

## Section 6. Home rule for cities and towns.

The people of each city or town of this state, having a population of two thousand inhabitants as determined by the last preceding census taken under the authority of the United States, the state of Colorado or said city or town, are hereby vested with, and they shall always have, power to make, amend, add to or replace the charter of said city or town, which shall be its organic law and extend to all its local and municipal matters.

Such charter and the ordinances made pursuant thereto in such matters shall supersede within the territorial limits and other jurisdiction of said city or town any law of the state in conflict therewith.

Proposals for charter conventions shall be submitted by the city council or board of trustees, or other body in which the legislative powers of the city or town shall then be vested, at special elections, or at general, state or municipal elections, upon petition filed by qualified electors, all in reasonable conformity with section 5 of this article, and all proceedings thereon or thereafter shall be in reasonable conformity with sections 4 and 5 of this article.

From and after the certifying to and filing with the secretary of state of a charter framed and approved in reasonable conformity with the provisions of this article, such city or town, and the citizens thereof, shall have the powers set out in sections 1, 4 and 5 of this article, and all other powers necessary, requisite or proper for the government and administration of its local and municipal matters, including power to legislate upon, provide, regulate, conduct and control:

- a. The creation and terms of municipal officers, agencies and employments; the definition, regulation and alteration of the powers, duties, qualifications and terms or tenure of all municipal officers, agents and employees;
- b. The creation of police courts; the definition and regulation of the jurisdiction, powers and duties thereof, and the election or appointment of police magistrates therefor;
- c. The creation of municipal courts; the definition and regulation of the jurisdiction, powers and duties thereof, and the election or appointment of the officers thereof;
- d. All matters pertaining to municipal elections in such city or town, and to electoral votes therein on measures submitted under the charter or ordinances thereof, including the calling or notice and the date of such election or vote, the registration of voters, nominations, nomination and election systems, judges and clerks of election, the form of ballots, balloting, challenging, canvassing, certifying the result, securing the purity of elections, guarding against abuses of the elective franchise, and tending to make such elections or electoral votes non-partisan in character;
- e. The issuance, refunding and liquidation of all kinds of municipal obligations, including bonds and other obligations of park, water and local improvement districts;
- f. The consolidation and management of park or water districts in such cities or towns or within the jurisdiction thereof; but no such consolidation shall be effective until approved by the vote of a majority, in each district to be consolidated, of the qualified electors voting therein upon the question;
- g. The assessment of property in such city or town for municipal taxation and the levy and collection of taxes thereon for municipal purposes and special assessments for local improvements; such assessments,

levy and collection of taxes and special assessments to be made by municipal officials or by the county or state officials as may be provided by the charter;

h. The imposition, enforcement and collection of fines and penalties for the violation of any of the provisions of the charter, or of any ordinance adopted in pursuance of the charter.

It is the intention of this article to grant and confirm to the people of all municipalities coming within its provisions the full right of self-government in both local and municipal matters and the enumeration herein of certain powers shall not be construed to deny such cities and towns, and to the people thereof, any right or power essential or proper to the full exercise of such right.

The statutes of the state of Colorado, so far as applicable, shall continue to apply to such cities and towns, except insofar as superseded by the charters of such cities and towns or by ordinance passed pursuant to such charters.

All provisions of the charters of the city and county of Denver and the cities of Pueblo, Colorado Springs and Grand Junction, as heretofore certified to and filed with the secretary of state, and of the charter of any other city heretofore approved by a majority of those voting thereon and certified to and filed with the secretary of state, which provisions are not in conflict with this article, and all elections and electoral votes heretofore had under and pursuant thereto, are hereby ratified, affirmed and validated as of their date.

Any act in violation of the provisions of such charter or of any ordinance thereunder shall be criminal and punishable as such when so provided by any statute now or hereafter in force.

The provisions of this section 6 shall apply to the city and county of Denver.

This article shall be in all respects self-executing.

