



## Home Rule in Washington

City powers and how the state and courts have approached city home rule authority



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## Washington's History of City Home Rule

1889: Washington has one of the earliest home rule constitutional provisions for first class charter cities (Art. XI, §§ 10 & 11)

1967: Washington has a *strong* home rule law for code cities (RCW 35A.11.020)

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## Washington 1889: Early “Progressive Era” Reaction to Heavy-handed Legislative Control of Cities

1. Problems with legislative chartering of cities on an individual, one-by-one basis
2. “Home Rule” to counter “Dillon’s Rule”

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## “Dillon’s Rule” Had Limited City Powers:

“A public municipal corporation, created for public purposes only...can exercise no powers but such as are expressly granted by law, or such as are incidental to those expressly granted, and is always subject to legislative control.”

-- *City of Clinton v. Cedar Rapids & Mo. River R.R. Co.* (1868)

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## John Forrest Dillon



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## Dillon and many contemporaries were worried about:

- \* Overreaching by governments for “special interests” such as labor unions
- \* over-regulation of the nation’s economy and business by governments
- \* the “socialistic attack...upon the rightfulness of private ownership of land”

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## The First Home Rule Provisions

- \* 1875 Missouri home rule provision for St. Louis
- \* 1879 California home rule provision for San Francisco
- \* 1889 Wash. home rule provision for any large city

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## Why Home Rule?

“[R]emoving corrupt, special influence from government; modifying the structure of government so as to make it easier for the people to control; and using the government so restored to the people to relieve social and economic distress.”

-- Benjamin Parke DeWitt, *The Progressive Movement: A Non-Partisan, Comprehensive Discussion of Current Tendencies in American Politics* (1915)

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## Progressive Movement Boosts City Home Rule

“Growing cities should be empowered to determine for themselves . . . the many important and complex questions of local policy.” – *Hilzinger v. Gillman* (1909)

“The constitution grants cities complete local self-government in municipal affairs.” – *Bussell v. Gill* (1910)

“The spirit of the Constitution . . . is to grant the fullest measure of self-government to cities of the first class, subject to the general law.” – *State ex rel. Hindley v. Sup’r Ct.* (1912)

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## Washington’s Home Rule Provisions

Strong Home Rule re **Structure** (Art. XI, §10):

Allows any larger city “to frame a charter for its own government, consistent with and subject to the Constitution and laws of this state.”



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## Washington's Home Rule Provisions

### Strong Home Rule re *Police Powers*

(Art. XI, §11):

“Any county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws.”



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## Progressive Movement Boosts City Home Rule in the Courts

“**[Dillon’s rule]**...to the effect that ‘any fair or reasonable doubt concerning the existence of power is resolved by the courts against the corporation, and the power is denied,’ **should not be followed in determining a question involving the powers of a city of the first class, under its charter, as subject to and controlled by general laws.**”

-- *Ennis v. Sup’r Court* (1929)

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## Some Caveats:

**Caveat #1:** Courts kept using Dillon's Rule in cases about taxes, borrowing money, and eminent domain.

**Caveat #2:** Dillon's Rule continued re special purpose districts.

**Caveat #3:** Dillon's Rule occasionally pops up whenever a courts want it to

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## The 1960s: Another Reform Movement

Continuing court reticence about city powers leads to the "Second Wave of Home Rule Reform" in the late 1950s and the 1960s

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## Home Rule Energized

1948 - Home rule county charters allowed

1957 - Municipal metro corporations allowed

1963 - Charter city threshold drops to 10k

1965 - Legislators **Brachtenbach** and **Gorton** propose const. amdt. for strong city powers

1965 – Legislature forms “Municipal Code Committee” chaired by Sen. **Martin Durkan**

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### Report of the Legislature’s Municipal Code Committee (1966):

“The broad grant of home rule authority [is made] to municipalities without a specified enumeration of powers, thus **avoiding** continuously burdening the state legislature with a **multiplicity of municipal housekeeping bills** at each session....”

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## Strong Home Rule Language: (RCW 35A.01.010)

“The purpose and policy of this title is to confer upon two optional classes of cities . . . **the broadest powers of local self-government** consistent with the Constitution of this state. **Any specific enumeration of municipal powers** contained in this title or in any other general law **shall not be construed in any way to limit** the general description of power contained in this title, and any such specifically enumerated powers shall be construed as in addition and supplementary to the powers conferred in general terms by this title....”

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## The Optional Municipal Code’s Strong Home Rule Language: (RCW 35A.01.020)

“The legislative body of **each code city shall have power** to organize and regulate its internal affairs within the provisions of this title and its charter, if any; and **to define the functions, powers, and duties of its officers and employees...**

“...Such body **may adopt and enforce ordinances** of all kinds **relating to** and regulating its **local or municipal affairs** and appropriate to the good government of the city....”

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## The Optional Municipal Code's Strong Home Rule Language: (RCW 35A.11.020)

The legislative body of **each code city shall have all powers** possible for a city... under the Constitution of this state, and **not specifically denied** to code cities by law. By way of illustration and not in limitation, such powers may be exercised in regard to the acquisition, sale, ownership, improvement,... regulation, use...of public ways, real property of all kinds...  
*[corporate powers]*



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## The Optional Municipal Code's Strong Home Rule Language: (RCW 35A.11.020)

... and in the rendering of local **social, cultural, recreational, educational, governmental, or corporate services**, including operating and supplying of **utilities and municipal services** commonly or conveniently rendered by cities.  
*(Services powers)*



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## The Optional Municipal Code's Strong Home Rule Language: (RCW 35A.11.050)

“Within constitutional limitations, legislative bodies of code cities shall have within their territorial limits **all powers of taxation** for local purposes except those which are expressly preempted by the state ....”

(This provision key to State Supreme Court upholding Seattle's gun sales tax and per-employee business tax.)



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## But Remember: *The Legislature holds all the cookies*

1. City formation and charters are “subject to the Constitution and laws of this state.”
2. Cities can enact any regulatory (police) measures “as are not in conflict with general laws.”



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## The Bottom Line

\*Code & first-class cities still have to look to **statutes** for clear authority relating to eminent domain, **taxes**, borrowing, granting franchises, public records, accounting, audits.

\* Code & first-class cities have robust independent powers:

- \*\* In choosing a form of government
- \*\* In exercising regulatory authority (constitutional grant)
- \*\* In providing municipal services (general & utilities)
- \*\* In the nuts & bolts of administration (*e.g.*, electronic signatures and lots of other details of corporate power)

...**unless** those powers are **expressly denied**.

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## Local Government Articles by UW Professor Hugh Spitzer:

*Realigning the Governmental/Proprietary Distinction in Municipal Law*, 40 Seattle U. L. Rev. 173 (2016).

*"Home Rule" vs. "Dillon's Rule" for Washington Cities*, 38 Seattle U. L. Rev. 809 (2015)

*Taxes vs. Fees: A Curious Confusion*, 38 Gonzaga Law Review 335 (2003)

*Municipal Police Power in Washington State*, 75 Washington Law Review 495 (2000)

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