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<b>Title:</b>	New York State Municipal Home Rule Law – General Powers of Local Governments to Adopt & Amend Local Laws; Restrictions
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### ***Abstract***

Municipal Home Rule Law Chapter 36-A Article 2 Section 10 articulates the powers of local county, city, town, or village governments to include: acquisition and care of highways, roads, streets, avenues, and property; acquisition of transit facilities; collection, fixing, and administration of local government rentals, charges, rates or fees; and regulation or licensing of businesses and occupations. Section 11 outlines the restriction of powers of local county, city, town, or village governments to adopt local laws, including: the regulation or elimination of railroad crossings and the transfer of liability to abutting property owners for failure to maintain sidewalks and gutters.

### ***Resource***

#### **Municipal Home Rule Law**

#### **Chapter 36-A Of the Consolidated Laws**

#### **Article 2. General Powers of Local Governments to Adopt and Amend Local Laws; Restrictions**

#### **§ 10. General powers of local governments to adopt and amend local laws**

1. In addition to powers granted in the constitution, the statute of local governments or in any other law,

(i) every local government shall have power to adopt and amend local laws not inconsistent with the provisions of the constitution or not inconsistent with any general law relating to its property, affairs or government and,

(ii) every local government, as provided in this chapter, shall have power to adopt and amend local laws not inconsistent with the provisions of the constitution or not inconsistent with any general law, relating to the following subjects, whether or not they relate to the property, affairs or government of such local government, except to the extent that the legislature shall restrict the adoption of such a local law relating to other than the property, affairs or government of such local government:

a. A county, city, town or village:

(1) The powers, duties, qualifications, number, mode of selection and removal, terms of office, compensation, hours of work, protection, welfare and safety of its officers and employees, except that cities and towns shall not have such power with respect to members of the legislative body of the county in their capacities as county officers. This provision shall include but not be limited to the creation or discontinuance of departments of its government and the prescription or modification of their powers and duties.

(2) In the case of a city, town or village, the membership and composition of its legislative body.

(3) The transaction of its business.

(4) The incurring of its obligations, except that local laws relating to financing by the issuance of evidences of indebtedness by such local government shall be consistent with laws enacted by the legislature.

(5) The presentation, ascertainment, disposition and discharge of claims against it.

(6) The acquisition, care, management and use of its highways, roads, streets, avenues and property.

(7) The acquisition of its transit facilities and the ownership and operation thereof.

(8) The levy and administration of local taxes authorized by the legislature and of assessments for local improvements, which in the case of county, town or village local laws relating to local non-property taxes shall be consistent with laws enacted by the legislature.

(9) The collection of local taxes authorized by the legislature and of assessments for local improvements, which in the case of county, town or village local laws shall be consistent with laws enacted by the legislature.

(9-a) The fixing, levy, collection and administration of local government rentals, charges, rates or fees, penalties and rates of interest thereon, liens on local property in connection therewith and charges thereon.

(10) The wages or salaries, the hours of work or labor, and the protection, welfare and safety of persons employed by any contractor or subcontractor performing work, labor or

services for it.

(11) The protection and enhancement of its physical and visual environment.

(12) The government, protection, order, conduct, safety, health and well-being of persons or property therein. This provision shall include but not be limited to the power to adopt local laws providing for the regulation or licensing of occupations or businesses provided, however, that:

(a) The exercise of such power by a town shall relate only to the area thereof outside the village or villages therein.

(b) Except in a case where and to the extent that a county is specifically authorized to regulate or license an occupation or business, the exercise of such power by a county shall not relate to the area thereof in any city, village or area of any town outside the village or villages therein during such time as such city, village or town is regulating or licensing the occupation or business in question.

(13) The apportionment of its legislative body and, only in connection with such action taken pursuant to this subparagraph, the composition and membership of such body, the terms of office of members thereof, the units of local government or other areas from which representatives are to be chosen and the voting powers of individual members of such legislative body. The power granted by this subparagraph shall be in addition to and not in substitution for any other power and the provisions of this subparagraph shall apply only to local governments which adopt a plan of apportionment thereunder.