**Source: L. 01:** Entire article added, p. 104. **Initiated 12:** Entire section amended, see **L. 13**, p. 669, effective January 22, 1913.

**Cross references:** For powers granted the city and county of Denver, see § 1 of this article; for amendment of charter or adoption of new charter, see § 5 of this article; for effect of conflicting constitutional provisions, see § 8 of this article; for power to regulate rates and service charges of public utilities in home rule cities, see article XXV; for the prohibition on appointment of outgoing officers, see § [24-50-402](#).

## ANNOTATIONS

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## I. GENERAL CONSIDERATION.

**Am. Jur.2d.** See 56 Am. Jur.2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 107-123.

**C.J.S.** See 16 C.J.S., Constitutional Law, §§ 259-261, 288-301; 62 C.J.S., Municipal Corporations, §§ 88-90, 93.

**Law reviews.** For comment on *City & County of Denver v. Henry* appearing below, see 7 Rocky Mt. L. Rev. 223 (1935). For comment on *Woolverton v. City & County of Denver* appearing below, see 34 Rocky Mt. L. Rev. 250 (1962). For note, "Colorado Municipal Government Authority to Regulate Obscene Materials", see 51 Den. L.J. 75 (1974). For article, "Proposed Public Sector Bargaining Legislation for Colorado", see 51 U. Colo. L. Rev. 107 (1979). For article, "May Regulated Utilities Monopolize the Sun", see 56 Den. L.J. 31 (1979). For comment, "Water: Statewide or Local Concern?", *City of Thornton v. Farmers Reservoir & Irrigation Co.*, 194 Colo. 526, 575 P.2d 382 (1978)", see 56 Den. L.J. 625 (1979). For article, "Cumulative Impact Assessment of Western Energy Development: Will it Happen?", see 51 U. Colo. L. Rev. 551 (1980). For article, "Antitrust", see 58 Den. L.J. 249 (1981). For article, "A Primer on Municipal Home Rule in Colorado", see 18 Colo. Law. 443 (1989). For article, "Home Rule Municipalities and Colorado's Open Records and Meetings Laws", see 18 Colo. Law. 1125 (1989). For article, "Civil Enforcement of Building and Zoning Codes in Municipal Court", see 19 Colo. Law. 469 (1990). For article, "Home Rule City Regulation of Oil and Gas Development", see 23 Colo. Law. 2771 (1994). For article, "Municipal Home Rule in the 1990s", see 28 Colo. Law. 95 (September 1999). For article, "Colorado's Municipal System", see 30 Colo. Law. 33 (December 2001). For article, "Transferable Development Rights and Their Application in Colorado: An Overview", see 34 Colo. Law. 75 (March 2005). For article, "The Doctrine of Preemption and Regulating Oil and Gas Development", see 38 Colo. Law. 47 (October 2009). For article, "Home Rule, Extraterritorial Impact, and the Region", see 86 Den. U.L. Rev. 1271 (2009). For article, "Town of Telluride v. San Miguel Valley Corp.: Extraterritoriality and Local Autonomy", see 86 Den. U.L. Rev. 1311 (2009). For article, "Constitutional Home Rule and Judicial Scrutiny", see 86 Den. U.L. Rev. 1337 (2009). For article, "Telluride's Tale of Eminent Domain, Home Rule, and Retroactivity", see 86 Den. U.L. Rev. 1433 (2009). For comment, "Minority Interests, Majority Politics: A Comment on Richard Collins' 'Telluride's Tale of Eminent Domain, Home Rule, and Retroactivity'", see 86 Den. U.L. Rev. 1459 (2009).

**Construction of section.** Narrow and technical reasoning is out of place in the interpretation of a constitution. This rule is not abrogated but rather enlarged by this section. *City & County of Denver v. Mountain States Tel. & Tel. Co.*, 67 Colo. 225, 184 P. 604 (1919).

