

NYSAC Training for County Officials

Adopting Local Laws

March 22, 2024



NYSAC
— NEW YORK STATE —
ASSOCIATION OF COUNTIES



515 Broadway Albany, 12207

www.nysac.org

518-465-1473

Adopting Local Laws

Agenda

This presentation on Local Laws will provide the following information.

- Where the authority comes from to adopt a Local Law.
- Structural components of a Local Law.
- Procedural steps to pass a Local Law.
- Examples of Local Laws.
- Restrictions of Local Laws.

Adopting Local Laws

Local Laws Defined

A Local Law is defined under Municipal Home Rule Law Section 2(9) as:

“A law (a) adopted pursuant to this chapter or to other authorization of a state statute or charter by the legislative body of a local government, or (b) proposed by a charter commission or by petition, and ratified by popular vote, as provided in article four of this chapter or as provided in a state statute, charter or local law; but shall not mean or include an ordinance, resolution or other similar act of the legislative body or of any other board or body.”

Adopting Local Laws

New York State Constitution:

Grant of Local Government Authority

The power to enact Local Laws is granted by the Constitution. This is superior to other forms of Municipal Legislation such as; ordinance, resolution, rule or regulation which are delegated by State Statute.



Adopting Local Laws

Constitutional Framework

- Article IX
 - Section 2: Provides Local Governments...
 - *Article IX, §3(d)(2)* defines local governments to include; counties, cities, towns, villages, but not school districts or other special districts
 - ...with the power to adopt and amend local laws not inconsistent with the provisions of the NYS Constitution or any general law relating to its property, affairs, or government (*Art. IX, §2(c)(i)*)

Adopting Local Laws

Constitutional Framework

- Article IX
 - Section 2: Provides Local Governments...
 - *Article IX, §3(d)(2)* defines local governments to include; counties, cities, towns, villages, but not school districts or other special districts
 - ...with the power to adopt and amend local laws not inconsistent with the provisions of the NYS Constitution or any general law relating to its property, affairs, or government (*Art. IX, §2(c)(i)*)

Adopting Local Laws

Constitutional Framework

- A local government may also adopt local laws not inconsistent with the constitution or general laws with respect to subject areas despite whether they relate to local property, affairs or government subject to state restriction in 10 enumerated areas (*Art. IX, §2(c)(ii)*);
- The specific powers related to counties include:
 - Powers, duties, qualifications, number, terms of office, compensation, hours of work, and welfare of local officers and employees.
 - Transaction of local government's business.
 - Management and use of the localities highways, roads, streets, etc.
 - Wages, hours and welfare of employees of local government contractors.
 - Local government police power.

Adopting Local Laws

Constitutional Framework

- Other powers include:
 - Ability to provide cooperatively with other municipalities' governmental services and functions.
 - Eminent domain.
 - Power to make a fair return on the value or property used in the operation of certain utility services and the right to use profits therefrom for refunds or any other lawful purpose.
 - The power to apportion costs of governmental services or functions upon portions of local areas as authorized by the legislature.

These rights, powers, privileges and immunities are to be “liberally construed” (Art. IX, §3) which allows for wide discretion of the local government body.

Adopting Local Laws

Constitutional Framework

- These rights, powers, privileges and immunities are to be “liberally construed” (Art. IX, §3) which allows for wide discretion of the local government body.

Adopting Local Laws

Constitutional Restrictions to Local Government Authority

- A local government may not enact laws which relate to:
 - Maintenance, support and administration of the public school system.
 - Matters relating to the administration of the Courts.
 - Matters other than property, affairs or government of a local government.

Adopting Local Laws

State Statute

- While Constitutional provisions confer substantial rights and powers upon them, local governments exercise perhaps as much or more authority under laws enacted at the discretion of the state. The major local functions or services, as measured by amounts expended or other criteria, include education, public welfare, highway and transportation, police protection, fire protection, water supply, sewerage, and other sanitation, public health and mental health.

Adopting Local Laws

Statute of Local Governments

- 7 Powers Granted
 1. Adopt, amend and repeal ordinances, resolutions and rules and regulations in the exercise of their functions.
 2. Acquire real and personal property for its purposes.
 3. Acquire or construct and operation of recreational facilities, including revenue producing recreational facilities.
 4. The power to dispose of its real and personal property when no longer required for its purposes, except in the case of inalienable real or personal property.

Adopting Local Laws

Statute of Local Governments

5. Levy, impose, collect and administer rents, charges, rates and fees, penalties and rates of interest and liens on local property in connection therewith.
6. In the case of a city, village or town, with respect to the area thereof outside the village or villages therein, adopt, amend and repeal zoning regulations (counties do not have this authority), and...
7. Perform planning work relating to its jurisdiction.

Adopting Local Laws

Municipal Home Rule Law

- MHRL§10
 - Repeats for counties, cities, towns and villages, the constitutional grant of power to local governments, adding thereto the power to collect local taxes authorized by the legislature and assessments for local improvements as well as the powers granted to local governments in the statute of local governments.

Adopting Local Laws

Combined Effect of Constitutional and Statutory Changes

As to Matters which are neither property, affairs or government nor within the 10 enumerated subjects:

State Power: The Legislature has the power to act either by general or special law and may confer additional powers on local governments in the Statute of Local Governments or otherwise.

Adopting Local Laws

Local Law Drafting Requirements

- Every Local Law needs four structural components:
 - 1) The title.
 - 2) The enacting clause.
 - 3) The body.
 - 4) The effective date.

Adopting Local Laws

Procedural Steps

- Introduction of the Local Law.
- Public Hearing.
- Consideration of County Legislative Body.
- Waiting Time.
- Adoption of Law (Vote).
- Filing of the Local Law.

