

HISTORY OF MUNICIPAL HOME RULE

The desire for home rule is an important part of the history of California. There is a common misconception among even some California city officials that only charter cities possess home rule powers. Both general law and charter cities possess home rule. This document describes the historical evolution of the constitutional municipal home rule doctrine in California in three separate stages. The tension between cities and the state has been with us since the dawn of statehood, and it has manifested itself in various state constitutional amendments over time that reiterate how home rule is really the birthright of every California city.

Before Home Rule — 1850–1879

City governments already existed when California became a state in 1850. In some areas they took the form of the Mexican *alcades* (who embodied the role of mayor, judge, and sheriff) or local legislative bodies like the 15-member assembly created in San Francisco before it was declared illegal by a military governor in June 1849 when he called the first Constitutional Convention.¹ The 1849 California Constitution gave the Legislature the exclusive power to establish cities and to enlarge or restrict city powers.² This naturally led to extensive state involvement in city affairs, including the appointment of special commissions to actually manage the property and funds of Sacramento, San Jose, and San Francisco, as well as other legislation directing cities to pay special claims of parties that provided political inducements to the Legislature.³

All Cities Granted Inherent Home Rule Powers to Legislate Without Legislative Grant of Authority — 1879

State meddling in city affairs in those first 30 years caused the deep resentment throughout the state that ultimately led to the 1879 Constitutional Convention. During that convention, delegates borrowed heavily from the home rule provisions of the constitution of Missouri, the first state to grant home rule powers to its cities. Incorporating that constitution's provisions almost verbatim, the California Constitution of 1879 banned special legislation, banned special act incorporations, and granted the power to frame freeholder charters to communities with at least 100,000 people.⁴ The 1879 Constitution also took the power to impose local taxes away from the Legislature with the intention "to bring matters of a local concern home to the people."⁵

In addition to these changes, the most significant home rule provision in the 1879 amendments was article XI, section 11 (now art. XI, § 7), which provides a general grant of inherent home rule power to every city — general and charter cities alike — to "make or enforce within its limits all local, police, sanitary, and other ordinances or regulations not in conflict with the general laws." Sometimes this provision of the California Constitution is called the police power. The California Supreme Court declared later that the drafters' intent was "... to emancipate municipal governments from the authority and control formerly exercised over them by the Legislature."⁶

The 1879 home rule amendment finally freed cities from the need to seek specific state legislation to authorize their legislative acts on traditional municipal matters. Since the constitution empowered them to act without prior permission of the Legislature, cities instead simply had to inquire whether a proposed ordinance conflicted with a general state law. Years later the California Court of Appeal described the effect of this amendment: "[t]he constitution has, by direct grant, vested in them [cities] plenary power to

provide and enforce such ... regulations as they determine shall be necessary for the health, peace, comfort and happiness of their inhabitants, provided such regulations do not conflict with the general law. And the Legislature has no authority to limit the exercise of the power thus directly conferred upon cities, counties and towns by the organic law.”⁷

Former California Supreme Court Associate Justice and Hastings College of the Law Professor Joseph Grodin, in his authoritative study of the California Constitution, explains how section 7 changed everything for cities and counties:

- Section 7 presents the most widely used of the home rule provisions of the California Constitution. In contrast to sections 4 and 5, it applies equally to all cities and counties, regardless of their charter status. Section 7 empowers cities and counties to use their general authority, called their police power, to control and regulate any matter or activity that is otherwise an appropriate subject for governmental concern.
- The drafters intended that local authorities “ought to be left to do all those things that in their judgment are necessary to be done, and that are not in conflict with the general laws of the state.” The decision was made then not to restrict local governments narrowly to those specified powers that are overtly granted to them by the legislature *but to allow them to exercise whatever powers appeared necessary, without the need to request legislative authorization before taking action.*”⁸ (Emphasis added.)

In summary, under article XI, section 7, all cities are free to legislate on a matter unless it conflicts with a general law of the state and is, therefore, said to be preempted by the state law. What constitutes a conflict? The California Supreme Court articulated the basic analysis in upholding the validity of a city ordinance banning medical marijuana dispensaries and cultivation. In summary, it said:

- Cities have constitutionally granted powers to regulate land use and other traditional local matters. Absent a clear indication of preemptive intent from the Legislature, local regulations are not preempted.
- A local law conflicts with a general state law if the local legislation (1) duplicates the state law, (2) contradicts the state law (i.e., requires what state law forbids or prohibits what state law requires), or (3) enters an area that is fully occupied by general state law. A local ordinance does not conflict with state law if it is reasonably possible to comply with both the state and local laws.
- The courts are reluctant to infer legislative intent to preempt local regulations, and there is a presumption of validity of the local ordinance against an attack of state preemption when there is a significant local interest to be served that may differ from one locality to another.⁹

