



## MICHIGAN

### I. Summary of Home Rule in Michigan

- Michigan's constitution grants cities, counties, and other local governments home rule powers with some limitations, including limitations around fiscal authority.
- Michigan statutes fill in details of local governments' home rule powers and impose various limitations.
- Despite local governments' home rule powers under the state's constitution, the legislature may exercise plenary control over local governments if and when it sees fit.
- In addition, local governments are precluded from acting if an ordinance is in direct conflict with a state statutory scheme or if the statutory scheme occupies the field of regulation in which the local government seeks to act, even where there is no direct conflict between the schemes of regulation

### II. Source of Municipal and County Home Rule Authority

- *Constitutional sources of home rule:*
  - **Counties:**
    - **MI CONST Art. 7, § 1**  
Sec. 1. Each organized county shall be a body corporate with powers and immunities provided by law.
    - **MI CONST Art. 7, § 2**  
Sec. 2. Any county may frame, adopt, amend or repeal a county charter in a manner and with powers and limitations to be provided by general law, which shall among other things provide for the election of a charter commission. The law may permit the organization of county government in form different from that set forth in this constitution and shall limit the rate of ad valorem property taxation for county purposes, and restrict the powers of charter counties to borrow money and contract debts. Each charter county is hereby granted power to levy other taxes for county purposes subject to limitations and prohibitions set forth in this constitution or law. Subject to law, a county charter may authorize the county through its regularly constituted authority to adopt resolutions and ordinances relating to its concerns.

**Election of charter commissions**

The board of supervisors by a majority vote of its members may, and upon petition of five percent of the electors shall, place upon the ballot the question of electing a commission to frame a charter.

**Approval of electors**

No county charter shall be adopted, amended or repealed until approved by a majority of electors voting on the question.

○ **Cities:**

▪ **MI CONST Art. 7, § 22**

Sec. 22. Under general laws the electors of each city and village shall have the power and authority to frame, adopt and amend its charter, and to amend an existing charter of the city or village heretofore granted or enacted by the legislature for the government of the city or village. Each such city and village shall have power to adopt resolutions and ordinances relating to its municipal concerns, property and government, subject to the constitution and law. No enumeration of powers granted to cities and villages in this constitution shall limit or restrict the general grant of authority conferred by this section.

○ **Cities and Counties:**

▪ **MI CONST Art. 7, § 34**

Sec. 34. The provisions of this constitution and law concerning counties, townships, cities and villages shall be liberally construed in their favor. Powers granted to counties and townships by this constitution and by law shall include those fairly implied and not prohibited by this constitution.

• ***Statutory sources of home rule:***

○ **Cities:**

▪ **Michigan Home Rule City Act of 1909, including such provisions as:**

▪ **Mich. Comp. Laws Ann. § 117.4i (d) & (j) (West 2019)**

(d) Except as otherwise provided in this subdivision, the regulation of trades, occupations, and amusements within city boundaries, if the regulations are not inconsistent with state or federal law, and the prohibition of trades, occupations, and amusements that are detrimental to the health, morals, or welfare of the inhabitants of that city. This subdivision is subject to the local government occupational licensing act.

...

(j) The enforcement of police, sanitary, and other ordinances that are not in conflict with the general laws.

▪ **Mich. Comp. Laws Ann. § 117.4j (West 2019)**

Sec. 4-j. Each city may in its charter provide:

(1) **City departments.** For the establishment of any department that it may deem necessary for the general welfare of the city, and for the separate incorporation thereof: Provided, however, That these provisions shall not be construed to extend to and include public schools;

(2) **Special acts.** For altering, amending or repealing any special act affecting any municipal concerns or existing municipal department, but the department in control of the public schools shall not be construed to be a municipal department;

(3) **Municipal powers.** For the exercise of all municipal powers in the management and control of municipal property and in the administration of the municipal government, whether such powers be expressly enumerated or not; for any act to advance the interests of the city, the good government and prosperity of the municipality and its inhabitants and through its regularly constituted authority to pass all laws and ordinances relating to its municipal concerns subject to the constitution and general laws of this state.

○ **Counties:**

▪ **Michigan County Home Rule Act of 1966, including such provisions as:**

▪ **Mich. Comp. Laws Ann. § 45.515 (West 2019)**

Sec. 15. A county charter adopted under this act may provide for 1 or more of the following:

...