**The rule was intended to reiterate unmistakably the will of the people** that the power of a municipal corporation should be as broad as possible within the scope of a republican form of government of the state. *City of Fort Collins v. Pub. Utils. Comm'n*, 69 Colo. 554, 195 P. 1099 (1921).

**This rule also confirms the power set out in §§ 1, 4, and 5 of this article** and invests the people of the municipality with all other powers necessary, requisite, or proper for the government and administration of its local and municipal matters, including the power to amend, add to, or replace the charter of said city or town, which shall be its organic law and extend to all its local and municipal matters. *City & County of Denver v. Mountain States Tel. & Tel. Co.*, 67 Colo. 225, 184 P. 604 (1919), appeal dismissed for want of jurisdiction, 251 U.S. 545, 40 S. Ct. 219, 64 L.Ed. 407 (1920).

**Home rule city is created and derives powers from this article.** The home rule city does not derive its powers over local matters from the general assembly but is created and derives its powers from this article. *Burks v. City of Lafayette*, 142 Colo. 61, 349 P.2d 692 (1960).

**The home rule city shares its powers with the state.** By this article the sovereign power created a new agency, vesting it with some of the powers previously reposed in the general assembly. The two agencies are creatures of the same sovereign; neither has supreme power. Each may exercise the power conferred upon it but only in the manner and to the extent prescribed. *City & County of Denver v. Mountain States Tel. & Tel. Co.*, 67 Colo. 225, 184 P. 604 (1919), appeal dismissed for want of jurisdiction, 251 U.S. 545, 40 S. Ct. 219, 64 L.Ed. 407 (1920); *City & County of Denver v. Sweet*, 138 Colo. 41, 329 P.2d 441 (1958).

**A home rule city created under this section is not an agency or subdivision of the state.** *Clark-Wine v. City of Colo. Springs*, 556 F. Supp. 2d 1238 (D. Colo. 2008).

**The overall effect of this section was to grant to home rule municipalities** the power the legislature previously had and to limit the authority of the legislature with respect to local and municipal affairs in home rule

cities. Fraternal Order of Police, Lodge 27 v. Denver, 926 P.2d 582 (Colo. 1996).

**Powers of chartered municipality part of constitutional powers granted to home rule city.** The powers granted to a municipality which is chartered under the provisions of this article, and not superseded by the charter of the home rule city, are incorporated as a part of the powers which are granted by the constitution to a home rule city. Pueblo Aircraft Serv., Inc. v. City of Pueblo, 498 F. Supp. 1205 (D. Colo. 1980), aff'd, 679 F.2d 805 (10th Cir. 1982), cert. denied, 459 U.S. 1126, 103 S. Ct. 762, 74 L.Ed.2d 977 (1983).

**This section applies to city and county of Denver.** People ex rel. McQuaid v. Pickens, 91 Colo. 109, 12 P.2d 349 (1932); City & County of Denver v. Henry, 95 Colo. 582, 38 P.2d 895 (1935).

**The powers of the city and county of Denver are derived from this article** and are limited thereby. McNichols v. People ex rel. Cook, 95 Colo. 235, 35 P.2d 863 (1934).

The authority of the city and county of Denver is conferred by constitutional grant. Town of Glendale v. City & County of Denver, 137 Colo. 188, 322 P.2d 1053 (1958).

The legislative jurisdiction of Denver derives from this article together with the charter adopted pursuant thereto, thus, in the area of local legislative jurisdiction, Denver is not limited by the statutes pertaining to powers of towns and cities. Lehman v. City & County of Denver, 144 Colo. 109, 355 P.2d 309 (1960).

**Judiciary cannot alter article.** Only by a vote of the people may this article be altered or repealed, it not being the function of the judiciary to do so by judicial decision. Four-County Metro. Capital Imp. Dist. v. Bd. of County Comm'rs, 149 Colo. 284, 369 P.2d 67 (1962).

**Jurisdictional powers of a home rule city are subject to change.** Pub. Utils. Comm'n v. City of Durango, 171 Colo. 553, 469 P.2d 131 (1970).

