

NORTH CAROLINA

CONSTITUTIONAL AND STATUTORY PROVISIONS

The North Carolina constitution grants the General Assembly the option to create statutory home rule for local governments, but it does not mandate home rule nor protect it. The home rule statutes are extensive; this memorandum includes portions of the municipal statutes only.

North Carolina Constitution

- Art. VII, § 1. General Assembly to provide for local government.

The General Assembly shall provide for the organization and government and the fixing of boundaries of counties, cities and towns, and other governmental subdivisions, and, except as otherwise prohibited by this Constitution, may give such powers and duties to counties, cities and towns, and other governmental subdivisions as it may deem advisable.

North Carolina Statutes

Cities: See N.C. Stat. Ann. Chapter 160A

- N.C. GEN STAT. § 160A-4 (2017). Broad Construction

It is the policy of the General Assembly that the cities of this State should have adequate authority to execute the powers, duties, privileges, and immunities conferred upon them by law. To this end, the provisions of this Chapter and of city charters shall be broadly construed and grants of power shall be construed to include any additional and supplementary powers that are reasonably necessary or expedient to carry them into execution and effect: Provided, that the exercise of such additional or supplementary powers shall not be contrary to State or federal law or to the public policy of this State.

- *Id.* § 160A-11. Corporate Powers

The inhabitants of each city heretofore or hereafter incorporated by act of the General Assembly or by the Municipal Board of Control shall be and remain a municipal corporation by the name specified in the city charter. Under that name they shall be vested with all of the property and rights in property belonging to the corporation; shall have perpetual succession; may sue and be sued; may contract and be contracted with; may acquire and hold any property, real and personal, devised, sold, or in any manner conveyed, dedicated to, or otherwise acquired by them, and from time to time may hold, invest, sell, or dispose of the same; may have a common seal and alter and renew the same at will; and shall have and may exercise in conformity with the city charter and the general laws of this State all municipal powers, functions, rights, privileges, and immunities of every name and nature whatsoever.

- *Id.* § 160A-174. General ordinance-making power (under “Article 8. Delegation of Police Power”)

(a) A city may by ordinance define, prohibit, regulate, or abate acts, omissions, or conditions, detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the city, and may define and abate nuisances.

(b) A city ordinance shall be consistent with the Constitution and laws of North Carolina and of the United States. An ordinance is not consistent with State or federal law when:

(1) The ordinance infringes a liberty guaranteed to the people by the State or federal Constitution;

(2) The ordinance makes unlawful an act, omission or condition which is expressly made lawful by State or federal law;

(3) The ordinance makes lawful an act, omission, or condition which is expressly made unlawful by State or federal law;

(4) The ordinance purports to regulate a subject that cities are expressly forbidden to regulate by State or federal law;

(5) The ordinance purports to regulate a field for which a State or federal statute clearly shows a legislative intent to provide a complete and integrated regulatory scheme to the exclusion of local regulation;

(6) The elements of an offense defined by a city ordinance are identical to the elements of an offense defined by State or federal law.

The fact that a State or federal law, standing alone, makes a given act, omission, or condition unlawful shall not preclude city ordinances requiring a higher standard of conduct or condition.

HOME RULE STRUCTURE, INCLUDING LACK OF IMMUNITY FROM STATE PREEMPTION

The state constitution makes home rule a discretionary matter for the General Assembly. While cities and counties in North Carolina do not have constitutional home rule status, the legislature has chosen to provide home rule by statute. Cities and counties enjoy statutory authority to locally select their form of government, management options, and personnel systems.¹ Under the statute, these powers are granted automatically to counties and to cities by virtue of incorporation; there is no “opt-in” requirement.² In most areas of municipal concern, the presumption against local authority to control local affairs is gone, with the legislature having abolished Dillon’s Rule in 1971, directing courts to “broadly construe” any powers granted, and “to include any additional and supplementary powers that are reasonably necessary or expedient” to granted powers.³ However, other functions are limited, such as the imposition of taxes, which

¹ For cities, see N.C. GEN. STAT. Chapter 160A (2017), and for counties, see *id.* Chapter 153A.

² *Parsons v. Wright*, 223 N.C. 520 (1943) (“When a municipal incorporation is established it takes control of the territory and affairs over which it is given authority.”)

³ N.C. GEN. STAT. ch. 160A-4 (2017).

the legislature must “specifically authorize[.]”⁴ Moreover, the legislature has specifically withdrawn or limited municipal powers in numerous areas, such as regarding the regulation of soft drink sizes, outdoor advertising, and standards of care for farm animals.⁵

If there is discord between the state provisions and the municipal or county provisions, the municipal and county provisions must give way.⁶ Moreover, if the state law clearly shows a legislative intent to provide “a complete and integrated regulatory scheme to the exclusion of local regulation[]” in a particular area of law, then the local rules must be consistent with the General Assembly’s legislative intent.⁷ State regulation of a particular field preempts county and municipal rules that govern the same issue and conflict with the state provision.⁸

In sum, North Carolina is a weak home rule state with no well-recognized state constitutional constraints on the state’s ability to preempt and restructure local governments.

⁴ *Id.* § 160A-206.

⁵ *Id.* § 160A-203 (limitations on regulating soft drink sizes); *id.* § 160A-203.1 (limitations on standard of care for farm animals); § 160A-199 (regulation of outdoor advertising).

⁶ *Greene v. City of Winston-Salem*, 213 S.E.2d 231, 235-36 (N.C. 1975).

⁷ *See* N.C. GEN. STAT. § 160A-174(b)(5) (2017); *Greene*, 213 S.E.2d at 237.

⁸ *Pne Aoa Media, L.L.C. v. Jackson County*, 554 S.E.2d 657, 661 (N.C. Ct. App. 2001) (citing *Greene*, 213 S.E.2d at 235-36).