

CALIFORNIA

CONSTITUTIONAL AND STATUTORY PROVISIONS

California Constitution

- Art. XI, § 1(b)

The Legislature shall provide for county powers, an elected county sheriff, an elected district attorney, an elected assessor, and an elected governing body in each county. Except as provided in subdivision (b) of Section 4 of this article, each governing body shall prescribe by ordinance the compensation of its members, but the ordinance prescribing such compensation shall be subject to referendum. The Legislature or the governing body may provide for other officers whose compensation shall be prescribed by the governing body. The governing body shall provide for the number, compensation, tenure, and appointment of employees.

- Art. XI, §3. County and city charters.

(a) For its own government, a county or city may adopt a charter by majority vote of its electors voting on the question County charters adopted pursuant to this section shall supersede any existing charter and all laws inconsistent therewith. The provisions of a charter are the law of the State and have the force and effect of legislative enactments.

- Art. XI, § 4. County charters; provisions.

County charters shall provide for:

- (a) A governing body of 5 or more members, elected (1) by district or, (2) at large, or (3) at large, with a requirement that they reside in a district. Charter counties are subject to statutes that relate to apportioning population of governing body districts.
- (b) The compensation, terms, and removal of members of the governing body. If a county charter provides for the Legislature to prescribe the salary of the governing body, such compensation shall be prescribed by the governing body by ordinance.
- (c) An elected sheriff, an elected district attorney, an elected assessor, other officers, their election or appointment, compensation, terms and removal.
- (d) The performance of functions required by statute.
- (e) The powers and duties of governing bodies and all other county officers, and for consolidation and segregation of county officers, and for the manner of filling all vacancies occurring therein.
- (f) The fixing and regulation by governing bodies, by ordinance, of the appointment and number of assistants, deputies, clerks, attachés, and other persons to be employed, and for the prescribing and regulating by such bodies of the powers, duties, qualifications, and compensation of such

persons, the times at which, and terms for which they shall be appointed, and the manner of their appointment and removal.

(g) Whenever any county has framed and adopted a charter, and the same shall have been approved by the Legislature as herein provided, the general laws adopted by the Legislature in pursuance of Section 1(b) of this article, shall, as to such county, be superseded by said charter as to matters for which, under this section it is competent to make provision in such charter, and for which provision is made therein, except as herein otherwise expressly provided.

(h) Charter counties shall have all the powers that are provided by this Constitution or by statute for counties.

- Art. XI, § 5. City charters; provisions.

(a) It shall be competent in any city charter to provide that the city governed thereunder may make and enforce all ordinances and regulations in respect to municipal affairs, subject only to restrictions and limitations provided in their several charters and in respect to other matters they shall be subject to general laws. City charters adopted pursuant to this Constitution shall supersede any existing charter, and with respect to municipal affairs shall supersede all laws inconsistent therewith.

(b) It shall be competent in all city charters to provide, in addition to those provisions allowable by this Constitution, and by the laws of the State for: (1) the constitution, regulation, and government of the city police force (2) subgovernment in all or part of a city (3) conduct of city elections and (4) plenary authority is hereby granted, subject only to the restrictions of this article, to provide therein or by amendment thereto, the manner in which, the method by which, the times at which, and the terms for which the several municipal officers and employees whose compensation is paid by the city shall be elected or appointed, and for their removal, and for their compensation, and for the number of deputies, clerks and other employees that each shall have, and for the compensation, method of appointment, qualifications, tenure of office and removal of such deputies, clerks and other employees.

- Art. XI, § 7. Counties and cities; ordinances and regulations; authority.

A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.