Voter Approved Charters Allowed to Trump State Law Over Municipal Affairs — 1896–1914

While the 1879 Constitution gave all cities basic home rule powers subject to conflicting state laws, over the following decade it became clear that cities needed the ability to engage in certain core municipal functions despite the conflicting general laws of the state. The 1896 Constitution introduced the concept of municipal affairs. The authority to adopt a charter is found in section 3 of article XI, which also contains this provision in subparagraph (a) explaining the status of the charter vis-à-vis state law: “The provisions of a charter are the law of the State and have the force and effect of legislative enactments.” In 1899, the California Supreme Court explained that provisions relating to charter cities “were enacted upon the principle that the municipality itself knew better what it wanted and needed than the state at large, and to give that municipality the exclusive privilege and right to enact direct legislation which would carry out and satisfy its wants and needs.”¹⁰

The 75 years of constitutional history leading to the authorization for voters to approve city charters that could, depending on the subject, supersede the general laws of the state, was explained by the California Supreme Court in 1992:

- [I]n 1896 article XI was amended in two significant respects. Former section 6 was revised to read as follows: “Cities or towns heretofore or hereafter organized, and all charters thereof framed or adopted by authority of the constitution, except in municipal affairs, shall be subject to and controlled by general laws.” (emphasis added.) In addition, former section 8 was adopted, allowing consolidated charter city and county governments to regulate “the manner in which, the times at which, and the terms for which the several county officers shall be elected ... [and] for their compensation”
- “What was the good to be gained by this amendment? The answer is common, every-day history. It was to prevent existing provisions of charters from being frittered away by general laws. It was to enable municipalities to conduct their own business and control their own affairs to the fullest possible extent in their own way. It was enacted upon the principle that the municipality itself knew better what it wanted and needed than the state at large, and to give that municipality the exclusive privilege and right to enact direct legislation which would carry out and satisfy its wants and needs. ... This amendment, then, was intended to give municipalities the sole right to regulate, control, and govern their internal conduct independent of general laws”
- [A]rticle XI [in 1914] was revised to give charter cities the power “to make and enforce all laws and regulations in respect to municipal affairs, subject only to the restrictions and limitations provided in their several charters, and in respect to other matters they shall be subject to and controlled by general laws.” (Former section 8 of the same article was likewise amended by the insertion of a similar provision: “It shall be competent in any charter framed under the authority of this section to provide that the municipality governed thereunder may make and enforce all laws and regulations in respect to municipal affairs, subject only to the restrictions and limitations provided in their several charters and in respect to all other matters they shall be subject to general laws.”¹¹

In addition to the jurisdiction granted in subdivision (a) of section 5 of article XI to make and enforce all ordinances and regulations concerning municipal affairs, subdivision (b) of section 5 of article XI specifically identifies four subjects that can be included in a charter: (1) a city police force; (2) subgovernment in all or part of the city; (3) conduct of city elections; and (4) election, appointment, removal, and compensation of municipal officers and employees whose compensation is paid by the city.¹²

The California Constitution provides no definition of what is or is not a municipal affair. The California Supreme Court noted that “the constitutional concept of municipal affairs is not a fixed or static quantity ... [but one that] changes with the changing conditions upon which it is to operate ... our cases display a growing recognition that home rule is a means of adjusting the political relationship between state and local governments in discrete areas of conflict.”¹³ What was once a matter of local concern can later become a matter of statewide concern, controlled by the general laws of the state.¹⁴ The Court also made it clear that this is a legal matter of state constitutional interpretation for the courts and not solely a factual one.¹⁵

Home Rule Authority Granted to All Cities over Public Works, Utilities and Public Property, Improvements and Funds — 1911–1970

Until 1911, it was believed that only charter cities could operate a public utility, so the Legislature proposed and the people enacted section 9 (formerly section 19) of article XI, providing broad plenary authority to any city to “establish, purchase, and operate public works to furnish its inhabitants with light, water, power, heat, transportation, or means of communications.”¹⁶ The section allows cities to provide similar services in other cities with their consent.

In 1970, voters further amended this section to effectively allow cities to issue franchises to persons or corporations to provide such services “... upon conditions and under regulations that the city may prescribe under its organic law.” These franchise powers must be construed, however, in conjunction with the broad authority over such activities granted to both the Legislature and the Public Utilities Commission by article XII. On the distribution of powers between the state and cities on this subject, however, article XII, section 8 is quite clear:

- A city, county, or other public body may not regulate matters over which the Legislature grants regulatory power of the Commission. This section does not affect the power over public utilities relating to the making and enforcement of police, sanitary, and other regulations concerning municipal affairs pursuant to a city charter existing on October 10, 1911, unless that power has been revoked by the city’s electors, or the right of *any city* to grant franchises for public utilities or other businesses on terms, conditions, and in the manner prescribed by law. (Emphasis added.)