A home rule city's powers under this article can be limited or altered by constitutional change or by a broadening of the concept of what constitutes a matter of statewide concern. City & County of Denver v. Sweet, 138 Colo. 41, 329 P.2d 441 (1958).

**The city and county of Denver has not been freed from the constitution** but is as much subject thereto as any other part of the state, though portions of the constitution, as it existed prior to the adoption of this article, became inapplicable to such territory because of the express provision of the new article. People ex rel. Attorney Gen. v. Curtice, 50 Colo. 503, 117 P. 357, appeal dismissed for want of jurisdiction, 223 U.S. 707, 32 S. Ct. 518, 56 L.Ed. 622 (1911); Mauff v. People ex rel. Clay, 52 Colo. 562, 123 P. 101 (1912); Dixon v. People ex rel. Elliott, 53 Colo. 527, 127 P. 930 (1912).

The fact that the authority given by this article to the people of the city and county of Denver to legislate was confined and limited solely to local matters was the precise thing that made it possible for the courts to uphold and enforce it. If by this article it had been undertaken to free the people of the city and county of Denver from the state constitution, from statute law, and from the authority of the general assembly, respecting matters other than those purely of local concern, that article could not have been upheld. Mauff v. People ex rel. Clay, 52 Colo. 562, 123 P. 101 (1912).

Unless set aside by express words or necessary implication, the constitution and general laws are as much in force in home rule cities as in other portions of the state. Speer v. People ex rel. Rush, 52 Colo. 325, 122 P. 768 (1912); City & County of Denver v. Tihen, 77 Colo. 212, 235 P. 777 (1925).

No part of the constitution has been set aside unless directly so, or by necessary implication, through some one or more provisions of the article. Where the constitution and general laws of the state have not been, either by direct provision or necessary implication, set aside, they are as much in force in the city and county of Denver as they are in other portions of the state. Mauff v. People ex rel. Clay, 52 Colo. 562, 123 P. 101 (1912).

**Even by constitutional amendment,** the people cannot set apart any portion of the state in such manner that that portion of the state shall be freed from the constitution, or delegate the making of constitutional amendments concerning it to a charter convention, or give to such charter convention the power to prescribe the jurisdiction and duties of public officers with respect to state government as distinguished from municipal or city government. People ex rel. Elder v. Sours, 31 Colo. 369, 74 P. 167 (1903).

**Cities operating under this article are subject to limitations of §§ 1 and 2 of art. XI, Colo. Const.** Nowhere in this section can there be found express alteration or limit of the prohibition contained in §§ 1 and 2 of art. XI, Colo. Const., prohibiting the pledging of credit or aid to corporations by municipalities, and all municipalities operating under this article are clearly subject to such limitations. *Lord v. City & County of Denver*, 58 Colo. 1, 143 P. 284 (1914).

**In addition, cities operating under this article are subject to limitations of fourteenth amendment.** A state's political subdivisions must comply with the fourteenth amendment. The actions of local government are the actions of the state. A city, town, or county may no more deny the equal protection of the laws than it may abridge freedom of speech, establish an official religion, arrest without probable cause, or deny due process of the law. *Hartman v. City & County of Denver*, 165 Colo. 565, 440 P.2d 778 (1968).

Due process requirements of fairness are properly imposed on any lawful exercise of jurisdiction by the city council of a home rule city. *Pub. Utils. Comm'n v. City of Durango*, 171 Colo. 553, 469 P.2d 131 (1970).

Home rule town met requirements of due process when it substantially complied with its own procedures in adopting ordinance. *Lot Thirty-Four Venture, L.L.C. v. Town of Telluride*, 976 P.2d 303 (Colo. App. 1998), *aff'd* on other grounds, 3 P.3d 30 (Colo. 2000).