(c) The authority to perform at the county level any function or service not prohibited by law, including, but not limited to, police protection, fire protection, planning, zoning, education, health, welfare, recreation, water, sewer, waste disposal, transportation, abatement of air and water pollution, civil defense, and any other function or service necessary or beneficial to the public health, safety, and general welfare of the county. Powers granted solely by charter may not be exercised by the charter county in a local unit of government that is exercising a similar power without the consent of the local legislative body. The cost of a service authorized by charter to be performed by the county, may be determined by negotiation between the local unit of government and the charter county and the cost must be charged to the local unit of government or area benefited by the service, unless it is rendered on a countywide basis in which event the cost may be paid from the general fund of the county. If a function exercised by a local unit of government is transferred to the county and becomes a county function financed through the

general fund of the county, the county shall reimburse a local unit of government a negotiated sum representing the value of the transferred capital assets of the function owned by and paid for by the local unit of government, including outstanding bonded indebtedness of the local unit of government.

### III. Scope of Municipal and County Home Rule Authority

The Michigan constitution provides home rule for cities and counties. *See* Part II, *supra*. These provisions were first enacted for Michigan’s cities and villages in 1908,<sup>1</sup> and then largely transferred over to Michigan’s current constitution of 1963. The Michigan constitution extended home rule powers to counties for the first time in 1963.<sup>2</sup>

Michigan has a variety of forms of local government, including villages and townships. Because cities and counties are the two most powerful forms of local government, this memorandum will focus on them, although prominent cases involving conflict between local and state law also concern townships.

The constitution empowers counties, cities, and villages to adopt charters for home rule. *See* Part II, *supra*. Only two counties, Wayne (Detroit) and Macomb (suburban Detroit) have adopted such charters.<sup>3</sup> All cities and some villages are governed by a charter.<sup>4</sup>

In addition to the constitution, the Michigan legislature has passed statutes that fill in the details of home rule.<sup>5</sup> With respect to both cities and counties, these statutes are quite detailed. For cities, for instance, the statute grants seemingly broad police powers to regulate “trades, occupations, and amusements within city boundaries, if the regulations are not inconsistent with state or federal law, and the prohibition of trades, occupations, and amusements that are detrimental to the health, morals, or welfare of the inhabitants of that city,” and to “enforce[] . . . police, sanitary, and other ordinances that are not in conflict with the general laws.”<sup>6</sup> With respect to fiscal authority, the constitution itself limits local power,<sup>7</sup> as do many sections of the home rule statute.<sup>8</sup>

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<sup>1</sup> John Amrhein, Michigan State University, MSU Extension, Elected County Executives And County Home Rule in Michigan: Part One (Sept. 21, 2016),

[https://www.canr.msu.edu/news/elected\\_county\\_executives\\_and\\_county\\_home\\_rule\\_in\\_michigan\\_part\\_one](https://www.canr.msu.edu/news/elected_county_executives_and_county_home_rule_in_michigan_part_one).

<sup>2</sup> *See, e.g.*, Citizens Research Council of Michigan, Michigan Constitutional Issues: System of Local Government at 3 (Oct. 1994), <http://crcmich.org/PUBLICAT/1990s/1994/rpt31309.pdf>; Stephen M. Silverman, *County Home Rule: An Approach to Metropolitan Problems in Michigan*, 6 U. MICH. J. L. REFORM 232 at 234 (1972), <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=2290&context=mjlr>.

<sup>3</sup> Ballotpedia, Counties in Michigan, [https://ballotpedia.org/Counties\\_in\\_Michigan](https://ballotpedia.org/Counties_in_Michigan) (last viewed Dec. 17, 2019).

<sup>4</sup> *Id.*

<sup>5</sup> For cities, this statute is known as the “Home Rule City Act of 1909,” and it has been updated repeatedly in the century-plus since its enactment. *See* Mich. Comp. Laws Ann. §§ 117 to 117.38 (West 2019). For counties, the Michigan County Home Rule Act of 1966 explains the charter adoption process and permissive and mandatory charter provisions. Mich. Comp. Laws Ann. §§ 45.501 to 45.521 (West 2019).

<sup>6</sup> Mich. Comp. Laws Ann. § 117.4i(d) & (j) (West 2019).

