

Legal Q & A

Home Rule

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This monthly column examines issues of general concern to municipal officers. It is not meant to provide legal advice and is not a substitute for consulting with your municipal attorney. As always, when confronted with a legal question, contact your municipal attorney as certain unique circumstances may alter any conclusions reached herein.

The delegates to the Illinois Constitutional Convention of 1970 included a home rule provision in the Illinois Constitution of 1970.¹ Since then, the concept of home rule is still misunderstood by some citizens and officials. The intent of this column is to clear up those misunderstandings and to help municipalities utilize the full authority granted by the home rule Section of the Illinois Constitution.

Q: What is “home rule,” what are its benefits, and how does a municipality become a home rule unit?

A: In Illinois, home rule is the State constitutional authority of local governments to self-govern provided the General Assembly did not explicitly limit that power or maintain the exclusive exercise of authority in a specific area. Home rule municipalities “may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; to license; to tax; and to incur debt”² without specific statutory authority.

Prior to July 1, 1971 – the effective date of the Illinois Constitution of 1970 – Illinois municipalities were limited in their authority to regulate by what was commonly referred to as Dillon’s Rule.³ Dillon’s Rule provides that municipalities possess only those powers expressly granted, powers incident to those expressly granted, and powers indispensable to the accomplishment of the declared objects and purposes of the municipal corporation.⁴ Non-home rule municipalities are still required to operate under Dillon’s Rule⁵ but with some additional authority offered by Section 7, of Article VII of the Illinois Constitution.⁶

However, home rule municipalities have the power to self-govern in areas that are uniquely local in nature. Therefore, home rule municipalities in Illinois have the ability to regulate on any subject that is of local concern provided the regulation thereof is not limited or prohibited by federal or state statute or constitutional provision. In Illinois, the only exceptions to self-governance are:

1. If the General Assembly explicitly limits or prohibits the exercise of authority in a specific area;⁷

2. To incur debt payable from *ad valorem* property tax receipts maturing more than 40 years from the time it is incurred;
3. To define and provide for the punishment of a felony;⁸
4. Providing for imprisonment of over six months, unless otherwise authorized by statute;
5. Licensing for revenue;
6. Imposing taxes measured by income, earnings, or upon occupations, unless otherwise authorized by law;
7. Providing for officers, their manner of selection and terms of office, except as approved by referendum or otherwise authorized by law; or
8. Anything that may violate the provisions of the federal or state constitutions.⁹

“Home rule” is defined as:

State Constitutional provision or type of legislative action which results in apportioning power between state and local government by providing local cities and towns with a measure of self-government if such local government accepts terms of the state legislation.¹⁰

The authority granted home rule units are very broad. Article VII, Section 6(a) of the Illinois Constitution of 1970 provides:

Except as limited by this Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; to license; to tax; and to incur debt.

As the above language provides, a home rule unit may exercise any power and perform any function pertaining to its government and affairs. Besides the limitations listed above, the regulation must be a matter pertaining to the government and affairs of the municipality, not a matter of state or nationwide concern.¹¹ For example, although disconnection is a very local concern, it is considered a matter of statewide concern better left to the General Assembly to regulate.¹² However, the power to determine the number of votes necessary to approve an appropriation is a matter of solely local concern.¹³ If there is no statutory or constitutional limitation or prohibition, it is up to the courts to decide whether a regulation is a matter pertaining to the government and affairs of the municipality upon a challenge of the regulation.¹⁴

There are a variety of ways a home rule municipality can regulate for the protection of public health, safety, morals and welfare of the municipality provided the regulation is a matter pertaining to its government and affairs and stays within the constitutional and explicit statutory

limitations. For instance, a home rule municipality can enact and enforce zoning regulations and building codes beyond what is provided by statute as long as those regulations do not go beyond the above mentioned limitations. In addition, home rule municipalities can license, tax, and regulate businesses and occupations beyond what is allowed for non-home rule municipalities provided they remain within the limitations. Finally, home rule municipalities can incur debt and use a portion of its taxes to pay off that debt.