(a.) A plan of apportionment adopted under this subparagraph shall comply with the following standards, which shall have priority in the order herein set forth, to the extent applicable:

(i.) The plan shall provide substantially equal weight for all the voters of that local government in the allocation of representation in the local legislative body.

(ii.) In such plan adopted by a county, no town except a town having more than one hundred and ten per cent of a full ratio for each representative, shall be divided in the formation of representation areas. Adjacent representation areas in the same town or city shall not contain a greater excess in population than five per cent of a full ratio for each representative.

(iii.) The plan shall provide substantially fair and effective representation for the people of the local government as organized in political parties.

(iv.) Representation areas shall be of convenient and contiguous territory in as compact form as practicable.

(b.) A plan of apportionment adopted by a county under this subparagraph may provide

that mayors of cities or villages, supervisors of towns or members of the legislative bodies of cities, towns, or villages, who reside in the county shall be eligible to be elected as members of the county legislative body.

(c.) As used in this subparagraph the term "population" shall mean residents, citizens, or registered voters. A population base for such a plan of apportionment shall utilize the latest statistical information obtainable from an official enumeration done at the same time for all the residents, citizens, or registered voters of the local government. Such a plan may allocate, by extrapolation or any other rational method, such latest statistical information to representation areas or units of local government, provided that any plan containing such an allocation shall have annexed thereto as an appendix, a detailed explanation of the allocation.

(d.) Where a public hearing on a local law proposed to be adopted under this subparagraph is required, by subdivision five of section twenty of this chapter, to be held only before an elective chief executive officer, the legislative body shall not adopt such proposed local law until after a public hearing shall have been held thereon before it, on notice as provided in such subdivision five, in which event no public hearing thereon before such chief executive officer shall be required.

(e.) A local law proposed to be adopted under this subparagraph shall be subject to referendum only in the manner provided by paragraph j of subdivision two of section twenty-four of this chapter, except that such local law shall be subject to a mandatory referendum in any county in which a provision of law requires a mandatory referendum if a local law proposes a change in the form or composition of the elective governing body of the county. The local law may be so structured as to permit separate submission of the principle [FN1] elements (such as, multiple office holding as in clause (b) above, the use of multiple member or floterial districts in portions of the local government, and so forth) of the plan and also may provide alternatives in the event one or more of these separate submissions is rejected by the electorate.

(f.) Notwithstanding any inconsistent provisions of any general or special law, or any local law, ordinance, resolution or city or county charter heretofore or hereafter adopted, no local government may restructure its local legislative body (pursuant to provision of this chapter or any other provision of law) more than once in each decade commencing with the year nineteen hundred seventy; provided, however, that this prohibition shall not prevent the periodic adjustment of the weight of the votes of representatives on the basis of current census, voter, or other valid information where an existing plan distributes the votes of representatives on such a basis.

(14) The powers granted to it in the statute of local governments.

b. A county:

(1) The adoption, amendment or repeal of a county charter pursuant to article four of this chapter in addition to its powers under this article.

(2) The establishment of a county tax department headed by a director appointed by and serving at the pleasure of the board of supervisors, which director shall, subject to authorization of such board (a) employ necessary employees, (b) advise with and assist all assessors, collectors and receivers of taxes of the various tax districts within the county in the discharge of their duties, (c) assist in the preparation of equalization rates with the various tax districts within the county, (d) assist in the disposition and sale of real property acquired by the county as the result of enforcement of unpaid taxes, and (e) perform such other duties as shall be prescribed by such board.

(3) The assignment to and the performance by the chairman of the board of supervisors of specified administrative functions, powers and duties on behalf of such board, with provision for periodic reports to such board, and with further provision that such local law shall not divest such board of such functions, powers and duties.

(4) The creation of an office of administrative assistant to the chairman of the board of supervisors and assignment to and performance by such an assistant, under the general supervision of such chairman, of specified administrative functions, powers and duties on behalf of such board, with provision for periodic reports to such board, and with further provision that such local law shall not divest such board of such functions, powers and duties.

(5) The compensation to be paid from county funds to public officers or employees who are not officers or employees of the county other than members of the judiciary.

(6) The method for the correction of assessment rolls and tax rolls as authorized by title three of article five of the real property tax law, subject to review by the courts as provided by law.