<sup>7</sup> *See, e.g.*, MI CONST Art. 7, § 11 (limiting indebtedness to 10 percent of a county’s assessed valuation); MI CONST Art. 7, § 16 (limiting county taxes for road purposes); MI CONST Art. 7, § 21 (requiring legislature to limit property taxes for municipal purposes).

<sup>8</sup> *E.g.*, Mich. Comp. Laws Ann. § 117.5 (West 2019) (prohibiting cities from increasing property tax rates by more than 2 percent except in limited circumstances).

#### IV. Preemption

Michigan's home rule system is essentially legislative in structure. A recent Michigan Supreme Court case clarified that at least in the regulatory realm, cities' default authority is quite broad.<sup>9</sup> Despite this broad default authority, the legislature may exercise plenary control over local governments if and when it sees fit. This principle was clearly illustrated by the state's passage of legislation that allowed an emergency manager to steer Detroit into bankruptcy, essentially depriving the elected city council and mayor of all their powers.<sup>10</sup> A federal bankruptcy court, relying on Michigan law, held that the arrangement did not violate the home rule provisions of the Michigan constitution.<sup>11</sup>

A municipality is precluded from acting if its ordinance is in direct conflict with a state statutory scheme or if the statutory scheme occupies the field of regulation in which the municipality seeks to act, even where there is no direct conflict between the schemes of regulation.<sup>12</sup> "Preemption" and "conflict" are separate doctrines under which a local ordinance may be found invalid; under preemption doctrine a municipality may not invade a field completely occupied by state statute while "conflict doctrine" only invalidates ordinances actually in conflict with state law where the entire area has not been preempted.<sup>13</sup> In the absence of complete field occupation, local governments are free to regulate beyond state law's minimum requirements.<sup>14</sup>

Note that the statutes are inconsistent in referring to either "laws" or "general laws" as preemptive. Perhaps due to this inconsistency, there is no case law distinguishing preemption by state "law" from preemption by "general law" for the purposes of validity.

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<sup>9</sup> *Assoc. Builders & Contractors v. City of Lansing*, 880 N.W.2d 765, 769 (Mich. 2016) (concluding that cities have broad powers over local concerns, and overruling prior case to the contrary from before the 1963 constitution).

<sup>10</sup> 2011 Mich. Pub. Act 133. The state has also placed other cities and school districts under emergency management pursuant to a statute originally passed in 1990, although Detroit's was the most prominent in that it included bankruptcy and led to a reported judicial decision. 1990 Mich. Pub. Act. 72; *see also* Josh Hakala, *How Did We Get Here? A Look Back at Michigan's Emergency Manager Law*, Mich. Radio, Feb. 3, 2016, <http://michiganradio.org/post/how-did-we-get-here-look-back-michigans-emergency-manager-law> (discussing application of the law to Flint and its role in the water crisis); Clayton P. Gillette, *Dictatorships for Democracy: Takeovers of Financially Failed Cities*, 114 COLUM. L. REV. 1373, 1396 (2014) (discussing Michigan's emergency management regime); Michelle Wilde Anderson, *Democratic Dissolution: Radical Experimentation in State Takeovers of Local Governments*, 39 FORDHAM URB. L.J. 577, 586–92 (2012) (tracing the evolution and applications of Michigan's emergency manager law from 1990 to 2012).

<sup>11</sup> *In re City of Detroit*, 504 B.R. 97, 160 (Bankr. E.D. Mich. 2013).

<sup>12</sup> *AFSCME v. City of Detroit*, 652 N.W.2d 240, 249 (Mich. Ct. App. 2002) (per curiam), *aff'd sub nom. Am. Fed'n of State, Cty. & Mun. Employees v. City of Detroit*, 662 N.W.2d 695 (2003); *People v. Llewellyn*, 257 N.W.2d 902, 904 (Mich. 1977) (per curiam); *In re Wilcox*, 233 F.3d 899, 906 n. 5 (6th Cir. 2000) ("As the provisions of the Michigan Constitution and Home Rule City Act make clear, cities such as Detroit are empowered to enact any ordinance or charter provision deemed necessary for the public interest, as long as the enactment is not contrary to or preempted by the state constitution or state laws.").

<sup>13</sup> *E.g., City of Detroit v. Recorder's Court Traffic and Ordinance Judge*, 304 N.W.2d 829 (Mich. Ct. App. 1981) (engaging in both conflict and field analysis in determining whether Detroit anti-prostitution ordinance was preempted).