It is impossible to compile a complete list of ways that home rule powers can be used to the benefit of every community because new and innovative uses are continuously discovered. In addition, benefits of home rule are relative because what may be helpful or necessary for one municipality may not be helpful or necessary for another. The ability to address the relative needs or concerns of municipalities is, in and of itself, a benefit of home rule.

However, it is fair to say that, among others, the ability to acquire and manage revenue, and to address the economic development needs of a community are very compelling benefits of home rule. Home rule municipalities can impose a variety of taxes and at greater rates than non-home rule municipalities. A need for additional revenue sources can be a challenging political decision; however, it can be used to the benefit of residents as well. For instance, property taxes may be stabilized, or possibly even lowered, with the additional revenue sources. Other sources of revenue include the ability to borrow money, and to impose greater fines for various violations. Home rule municipalities have greater flexibility with economic development efforts as well.

A municipality can become a home rule unit in one of two ways. A municipality automatically becomes a home rule unit if and when its recorded population reaches 25,000 or greater.¹⁵ If a home rule municipality's population decreases below 25,000, it continues to be a home rule unit unless it elects by referendum not to be home rule.¹⁶ Only three municipalities that automatically became home rule by virtue of its population elected to become non-home rule, Lombard, Rockford, and Villa Park. In addition, if a municipality elects to go from home rule to non-home rule, it does not affect the validity of the actions taken while it was a home rule unit, and that may still be effective after becoming non-home rule.¹⁷ A municipality with a population under 25,000 can elect to become a home rule unit by a majority vote of its citizens by a local referendum.¹⁸

On July 1, 1971 – the effective date of the Illinois Constitution of 1970 – 60 municipalities became home rule by virtue of their population. As of this writing, there are 191 home rule municipalities in Illinois that enjoy the benefits of home rule status. The Illinois Municipal League has a packet of information with instructions and model forms and referenda if your non-home rule municipality is considering going home rule, and enjoying the benefits of local sovereignty.

¹ See ILL CONST. art. VII § 6.

² ILL. CONST. art VII § 6(a).

³ Dillon's Rule was enunciated in 1868 by Iowa Supreme Court Justice John F. Dillon in City of Clinton v. Cedar Rapids and Missouri River Railroad Company, 24 Iowa 455 (1868), and later adopted by all of the states as a result of Dillon's treatise on municipalities (Municipal Corporations (1872)) and the U.S. Supreme Court's decision in Hunter v. Pittsburgh, 207 U.S. 161 (1907), which adopted Dillon's Rule.

⁴ Pesticide Public Policy Foundation v. Wauconda, 117 Ill. 2d 107, 112 (1987).

⁵ Village of Sugar Grove v. Rich, 347 Ill. App. 3d 689 (2004).

⁶ See ILL. CONST. art VII § 7.

⁷ ILL. CONST. art VII § 6(g), (h) & (i).

⁸ ILL. CONST. art VII § 6(d).

⁹ City of Elgin v. County of Cook, 169 Ill. 2d 53 (1995); Stahl v. Village of Hoffman Estates, 296 Ill. App. 3d 550 (1st Dist. 1998).

¹⁰ Black's Law Dictionary, 733 (6th ed. 1990).

¹¹ La Salle Nat'l Trust, N.A. v. Village of Mettawa, 249 Ill. App. 3d 550 (2d Dist. 1993); cert. denied, 153 Ill. 2d 560 (1993).

¹² *Id.*

¹³ Allen v. County of Cook, 65 Ill. 2d 281 (1976).

¹⁴ See City of Evanston v. Create, Inc., 84 Ill. App. 3d 752 (1st Dist. 1980), aff'd, 85 Ill. 2d 101 (1981).

¹⁵ See *supra*, note 1.

¹⁶ Illinois Municipal Handbook, 2006 Edition. Edited by Stewart H. Diamond. p310.

¹⁷ See, *Id.* and Royal Liquor Mart, Inc. v. City of Rockford, 133 Ill. App. 3d 868 (2d Dist. 1985).

¹⁸ See *supra*, note 16 at p304, *supra*, note 2, 10 ILCS 5/28-7.