(7) The protection or preservation of game, game birds, fish or shell fish on county-owned lands.

(8) The control of floods or the conservation of soil.

(9) The reforestation of lands owned by the county.

(10) The eradication or prevention of bovine tuberculosis or other infectious or communicable diseases affecting animals or fowls.

(11) The regulation or prohibition of the dumping of garbage, rubbish, ashes or other waste material in or adjacent to creeks or streams in watershed areas improved under any flood control or soil erosion program.

c. A city:

(1) The revision of its charter or the adoption of a new charter by local law adopted by its legislative body pursuant to the provisions of this chapter and subject to the procedure

prescribed by this chapter or by local law adopted pursuant to article four of this chapter.

(2) The preparation, making, confirmation and correction of assessments of real property and the review of such assessments subject to further review by the courts as provided by law.

(3) The authorization, making, confirmation and correction of benefit assessments for local improvements.

d. A town:

(1) The preparation, making, confirmation and correction of assessments of real property and the review of such assessments subject to further review by the courts as provided by law, consistent with laws enacted by the legislature.

(2) The authorization, making, confirmation and correction of benefit assessments for local improvements, consistent with laws enacted by the legislature.

(3) The amendment or supersession in its application to it, of any provision of the town law relating to the property, affairs or government of the town or to other matters in relation to which and to the extent to which it is authorized to adopt local laws by this section, notwithstanding that such provision is a general law, unless the legislature expressly shall have prohibited the adoption of such a local law. Unless authorized by other state statute this subparagraph shall not be deemed to authorize supersession of a state statute relating to (1) a special or improvement district or an improvement area, (2) creation or alteration of areas of taxation, (3) authorization or abolition of mandatory and permissive referendum or (4) town finances as provided in article eight of the town law; provided, however that nothing set forth herein shall preclude the transfer or assignment of functions, powers and duties from one town officer or employee to another town officer or employee, and provided, however, further that the powers of local legislation and appropriation shall be exercised by the local legislative body.

e. A village:

(1) The preparation, making, confirmation and correction of assessments of real property and the review of such assessments subject to further review by the courts as provided by law, consistent with laws enacted by the legislature.

(2) The authorization, making, confirmation and correction of benefit assessments for local improvements.

(3) The amendment or supersession in its application to it, of any provision of the village law relating to the property, affairs or government of the village or to other matters in relation to which and to the extent to which it is authorized to adopt local laws by this section, notwithstanding that such provision is a general law, unless the legislature expressly shall have prohibited the adoption of such a local law.

2. Every local government also shall have power to adopt and amend local laws where and to the extent that its legislative body has power to act by ordinance, resolution, rule or regulation.

3. a. A grant of a specific power by this section to one or more local governments shall not operate to restrict the meaning of a general grant of power by this section to the same or any other local government or to exclude other powers comprehended in such general grant.

b. The enumeration of powers in this section is not intended to imply that any of such powers is not included within the power of a local government to adopt and amend local laws in relation to its property, affairs and government.

4. In the exercise of its powers to adopt and amend local laws, the legislative body of a local government shall have power:

(a) To delegate to any officer or agency of such local government the power to adopt resolutions or to promulgate rules and regulations for carrying into effect or fully administering the provisions of any local law and to authorize issuance of an appearance ticket by a public servant who, by virtue of office, title or position is authorized or required to enforce any statute, local law, ordinance, rule or regulation relating to parking, licensing of occupations or businesses, fire prevention and safety, health and sanitation, and building, zoning and planning; provided however, that a peace officer may be authorized to issue an appearance ticket relating to enforcement of any statute, local law, ordinance, rule or regulation affecting the public health, safety and welfare.

(b) To provide for the enforcement of local laws by legal or equitable proceedings which are or may be provided or authorized by law, to prescribe that violations thereof shall constitute misdemeanors, offenses or infractions and to provide for the punishment of violations thereof by civil penalty, fine, forfeiture or imprisonment, or by two or more of such punishments, provided, however, that a local law adopted pursuant to subdivision two of this section shall provide only for such enforcement or punishment as could be prescribed if the action of the legislative body were taken by ordinance, resolution, rule or regulation, as the case may be.