Finally, general law and charter cities alike are protected by the provisions of article XI, section 11, subdivision (a), of the California Constitution that prohibits just the types of special commissions to control local property and funds that so outraged Californians prior to the 1879 Constitutional Convention. It states: “the Legislature may not delegate to a private person or body power to make, control, appropriate, supervise, or interfere with county or municipal corporation improvements, money, or property, or to levy taxes or assessments, or perform municipal functions.” This provision was one of the two constitutional limitations on the power of the Legislature over cities and counties that compelled the California Supreme Court to strike down a 2000 state law that attempted to delegate final decisions in public safety labor negotiations to a private arbitration panel.¹⁷

California Home Rule Today

Today the California Constitution authorizes both general law and charter cities to: (1) make and enforce all local laws and regulations not in conflict with general state laws (art. XI, § 7); (2) to establish, purchase, and operate public works and utilities or franchise others to do so (art. XI, § 9); and to be free from state legislation delegating to a private person or body control over city property, funds, tax levies and municipal functions (art. XI, § 11).

Cities with voter-approved charters have additional home rule authority or supremacy over their municipal affairs, police, subgovernments, city elections, and their elected and appointed city officials and employees (art. XI, § 5). The provisions of a city charter and the ordinances adopted by a charter city prevail over general state law in areas that a court determines are municipal affairs, including the specific areas enumerated in section 5, subdivision (b) of article XI.¹⁸ As to matters of statewide concern, however, charter cities remain subject to state law.¹⁹ Therefore, whether a charter city may act independent of state general law in a particular domain, including the specific areas enumerated in section 5, subdivision (b) of article XI, depends upon a court’s determination of whether it is a municipal affair or a matter of statewide concern.

Endnotes

- 1 See Detweiler, *Home Rule: An Historical Perspective* (Jan. 1997) Western City, at page 15.
- 2 *Johnson v. Bradley* (1992) 4 Cal.4th 389, 394-395.
- 3 See Thomas, *California Cities and the Constitution of 1879: General Laws and Municipal Affairs* (1980) 7 Hastings Const. L. Q. 642.
- 4 See Detweiler, *supra* note 1, at p. 16.
- 5 *People v. Martin* (1882) 60 Cal. 153; See Cal. Const., art. XIII, § 24, subd. (b).
- 6 *People v. Hoge* (1880) 55 Cal. 612, 618.
- 7 *In re Walter Ackerman* (1907) 6 Cal.App. 5, 9–10.
- 8 Grodin et al., *The Cal. State Constitution: A Reference Guide* (1993) pp. 192 (citing remarks of Mr. Eli Blackmer during debates at the California constitutional convention).
- 9 *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, 742-744. It is worthy of note that this case involves the regulatory legislation of a charter city, the City of Riverside, since charter cities as well as general law cities exercise home rule under the inherent police power granted to all cities by article XI, section 7. In other words, the City of Riverside did not rely on its status as a charter city under article XI, section 5, but rather on its home rule authority under article XI, section 7.
- 10 *Fragley v. Phelan* (1899) 126 Cal. 383, 387.
- 11 *Johnson v. Bradley* (1992) 4 Cal.4th 389, 395-397. (Emphasis in original) Empty brackets [] denote omitted language from the Supreme Court opinion.
- 12 In some cases, the courts have narrowly construed the subject matter described in section 5, subdivision (b) of article XI. See, e.g., *Baggett v. Gates* (1982) 32 Cal.3d 128 (applying the Public Safety Officers Procedural Bill of Rights to charter cities because it was limited to providing “procedural safeguards” to police officers and did not interfere with a charter city’s authority to set compensation).
- 13 *State Building and Construction Trades Council of California v. City of Vista* (2012) 54 Cal.4th 547, 557.
- 14 *Bishop v. City of San Jose* (1969) 1 Cal.3d 56, 61, *California Fed. Sav. & Loan Assn. v. City of Los Angeles* (1991) 54 Cal.3d 1, 13 (rejecting static and compartmentalized description of “municipal affairs” in favor of a more dialectical one); *Codding Enterprises v. City of Merced* (1974) 42 Cal.App.3d 375, 377.
- 15 *State Building and Construction Trades Council of California v. City of Vista*, *supra*, 54 Cal.4th at 558.
- 16 *California Apartment Association v. City of Stockton* (2000) 80 Cal.App.4th 699, 707.
- 17 *County of Riverside v. Superior Court* (2003) 30 Cal.4th 278.
- 18 Cal. Const., art. XI, § 5; *Sonoma County Organization of Public Employees v. County of Sonoma* (1979) 23 Cal.3d 296, 315.
- 19 *Bishop v. City of San Jose*, *supra*, 1 Cal.3d at p. 61.