**Towns may free themselves from jurisdiction of commissions.** Under this section any town may free itself from the jurisdiction of any commission, special or otherwise, having power to interfere in local affairs. *Town of Holyoke v. Smith*, 75 Colo. 286, 226 P. 158 (1924).

**Subsection (f) is intended to preserve existing political entities** or at least provide that such existing political entities shall be terminated only at the behest of those who created them. *City & County of Denver v. Mewborn*, 143 Colo. 407, 354 P.2d 155 (1960).

**Regulation of parks does not violate section.** The adoption of a charter amendment providing for the regulation and support of parks and city improvements does not constitute a "consolidation" of park districts within the meaning of subsection (f) of this section, and the amendment does not violate this section of the constitution. *City & County of Denver v. Mewborn*, 143 Colo. 407, 354 P.2d 155 (1960).

**Section does not apply to persons engaged in statewide activities.** This section relates only to the establishment of conditions of employment for "municipal" officers or employees rather than persons engaged in activities of a statewide concern. *Evert v. Ouren*, 37 Colo. App. 402, 549 P.2d 791 (1976).

**This section was properly submitted as single amendment.** The provisions of this section are effectual to make the regulation of municipal elections, the levy and collection of taxes for municipal purposes, and special assessments matters of municipal concern. All the provisions of the amendment are germane to its general purpose, and it was properly submitted as a single amendment. *People ex rel. Tate v. Prevost*, 55 Colo. 199, 134 P. 129 (1913).

**"Consolidation".** The word "consolidation" appears on its face to be one of rather narrow meaning and, when considered in light of the policy of this section, would appear to be a word that was consciously and carefully chosen by the framers of this section. *City & County of Denver v. Mewborn*, 143 Colo. 407, 354 P.2d 155 (1960).

**"Termination" and "consolidation".** There is a distinction between termination and consolidation; the latter is of concern because of the possibility of an adverse effect on bondholders in a park district consolidated with another, but there is no such concern when a park district is terminated as an administrative area. In such a case existing obligations and security would not be affected. *City & County of Denver v. Mewborn*, 143 Colo. 407, 354 P.2d 155 (1960).

**"Officer" and "employee"** are not interchangeable, and the two terms are to be distinguished. *City & County of Denver v. McNichols*, 129 Colo. 251, 268 P.2d 1026 (1954).

**General grant of eminent domain power confers no specific condemnation powers over state-owned lands.** Town and water and sanitation district were not authorized to condemn state-owned property to determine feasibility of recreation and water storage project. *Town of Parker v. Colo. Div. of Parks*, 860 P.2d 584 (Colo. App. 1993).

**The condemnation by a home rule municipality of property outside its territorial boundaries for open space and park purposes falls within the scope of the eminent domain power granted to such municipalities in this article.** The eminent domain power granted to home rule municipalities in this article is not limited to the purposes specified in this section nor is the eminent domain power circumscribed when exercised extraterritorially. Rather, this article grants home rule municipalities the power to condemn property, within or outside of territorial limits, for any lawful, public, local, and municipal purpose. The extraterritorial condemnation of property need not be pursuant to a purpose that is purely local and municipal. As long as the condemnation is based on a lawful, public, local, and municipal purpose, it does not fall outside of the scope of this article merely because it potentially implicates competing state interests. Based upon statutory provisions authorizing statutory localities to condemn land for open space, parks, and recreation, as well as the traditional exercise of this power by the state's statutory and home rule municipalities, the extraterritorial condemnation of property for open space and parks is a lawful, public, local, and municipal purpose within the scope of this article. The condemnation of the landowner's property outside the territorial boundaries of the municipality was, therefore, lawful. *Town of Telluride v. San Miguel Valley Corp.*, 185 P.3d 161 (Colo. 2008).

