

HAWAII

CONSTITUTIONAL AND STATUTORY PROVISIONS

Hawaii Constitution

- HAW. CONST. art. VIII, §2.

Each political subdivision shall have the power to frame and adopt a charter for its own self-government within such limits and under such procedures as may be provided by general law. Such procedures, however, shall not require the approval of a charter by a legislative body.

Charter provisions with respect to a political subdivision's executive, legislative and administrative structure and organization shall be superior to statutory provisions, subject to the authority of the legislature to enact general laws allocating and reallocating powers and functions.

A law may qualify as a general law even though it is inapplicable to one or more counties by reason of the provisions of this section.

- HAW. CONST. art. VIII, §6.

This article shall not limit the power of the legislature to enact laws of statewide concern.

Hawaii Revised Statutes

- HAW. REV. STAT. § 46-1.5(14) (2017). General powers and limitation of the counties.

Each county shall have the power to enact ordinances deemed necessary to protect health, life, and property, and to preserve the order and security of the county and its inhabitants on any subject or matter not inconsistent with, or tending to defeat, the intent of any state statute where the statute does not disclose an express or implied intent that the statute shall be exclusive or uniform throughout the State

- HAW. REV. STAT. § 50-15. Reserved powers.

Notwithstanding the provisions of this chapter, there is expressly reserved to the state legislature the power to enact all laws of general application throughout the State on matters of concern and interest and laws relating to the fiscal powers of the counties, and neither a charter nor ordinances adopted under a charter shall be in conflict therewith.

HOME RULE STRUCTURE

Hawaii has only four, relatively large units of general-purpose local government that correspond to its four main islands: the counties of Hawaii (“the Big Island”), Kauai, and Maui (which includes Lanai and a handful of other smaller islands), and the city and county of Honolulu (which covers the entire island of Oahu, the state’s most populous island).¹ The Hawaii constitution protects the authority of each unit to adopt its own home-rule charter subject to procedures established by state law. State law further delegates authority to the counties in detail. Among those powers are eminent domain, the power to regulate businesses, and the police power grant quoted above.² Despite these seemingly generous grants of authority, the Hawaii courts occasionally invoke language redolent of Dillon’s Rule in noting that “[m]unicipal corporations are solely the creation of the state” and “exercise only those powers which have been delegated to them by state legislation.”³ The courts meld this observation into their field preemption analysis, discussed in more detail below.⁴

Article VIII, § 6 of the constitution reserves ultimate authority over matters of statewide concern to the legislature.⁵ Similarly, state law reserves to the legislature the power to override local enactments “on matters of concern and interest” and fiscal matters, notwithstanding ordinances or charter provisions to the contrary. Moreover, the statutory police power grant to counties is conditioned on consistency with state law. Interpreting HAW. REV. STAT. § 46-1.5(14), the Hawaii Supreme Court stated that a municipal ordinance will be preempted “if (1) it covers the same subject matter embraced within a comprehensive statutory scheme disclosing an . . . intent to be exclusive and uniform throughout the state or (2) it conflicts with state law.”⁶ The court also noted that the state constitution mandates preemption through Article VIII, § 6, and that “most statutes will, by their very nature, govern matters of statewide concern.”⁷ The Hawaii Supreme Court includes local “[p]ersonnel matters, including civil service and compensation matters,” among those matters of statewide concern that the legislature may preempt.⁸

Under the test applied for determining preemption of a municipal ordinance, the court first examines whether the ordinance covers the same subject matter embraced by the statutory scheme or the rule promulgated pursuant to statute.⁹ A municipal ordinance may be preempted if it attempts to regulate in an area fully occupied by general law, either expressly or by legislative

¹ See, e.g., HAW. REV. STAT. § 50-2 (2017) (defining “counties”).

² *Id.* § 46-1.5 (listing powers delegated to counties).

³ *Robert Ito Farm, Inc. v. Cty. of Maui*, 111 F. Supp. 3d 1088, 1108 (D. Haw. 2015) (quoting *In re Application of Anamizu*, 481 P.2d 116, 118 (Haw. 1971)).

