

# NEW MEXICO

## CONSTITUTIONAL AND STATUTORY PROVISIONS

### **New Mexico Constitution**

- N.M. CONST. art. X, § 6. Municipal elections; charters; legislative powers and taxation.

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C. The registered qualified electors of a municipality may adopt, amend or repeal a charter in the manner provided by law. \* \* \* \*

D. A municipality which adopts a charter may exercise all legislative powers and perform all functions not expressly denied by general law or charter. This grant of powers shall not include the power to enact private or civil laws governing civil relationships except as incident to the exercise of an independent municipal power, nor shall it include the power to provide for a penalty greater than the penalty provided for a petty misdemeanor. No tax imposed by the governing body of a charter municipality, except a tax authorized by general law, shall become effective until approved by a majority vote in the charter municipality.

E. The purpose of this section is to provide for maximum local self-government. A liberal construction shall be given to the powers of municipalities.

### **New Mexico Statutes**

- N.M. STAT. ANN. § 3-17-1 (2017). Ordinances; Purposes.

The governing body of a municipality may adopt ordinances or resolutions not inconsistent with the laws of New Mexico for the purpose of:

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B. providing for the safety, preserving the health, promoting the prosperity and improving the morals, order, comfort and convenience of the municipality and its inhabitants. \* \* \* \*

- N.M. STAT. ANN. §3-18-1 (2017). General powers, body politic and corporate powers.

A municipality is a body politic and corporate under the name and form of government selected by its qualified electors. A municipality may:

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F. protect generally the property of its municipality and its inhabitants;

G. preserve peace and order within the municipality. \* \* \* \*

## HOME RULE STRUCTURE

New Mexico's constitutional home rule provision provides broad home rule authority to its cities that adopt a charter.<sup>1</sup> Municipalities that choose not to adopt a home rule charter depend on the state legislature for a grant of power.<sup>2</sup> The New Mexico legislature has delegated something akin to the police power to all cities, regardless of whether they have adopted a charter. Eleven cities, and one merged city-county government, have adopted home-rule charters.<sup>3</sup>

The Home Rule Amendment makes clear that charter cities' authority is subject to preemption by "general law." It also exempts from city authority matters of civil or private law unless incident to the exercise of an independent municipal power. In a case involving Santa Fe's enactment of a minimum wage higher than that of the state, the New Mexico Court of Appeals wrestled extensively with the scope of the private law exception, ultimately concluding that although the minimum wage constituted "private law," the ordinance was permissible in part because the legislature had separately delegated the police power to cities.<sup>4</sup> In that case, the court also rejected the notion that a state minimum wage law impliedly preempted the Santa Fe ordinance. In deciding on this question, the court considered whether the general law evinced any intent to negate such municipal power, whether there was a clear intent to preempt that governmental area from municipal policymaking, or whether municipal authority to act would be so inconsistent with the general law that the general law is the equivalent of an express denial.<sup>5</sup>

## IMMUNITY FROM STATE PREEMPTION

In addition to enjoying a constitutional foundation for their powers, charter cities enjoy limited autonomy from state interference in matters of local concern.<sup>6</sup> This immunity from preemption derives from the "general law" provision of the Home Rule Amendment, which the courts have interpreted to mean a law that applies generally throughout the state and is of statewide concern impacting all inhabitants of the state.<sup>7</sup> In a notable decision on this point, the state supreme court held that a state law mandating a certain number of city councilors was not a "general law" and

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<sup>1</sup> *New Mexicans for Free Enter. v. City of Santa Fe*, 126 P.3d 1149, 1158 (N.M. Ct. App. 2005) (describing the home rule amendment as offering a "generous grant of authority").

<sup>2</sup> *State ex rel. Haynes v. Bonem*, 845 P.2d 150, 154 (N.M. 1992).

<sup>3</sup> See Ballotpedia, [https://ballotpedia.org/Cities\\_in\\_New\\_Mexico#cite\\_note-Types-1](https://ballotpedia.org/Cities_in_New_Mexico#cite_note-Types-1) (last visited Apr. 23, 2017) (listing N.M. charter cities as Alamogordo, Albuquerque, Clovis, Gallup, Grants, Hobbs, Las Cruces, Las Vegas, Rio Rancho, and Santa Fe, and Los Alamos as a consolidated city-county charter government).

<sup>4</sup> *New Mexicans for Free Enter.*, 126 P.3d at 1160-64.

<sup>5</sup> *Id.* at 1159; see also *Apodaca v. Wilson*, 525 P.2d 876, 881 (N.M. 1974) ("[I]n New Mexico . . . a home rule municipality no longer has to look to the legislature for a grant of power to act, but only looks to legislative enactments to see if any express limitations have been placed on their power to act.").

<sup>6</sup> *New Mexicans for Free Enter.*, 126 P.3d at 1158.

<sup>7</sup> *Id.* at 1158.

therefore could not trump a charter city's provision to the contrary.<sup>8</sup> This decision indicates that matters of structural home rule receive some immunity from preemption in New Mexico.<sup>9</sup> In an earlier case, the supreme court held that matters within a city's "proprietary" authority were also likely not matters of statewide concern, whereas those within its governmental authority likely were.<sup>10</sup>

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<sup>8</sup> State ex rel. Haynes v. Bonem, 845 P.2d 150, 155 (N.M. 1992) ("[I]n order for a statute to override an enactment of a home rule municipality, the statute must relate to a matter of statewide concern.").

<sup>9</sup> *But see* Casuse v. City of Gallup, 746 P.2d 1103 (N.M. 1987) (holding that state legislature could require home-rule municipality to use single-member districts when city charter called for at-large districts).

<sup>10</sup> City of Albuquerque v. N.M. State Corp. Comm'n, 605 P.2d 227, 230 (N.M. 1979) (holding that city's regulation of limousine service trumped that of state commission's requirement to issue certificate of public necessity).