**Section 38-1-101 (4)(b) abrogates constitutional powers granted to home rule municipalities by this article.** Accordingly, the statutory provision is unconstitutional with respect to home rule municipalities. Court's inquiry need not extend beyond the question of whether the statute purports to deny home rule municipalities powers specifically granted by the constitution. No analysis of competing state and local interests is necessary where a statute purports to take away home rule powers granted by the constitution. The legislature cannot prohibit the exercise of constitutional home rule powers regardless of the state interests that may be implicated by the exercise of those powers. *Town of Telluride v. San Miguel Valley Corp.*, 185 P.3d 161 (Colo. 2008).

**Section 38-1-101 (4)(b) prohibits home rule municipalities from condemning property for parks and open space, thus denying them their constitutional power to condemn for any lawful, public, local, and municipal purpose.** Section 38-1-101 (4)(b) curtails the condemnation power in this article by limiting it to the enumerated purposes in this section and also by removing certain enumerated purposes from the list. Accordingly, § 38-1-101 (4)(b) is an unconstitutional abrogation of the powers granted to home rule municipalities under this article. The general assembly has no power to enact a law that denies a right specifically granted by the constitution. *Town of Telluride v. San Miguel Valley Corp.*, 185 P.3d 161 (Colo. 2008).

**Applied** in *Perkins v. People ex rel. MacFarland*, 59 Colo. 107, 147 P. 356 (1915); *Milheim v. Moffat Tunnel Imp. Dist.*, 72 Colo. 268, 211 P. 649 (1922); *People ex rel. Setters v. Lee*, 72 Colo. 598, 213 P. 583 (1923); *Kingsley v. City & County of Denver*, 126 Colo. 194, 247 P.2d 805 (1952); *Western Heights Land Corp. v. City of Fort Collins*, 146 Colo. 464, 362 P.2d 155 (1961); *City of Englewood v. Crabtree*, 157 Colo. 593, 404 P.2d 525, cert. dismissed, 382 U.S. 934, 86 S. Ct. 385, 15 L.Ed.2d 347 (1965); *Associated Dry Goods Corp. v. City of Arvada*, 197 Colo. 491, 593 P.2d 1375 (1979); *Community Commc'ns Co. v. City of Boulder*, 485 F. Supp. 1035 (D. Colo. 1980); *City of Sheridan v. City of Englewood*, 199 Colo. 348, 609 P.2d 108 (1980); *Pueblo Aircraft Serv., Inc. v. City of Pueblo*, 679 F.2d 805 (10th Cir. 1982); *Gold Star Sausage Co. v. Kempf*, 653 P.2d 397 (Colo. 1982); *Glennon Heights, Inc. v. Central Bank & Trust*, 658 P.2d 872 (Colo. 1983).

## II. STATE POWERS RESERVED.

**State's power to declare public policy not relinquished.** The people in adopting this article and the amendments thereto never intended to surrender or relinquish any portion of its police power to declare the public policy of the state; but, if it had so intended, it would have been an abortive effort. *City & County of Denver v. Tihen*, 77 Colo. 212, 235 P. 777 (1925); *People ex rel. Stokes v. Newton*, 106 Colo. 61, 101 P.2d 21 (1940).

No provision in this article deprives the state of its unquestioned power in declaring what the public policy of the state shall be in matters of taxation as well as in other matters of statewide importance. *People v. City & County of Denver*, 90 Colo. 598, 10 P.2d 1106 (1932).

**State laws apply except where superseded by charter or ordinance.** Under this article charter provisions of home rule municipalities, and ordinances thereunder, supersede any law of the state in conflict therewith, but state laws still are applicable to such cities except insofar as superseded by charter or by ordinance passed under the charter. *Horst v. City & County of Denver*, 101 Colo. 284, 73 P.2d 388 (1937); *Bd. of Trustees of Firemen's Pension Fund v. People ex rel. Behrman*, 119 Colo. 301, 203 P.2d 490 (1949); *City of Canon City v. Merris*, 137 Colo. 169, 323 P.2d 614 (1958); *City & County of Denver v. Sweet*, 138 Colo. 41, 329 P.2d 441 (1958); *Conrad v. City of Thornton*, 191 Colo. 444, 553 P.2d 822 (1976).