⁴ E.g., *Ito Farm*, 111 F. Supp. 3d at 1112 (holding that Maui’s ban on genetically engineered crops is preempted by state law).

⁵ *Marsland v. First Hawaiian Bank*, 764 P.2d 1228 (Haw. 1988).

⁶ *Richardson v. City and Cty. of Honolulu*, 868 P.2d 1193, 1209 (Haw. 1994).

⁷ *Id.* at 1213.

⁸ *City and Cty. of Honolulu v. Ariyoshi*, 689 P.2d 757, 764 (Haw. 1984)

⁹ *State v. Ewing*, 914 P.2d 549, 554 (Haw. 1996); *Anamizu*, 481 P.2d at 119 (looking to the “pervasiveness of the . . . statutory scheme” in holding that city ordinance regulating electrical contractors was invalid).

implication.¹⁰ Whether an ordinance conflicts with state statute is determined by examining whether it prohibits what the statute permits or permits what the statute prohibits.¹¹ Conflict may also exist, resulting in preemption of municipal ordinance, if a local ordinance otherwise contradicts or duplicates a state law.¹²

IMMUNITY FROM STATE PREEMPTION

As indicated in the constitutional home-rule provision, Article VIII, § 2, “[c]harter provisions with respect to a political subdivision's executive, legislative and administrative structure and organization shall be superior to statutory provisions,” subject to certain constraints imposed by “general law.” This language offers a sliver of constitutionally protected immunity from preemption to local governments regarding their structural affairs.¹³ If structural affairs implicate statewide concerns, however, such as personnel, then the Hawaii Supreme Court has held that Article VIII, § 6’s reservation of power to the state legislature trumps the home-rule protections of Article VIII, § 2.¹⁴ Moreover, the Hawaii Supreme Court has defined “general law” loosely, thereby removing that term as a significant constraint on the preemptive legislation permitted under Article VIII, § 2.¹⁵

¹⁰ *Id.*

¹¹ *Waikiki Resort Hotel, Inc. v. City and Cty. of Honolulu*, 624 P.2d 1353 (Haw. 1981).

¹² *Ewing*, 914 P.2d at 554 (citing *Richardson*, 868 P.2d at 1208 (emphasis omitted) (quoting *Sherwin-Williams Co. v. City of Los Angeles*, 844 P.2d 534, 536–37 (Cal. 1993)).

¹³ *See, e.g., Hawaii Gov't Employees' Ass'n v. Cty. of Maui*, 576 P.2d 1029, 1041 (Haw. 1978) (holding that Maui charter provisions governing the departments of water supply, police, and liquor “relate directly to the organization and government of the County of Maui” and thereby “supersede all laws of the State on the same subject in conflict therewith”); *but see Kauai Beach Villas-Phase II, LLC v. County of Kauai*, 955 F. Supp. 2d 1156, 1175 (Dist. Haw. 2013) (refusing to protect a charter provision authorizing zoning by initiative because the way in which zoning ordinances are passed “does not relate to the City’s ‘executive, legislative and administrative structure and organization[.]’” and is therefore inferior to state statute) (citation omitted).

¹⁴ *City & County of Honolulu v. Ariyoshi*, 689 P.2d 757, 764 (Haw. 1984); *see also* Elizabeth Kent, *Note, The Erosion of Home Rule in Hawaii: City and Cty. of Honolulu v. Ariyoshi*, 7 U. HAW. L. REV. 503, 519 (1985) (criticizing the court’s decision in *Ariyoshi* for “constrain[ing] the ability of counties to legislate on their own behalf”).

¹⁵ *See Bulgo v. Maui Cty.*, 430 P.2d 321, 326 (Haw. 1967) (“[A] law may apply to less than all of the political subdivisions and still be a general law, if it applies uniformly to a class of political subdivisions, which, considering the purpose of the legislation, are distinguished by sufficiently significant characteristics to make them a class by themselves.”).