<sup>14</sup> *Miller v. Fabius Tp.*, 114 N.W.2d 205, 207–08 (Mich. 1962) ("The mere fact that the state, in the exercise of the police power, has made certain regulations does not prohibit a municipality from exacting additional requirements.") (quotations omitted).

## V. Local Legislative Immunity

The Michigan constitution includes a Speech or Debate immunity provision under MI CONST Art. 4, § 11. The provision states:

Except as provided by law, senators and representatives shall be privileged from civil arrest and civil process during sessions of the legislature and for five days next before the commencement and after the termination thereof. They shall not be questioned in any other place for any speech in either house.

MI CONST Art. 4, § 11. The Court of Appeals of Michigan has explained that “[b]ecause Michigan's Speech or Debate Clause is substantially similar to the Speech or Debate Clause found in the Constitution of the United States, it should be similarly construed.”<sup>15</sup> The state’s Court of Appeals has also noted that “in the absence of a waiver of the immunity, the Speech or Debate Clause immunizes a legislator from civil suits premised on actions that he or she took within the legitimate sphere of legislative activity.”<sup>16</sup> The Michigan Court of Appeals does not appear to have questioned the application of the privilege under MI CONST Art. 4, § 11 to local officials.<sup>17</sup>

The Michigan legislature has codified the protections afforded under the state constitution’s Speech or Debate Clause through Mich. Comp. Laws Ann. § 4.551 (West 2019). The Michigan Court of Appeals has stated that Section 4.551 “is clearly a codification of the constitutional protections afforded under the Speech or Debate Clause” and “[b]ecause it was enacted after the amendment of Const1963, art. 4 § 11, it can be considered legislation that had the purpose of implementing the amendment of the constitution.”<sup>18</sup>

In addition, Michigan courts have recognized that the separation of powers doctrine insulates legislative bodies and their members, including local officials, from judicial interference when carrying out their discretionary duties “absent an abuse of discretion, excessive use of power or error of law.”<sup>19</sup> Moreover, legislators in Michigan, including local officials, enjoy common law absolute immunity “for what they do or say in legislative proceedings.”<sup>20</sup>

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<sup>15</sup> *Cotton v. Banks*, 872 N.W.2d 1, 6 (Mich. Ct. App. 2015).

<sup>16</sup> *Id.* at 7.

<sup>17</sup> *Field v. Wayne Cty. Cmty. Coll.*, No. 176056, 1997 WL 33353526, at \*4 (Mich. Ct. App. Mar. 11, 1997) (per curiam) (unpublished).

<sup>18</sup> *Wilkins v. Gagliardi*, 556 N.W.2d 171, 178 (Mich. Ct. App. 1996) (per curiam).

<sup>19</sup> *See, e.g., Cahalan v. Wayne Cty. Bd. of Comm'rs*, 286 N.W.2d 62, 66 (Mich. Ct. App. 1979) (per curiam) (applying separation of powers doctrine to actions by a county board, explaining that “[t]he judiciary will not interfere with the discretionary actions of legislative bodies”); *Sheffield Dev. Co. v. City of Troy*, 298 N.W.2d 23, 25 (1980) (explaining that “the limitations inherent in the constitutional separation of powers” preclude judicial interference in acts that are legislative in nature “absent an abuse of discretion, excessive use of power or error of law”).

<sup>20</sup> *Guindon v. Twp. of Dundee*, No. 09-11501, 2010 WL 5394992, at \*6 (E.D. Mich. Dec. 23, 2010), *aff'd sub nom. Guindon v. Twp. of Dundee*, Mich., 488 F. App'x 27 (6th Cir. 2012).

## **VI. Other Relevant Issues**

The Michigan constitution includes a “single object” requirement for bills in MI CONST Art. 4, § 24.<sup>21</sup>

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<sup>21</sup> The Michigan Supreme Court “has explained that three kinds of challenges may be brought against statutes on the basis of the Title–Object Clause: ‘(1) a ‘title-body’ challenge, (2) a multiple-object challenge, and (3) a change of purpose challenge.’” *Estate of Buol by Roe v. Hayman Co.*, 918 N.W.2d 211, 216 (Mich. Ct. App. 2018) (quoting *People v. Kevorkian*, 527 N.W.2d 714, 714 (Mich. 1994)).