Adopting Local Laws

Procedural Steps

- Introduction.

- After a proposed law has been drafted, the proposed law needs to be introduced in the legislative body.

- Each member of the legislative body must be mailed or handed a hard copy of the proposed law.

- Each legislative body member needs to receive the proposed law no less than 7 calendar days prior to any vote; and if by mail, the mailing date no less than 10 calendar days prior to any vote.

Adopting Local Laws

Procedural Steps

- Public Hearing.
 - A public hearing must be held for each proposed local law.
 - If the local law is amended there must be a new public hearing regarding the full new text.
 - The public must be informed at least 5 days prior to the public hearing date.
 - There is an exception for counties who passed a procedural local law allowing for a shorter notice period but in no case may this be less than 3 days.

Adopting Local Laws

Procedural Steps

- Consideration by the Legislative Body.
 - The law should be debated by the legislative body in the open meeting prior to any vote taking place.
 - Any defects, substantive or otherwise, should be addressed and the proposed law should be amended accordingly.
 - If the local law is amended the Procedural Steps start over again.

Adopting Local Laws

Procedural Steps

- Vote.
 - After or at the end of the hearing the local law can be voted on.
 - Most local laws are passed by the majority vote of the legislative body.

Exceptions:

- 1) County Governments with a County Executive grant them the final authority on the local law, by either signing or vetoing the law.
- 2) Specific subject matter may require a referendum (Ex.- Becoming a charter County) or a supermajority vote (ex-overriding the tax cap).

Adopting Local Laws

Filing the Local Law

- In order for the local law to be enacted and officially adopted a few steps must be taken after the vote.
 - 1) A true copy of the Local Law, full text must be published in the official newspaper.
 - 2) You must mail to the Secretary of the State the local law in order for the law to be filed and officially adopted. The filing (adopted) dated is the date the State receives the law.

Adopting Local Laws

Restrictions On Local Laws

- Subject Matter.
- Preemption.
- Manner in which Local Laws are passed: 1) Majority Vote, 2) Supermajority Vote, or 3) Referendum.

Adopting Local Laws

Referendum

- Mandatory Referendum: requires that the local law is subject to a vote by the electorate of the body whom the law is proposed. Whether the electorate vote in favor or oppose the change, that determination is binding on the municipal body.
 - Specifically Section 23 of the Municipal Home Rule Law provides:
 - **Sub. 2: Except as otherwise provided by or under authority of a state statute, a local law shall be subject to mandatory referendum if it:**
 - c. Changes the veto power of the elective chief executive officer.
 - d. Changes the law of succession to the office of the chief executive officer of a _____ county elected on a county-wide basis or if there be none the chairman of the board _____ of supervisors, the mayor of a city or village or the supervisor of a town.
 - e. Abolishes an elective office, or changes the method of nominating, electing or _____ removing an elective officer, or changes the term of an elective office, or reduces _____ the salary of an elective officer during his term of office.
 - f. Abolishes, transfers or curtails any power of an elective officer.
 - g. Creates a new elective office.
 - i. Changes a provision of law relating to public utility franchises.

Adopting Local Laws

Referendum

- Local laws subject to referendum on petition
 - Section 24 Municipal Home Rule law:
 - “...if within forty-five days after its adoption there be filed with the clerk a petition protesting against such local law, signed and authenticated as hereinrequired by qualified electors of such local government, registered to vote therein at the last preceding general election, in number equal to at least ten per centum of the total number of votes cast for governor at the last gubernatorial election in such local government. If such petition be so filed, a proposition for the approval of such local law shall be submitted at the next general election of state or local government officers...”

Adopting Local Laws

Preemption

- Issues for evaluation:
 - Is there a general law or constitutional provision on the subject.
 - Whether the local law is inconsistent with the general law or constitutional provision or whether they operate together without conflict.
 - If it is a state law; whether the law is a special law or general law.

Adopting Local Laws

Preemption

- Inconsistency:
 - When the state and local law give conflicting commands such that both cannot be followed.
 - When a local law attempts to legalize something that the state law prohibits.
 - When the State prohibits any local legislation with respect to a particular subject and a local government passes a law on that subject.

Adopting Local Laws

Preemption

- Inconsistency cont.
 - Areas of ambiguity:
 - state regulation of an area without explicitly barring additional local regulation and a local government enacts further regulation of the same activity or behavior.
 - Generally: “local laws which do not prohibit what the State law permits not allow what the state law forbids are not inconsistent...However, where the extension of the principle that the State law by means of the local law results in a situation where what would be permissible under state law becomes a violation of the local law, the latter law is unauthorized.” See *Wholesale Laundry Board of Trade Inc. v. City of New York*, 17 A.D.2d 327, 329-330 (1963)
 - However, Courts have been inconsistent in applying this rule. See Generally, *New York State Clubs Ass’n v. City of New York*, 69 N.Y.2d 211 (1987), *Council for Owner Occupied Housing, Inc. v. Koch*, 61 N.Y.2d 942 (1983)

Adopting Local Laws

Preemption

- State Occupation of the Field.
 - Where the State has determined that policy-making in a particular field is exclusive to the state.
 - Courts will look at legislative intent
 - Evaluation of legislative policy, scope of the regulatory scheme and the nature of the subject matter.

Adopting Local Laws

Local Laws and Your County Attorney

- Whenever a local law is under consideration, the municipal attorney should be consulted to determine whether the county has the authority to pass the law in question and to determine whether the local law is consistent with local government authority and state law.
- A municipal attorney should check to see whether a local law would be subject to a mandatory referendum or referendum on petition.