(c) To enact as local law the provisions of any existing charter, general law or special law, theretofore enacted, conferring a right, power or authority, or imposing a duty or obligation, on such local government, whether or not the same relate to its property, affairs or government. Any such provision of law so re-enacted shall thereafter be subject to be superseded by local law only to the same extent and in the same manner as if the same had not been so re-enacted.

(d) In establishing the office of the head of a department of its government, to provide that such an office shall be in the unclassified service of the civil service and, in establishing the offices of one or more deputies to the head of a department of its government with power to act generally for and in place of their principals, to provide that the positions of such

deputies shall be in the exempt class of the civil service.

5. Except in the case of a transfer of functions pursuant to the constitution or under an alternative form of county government, a local government shall not have power to adopt local laws which impair the powers of any other public corporation.

[FN1] So in original. Probably should read "principal".

## **§ 11. Restrictions on the adoption of local laws**

1. Notwithstanding any provision of this chapter, the legislative body shall not be deemed authorized by this chapter to adopt a local law which supersedes a state statute, if such local law:

a. Removes or raises any limitation of law on the amount in which the local government may become indebted, or on the amount which may be raised in any one fiscal year by tax for any or all purposes of such local government provided, however, that if the total bonded indebtedness of any city operating under the provisions of the second class cities law is evidenced only by serial bonds payable in annual installments, any such city may adopt a local law which shall provide that the provisions of section seventy-two of the second class cities law shall not be operative or applicable as to such city.

b. Removes a restriction of law relating to the issuance of bonds or other evidences of indebtedness.

c. Applies to or affects the maintenance, support or administration of the educational system in such local government, or a teachers' pension or retirement system therein.

d. Except in the case of an alternative form of county government, changes the number or term of office of the members of the county board of supervisors chosen as such in a city or town.

e. Applies to or affects the courts as required or provided by article six of the constitution.

f. Applies to or affects any provision of paragraph (c) of subdivision one of section 8-100 of the election law, the labor law, sections two, three and four of chapter one thousand eleven of the laws of nineteen hundred sixty-eight, entitled "An act in relation to the maximum hours of labor of certain municipal and fire district firemen and the holidays of firemen and policemen, [FN1] repealing certain sections of the labor law relating thereto, and to amend the municipal home rule law, in relation thereto," as amended, the volunteer firemen's [FN2] benefit law, or the workmen's [FN2] compensation law or changes any provision of the multiple residence law or the multiple dwelling law, except that in a city of one million persons or more, the provisions of local law for the enforcement of the housing code which is not less restrictive than the multiple dwelling law may be applied in the enforcement of the multiple dwelling law.

g. Applies to or affects powers of the state comptroller in relation to auditing or examining municipal accounts or prescribing forms of municipal accounting or in relation to approval or disapproval of establishment or extension of fire districts or special districts.

h. Applies to or affects any provision of law providing for regulation or elimination of railroad crossings at grade or terminal facilities within the local government.

i. Relates to the judicial review of dismissals from the civil service or, in the case of a county, changes a provision of law relating to the membership of its civil service commission or to the terms of office of the members of such commission or of the personnel officer administering the provisions of the civil service law.

j. In the case of a city, transfers to abutting property owners its liability for failure to maintain its sidewalks and gutters in a reasonably safe condition.

2. Notwithstanding any provision of this chapter, the legislative body of a county, city or village shall not be authorized by this chapter to adopt any local law which:

a. Amends the charter of the county, city or village, as the case may be, contrary to any provisions of such charter regulating its own amendment. This provision shall not abridge the right of the people of a county, city or village to amend their charter or approve a proposed new charter, where such amendment or proposed new charter is subject to a mandatory referendum.

b. The legislative body is by provision of the charter prohibited to adopt.

3. Notwithstanding any provision of this chapter, any local law adopted by a town board shall be effective and operative only in that portion of such town outside of any village or villages therein except in a case where the power of such town board extends to and includes the area of the town within any such village or villages.

[FN1] See McK. Unconsol. Laws §§ 971-a, 1012-a and 1015.

[FN2] So in original. Probably should be "firefighters' "and "workers' ", respectively.