

# *Charter (Home Rule) Municipalities*

*NM Constitution, Article X, Section 6*



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# *Santa Fe, A Charter Municipality Since 1997*

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- A municipality which adopts a charter may exercise all legislative powers and perform all functions not expressly denied by general law or charter. This grant of powers shall not include the power to enact private or civil laws governing civil relationships except as incident to the exercise of an independent municipal power, nor shall it include the power to provide for a penalty greater than the penalty provided for a petty misdemeanor. No tax imposed by the governing body of a charter municipality, except a tax authorized by general law, shall become effective until approved by a majority vote in the charter municipality.
- The purpose of this section is to provide for maximum local self-government. A liberal construction shall be given to the powers of municipalities.
- N.M. Const. art. X, § 6

# *In Addition to the Constitution, the Charter Act Governs Charter Municipalities*

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- A municipality organized under the provisions of the Municipal Charter Act shall be governed by the provisions of the charter adopted pursuant to that act, and no law relating to municipalities inconsistent with the provisions of the charter shall apply to any such municipality.
- A municipality which adopts a charter may exercise all legislative powers and perform all functions not expressly denied charter municipalities by general law or charter. A liberal construction shall be given to the powers of municipalities to provide for maximum local self-government.
- NMSA 1978, § 3-15-13

# *Amending A Charter*

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The charter of any municipality adopted under the provisions of Article 10, Section 6 of the constitution of New Mexico, by law of the territorial legislature of New Mexico or under the provisions of the Municipal Charter Act may be amended or repealed either by a proposal submitted by the governing body of the municipality to the qualified electors or by petition as provided for in Section 3-15-4 NMSA 1978 for the adoption of an original charter at a general or special election and ratified by a majority of the qualified electors voting on the amendment or repeal.

NMSA 1978, § 3-15-16

# *What Can a Charter Municipality Do*

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In 1970, New Mexico adopted a state constitutional amendment that establishes the right of the citizens of a municipality to adopt a home rule charter. (citing Article X, Section 6). Municipalities that adopt home rule charters “may exercise all legislative powers and perform all functions not expressly denied by general law or charter.” N.M. Const. art. X, § 6(D). Thus, home rule municipalities do not look to the legislature for a grant of power to legislate, but only look to statutes to determine if any express limitations have been placed on that power.

*Kane v. City of Albuquerque*, 2015-NMSC-027, ¶ 48.

# *What a Charter Municipality Cannot Do*

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• Limitations on home rule authority are evaluated in a two-step process. In the first step, a court asks whether a state law is a “general law,” that is, a law that applies generally throughout the state, relates to a matter of statewide concern, and impacts inhabitants across the entire state. ... In the second step, we determine whether the general law “expressly denies” the City's power... The Court must consider (a) whether the statute “evinces any intent to negate such municipal power” ; (b) whether the effect of the statute implies “a clear intent to preempt that governmental area from municipal policymaking”; and (c) whether the grant of authority to another governmental body “makes its exercise by [the City] so inconsistent with the [statute] that it is equivalent to an express denial.”

• *Smith v. City of Santa Fe*, 2006-NMCA-048, ¶¶ 9-10.

*Questions?*