HOME RULE STRUCTURE

The state constitution provides a general grant of authority to cities and counties with respect to police powers, and offers immunity to preemption with respect to “municipal affairs,” including four named “core” categories. Outside of these protected areas — that is, when the city or county ordinance implicates a “statewide concern” — local legislation is subject to preemption

by the state.¹ The threshold question for preemption, therefore, is whether a local ordinance addresses a matter of statewide interest. The judiciary reserves the ultimate power to decide whether a matter is a subject of statewide concern, even if the legislature expresses views on the matter.² When a statute is ambiguous concerning scope of state law preemption, courts interpret it in favor of local government autonomy.³ State law preempts local law when the local legislation duplicates, contradicts, or enters an area fully occupied by general law expressly or by legislative implication.⁴

IMMUNITY FROM STATE PREEMPTION

If it is a purely municipal affair, California’s constitutional home rule doctrine reserves to charter cities the right to adopt and enforce ordinances that conflict with general state laws, provided the subject of the regulation is a municipal affair rather than one of statewide concern.⁵ Judicial inquiry into local versus statewide follows a four-step analysis: (1) determining whether there is an “actual conflict” between local and state law; (2) whether the conflict implicates a municipal affair; (3) whether the issue is also a matter of statewide concern; and (4) whether the state law is “reasonably related and narrowly tailored” to limit intrusion into local affairs.⁶ Outside of the areas specifically denominated in the constitution, “municipal affair” is an ambiguous term, the meaning of which can change over time or according to the specific circumstances.⁷

Within the areas specifically identified by the state constitution, charter cities exercise “plenary authority” over their own elections, a key structural matter.⁸ In *Johnson v. Bradley*, the California Supreme Court upheld a Los Angeles charter amendment providing for public financing of election campaigns for local officials despite a statewide voter-initiated proposition banning such funding. Although the court declined to rule on whether the charter provision fell under the “core” four categories protected by article XI, § 5(b), the court followed the general four-step analysis for determining whether a matter is a “municipal affair” protected from state preemption.⁹ The state law failed at the fourth step because the state had no evidence that the voter-enacted proposition furthered the asserted statewide interest in election integrity.¹⁰ Courts

¹ *Am. Fin. Ass’n v. City of Oakland*, 104 P.3d 1239, 1251 (Cal. 2005) (if ordinance regulates statewide concern, it is preempted if it conflicts with state law).

² *Johnson v. Bradley*, 841 P.2d 990, 1000 (Cal. 1992).

³ *San Diego County Veterinary Med. Ass’n v. County of San Diego*, 10 Cal.Rptr.3d 885, 889 (Cat. Ct. App. 2004) (“When a county’s action is challenged as not being a valid exercise of police power, all presumptions favor its validity . . .”).

⁴ *Am. Fin. Ass’n*, 104 P.3d at 820.

⁵ *Id.*

⁶ *Johnson*, 841 P.2d at 996.

⁷ *Pacific Tel. v. City of San Francisco*, 336 P.2d 514, 51 Cal.2d 766, 775 (Cal. 1959)

⁸ *Mackey v. Thiel*, 68 Cal. Rptr. 717 (Cal. Ct. App. 1968) (holding the state cannot require a local government to send out candidate statements where the locality has a comprehensive set of election rules because the requirement implicates “the manner by which municipal officers are elected” even if there is a statewide concern).

⁹ *Johnson*, 841 P.2d at 999 (“[W]e need not, and do not, determine whether [the charter section] is by definition a ‘core’ municipal affair . . .”).

¹⁰ *Id.* at 1004; *see also Cawdrey v. City of Redondo Beach*, 19 Cal. Rptr.2d 179 (Cal. Ct. App. 1993)

have also upheld city laws over conflicting state laws with respect to the procedures for raising local taxes.¹¹

In the realm of city contracting, the state supreme court has generally tended to affirm local power, holding in 2012 that the state's prevailing wage law, which sets the wages to paid to employees of private contractors constructing public works, could not constitutionally be applied to charter cities.¹² A subsequent intermediate appellate court, however, held that the state could require cities to pay higher, prevailing wages to city contractors or lose state funds because such a law did not amount to a conflict with city provisions to the contrary.¹³ A passionate dissent in the appellate court opinion argued that the state law unconstitutionally coerced cities into accepting the state mandate.¹⁴

Charter counties receive some immunity to state override under the state constitution, but less than cities. In contrast to cities, the state constitution does not grant charter counties a “general reservation of local autonomy.”¹⁵ The constitution does, however, allow county charter provisions implemented pursuant to the specific powers in Article XI, § 4, to supersede general laws.¹⁶ Moreover, Article XI, §1(b) protects the authority of *all* counties—charter or general—over “the number, compensation, tenure, and appointment of employees.”¹⁷

The California Supreme Court has considered a number of cases involving state regulation of city and county government employment. It has struck down as inconsistent with the home-rule

(acknowledging that cities have plenary authority over “core categories,” but instead deciding validity of local term limits under municipal affairs inquiry of article XI, section 5(a)).

¹¹ *Trader Sports, Inc. v. City of San Leandro*, 112 Cal. Rptr.2d 677, 93 Cal. App.4th 37, 49 (Cal. Ct. App. 2001) (upholding local procedure for putting a tax measure on the ballot over conflicting state statute).

¹² *State Bldg. & Constr. Trades Council of Cal., AFL-CIO v. City of Vista*, 279 P.3d 1022, 1034 (Cal. 2012) (“conclud[ing] that no statewide concern has been presented justifying the state's regulation of the wages that charter cities require their contractors to pay to workers hired to construct locally funded public works”); *see also* S.D. Myers, Inc. v. City and County of San Francisco, 253 F.3d 461, 474 (9th Cir. 2001) (“[U]nder current California law, the City's chosen mode of contracting is a municipal affair over which the City may exercise its authority without violating the California constitution.”).

¹³ *City of El Centro v. Lanier*, 200 Cal. Rptr.3d 376, 388 (Cal. Ct. App. 2016); *see also* *Domar Electric, Inc. v. City of Los Angeles*, 41 Cal. App.4th 810 (Cal. Ct. App. 1995) (finding no conflict between local practice and state law governing “the procedures for determining good faith efforts” to establish participation by minority and women business enterprises, which was a valid statewide concern).

¹⁴ *El Centro*, 200 Cal. Rptr.3d at 390 (relying on U.S. Supreme Court’s coercion analysis regarding the Affordable Care Act in *NFIB v. Sebelius*, 132 S.Ct. 2566 (2012)).

¹⁵ *Cawdrey v. City of Redondo Beach*, 19 Cal. Rptr.2d 179, 15 Cal. App.4th 1212, 1221 (Cal. Ct. App. 1993).

¹⁶ *Younger v. Board of Supervisors*, 93 Cal. App. 3d 864, 870 (Cal. Ct. App. 1979) (“[I]t is without dispute that local rules or regulations relating to matters which a county is constitutionally empowered to regulate by charter supersede general state laws on the subject, except as to matters covered by general law where (a) the local legislation attempts to impose additional requirements [citations], or (b) the subject matter is one of state concern, and the general law occupies the entire field [citation], or (c) the subject matter is of such statewide concern that it can no longer be deemed a municipal affair [citation].”) (internal quotations omitted).

¹⁷ *County of Riverside v. Superior Court*, 66 P.3d 718 (Cal. 2003) (invalidating binding arbitration regarding the compensation of firefighters or law enforcement officers because it interfered with county’s constitutionally guaranteed prerogative in this realm).

amendments state laws that denied the provision of state funds to mitigate the impact of Proposition 13 (a 1978 constitutional amendment that severely limited local authority to raise revenue) to local governments providing employees with cost-of-living increases greater than the state standard.¹⁸ The court also invalidated a state law that imposed binding arbitration over the compensation paid to county employees.¹⁹ On the other hand, the court has upheld the application of state laws imposing procedural protections for public safety officers,²⁰ and subjecting charter cities to meet-and-confer requirements with local public employees' unions.²¹

Note that in California, due to its statewide political dynamics, recent assertions of immunity at the city and county level have been put forward to immunize local governments from compliance with state statutes mandating more generous pay or terms of employment for employees.²²

¹⁸ *Sonoma County Org. of Pub. Employees v. County of Sonoma*, 591 P.2d 1, 13 (Cal. 1979).

¹⁹ *Riverside*, 66 P.3d at 723.

²⁰ *Baggett v. Gates*, 649 P.2d 874, 880 (Cal. 1982).

²¹ *People ex rel. Seal Beach Police Officers Ass'n v. City of Seal Beach*, 685 P.2d 1145, 1151 (Cal. 1984).

²² *E.g., El Centro*, 200 Cal. Rptr.3d at 376; *State Bldg. & Constr. Trades Council of Cal., AFL-CIO v. City of Vista*, 279 P.3d 1022 (2012).