This article does not preclude regulation by state agency of public utilities serving in areas of local and municipal concern. The operation of state law is ineffective in local and municipal matters in home rule cities only to the extent that charters or ordinances governing such matters are adopted by such cities and remain in effect therein. *Zelinger v. Pub. Serv. Co.*, 164 Colo. 424, 435 P.2d 412 (1967).

In purely local and municipal matters, home rule cities may exercise exclusive jurisdiction by passing ordinances which supersede state statutes. Until they do so, however, the Colorado Constitution provides that state statutes shall continue to apply. *Vela v. People*, 174 Colo. 465, 484 P.2d 1204 (1971); *People v. Hizhniak*, 195 Colo. 427, 579 P.2d 1131 (1978).

In matters of exclusively statewide concern, state statutes will always supersede conflicting local enactments. *DeLong v. City & County of Denver*, 195 Colo. 27, 576 P.2d 537 (1978).

**Factors for determining whether state interest is sufficient to preempt inconsistent home rule provisions** include: (1) Need for statewide uniformity of regulation; (2) impact of municipal regulations on persons living outside municipality; and (3) whether particular matter is traditionally governed by state or local government. *City & County of Denver v. State*, 788 P.2d 764 (Colo. 1990); *Lundvall Bros. Inc. v. Voss*, 812 P.2d 693 (Colo. App. 1990), *aff'd in part and rev'd in part on other grounds*, 830 P.2d 1061 (Colo. 1992); *Town of Telluride v. Lot Thirty-Four Venture, L.L.C.*, 3 P.3d 30 (Colo. 2000); *City & County of Denver v. Qwest Corp.*, 18 P.3d 748 (Colo. 2001).

**Whether a matter is of local, state, or mixed concern determines whether state or local legislation controls in that area.** *Boulder County Apt. Ass'n v. City of Boulder*, 97 P.3d 332 (Colo. App. 2004).

**Whether a matter is of local, state, or mixed concern is determined on an ad hoc basis considering the totality of the circumstances.** The factors to be considered include the need for statewide uniformity, whether the municipal legislation has an extraterritorial impact, whether the subject matter is traditionally one governed by state or local government, and whether the Colorado Constitution specifically identifies that the issue should be regulated by state or local legislation. *City of Northglenn v. Ibarra*, 62 P.3d 151 (Colo. 2003).

**Home rule cities subject to state legislation.** With respect to matters of statewide concern, home rule cities are subject to state legislation. *City of Colo. Springs v. State*, 626 P.2d 1122 (Colo. 1980).

In regard to matters of statewide concern, home rule cities may only act when authorized by the constitution or state statute. *R.E.N. v. City of Colo. Springs*, 823 P.2d 1359 (Colo. 1992); *Town of Telluride v. Lot Thirty-Four Venture, L.L.C.*, 3 P.3d 30 (Colo. 2000); *City & County of Denver v. Qwest Corp.*, 18 P.3d 748 (Colo. 2001); *Boulder County Apt. Ass'n v. City of Boulder*, 97 P.3d 332 (Colo. App. 2004).

**Thus, state may adopt uniform statewide legislative program**, even though the subject has a local or municipal character, where the municipality has not acted. *Rabinoff v. District Court*, 145 Colo. 225, 360 P.2d 114 (1961).

**All statutes of general nature are applicable within the cities.** The language contained in this section providing for the application of general laws within the cities operating thereunder can have but one meaning, fixed and definite--that all statutes of a general nature shall have application within municipalities. It is the precise converse of the language of the grant to municipalities--of powers limited to local and municipal matters. There is perfect harmony between the language of the grant and the language of the reservation of power. The sum of the two equals the total of the state's inherent power in this respect. *City & County of Denver v. Mountain States Tel. & Tel. Co.*, 67 Colo. 225, 184 P. 604 (1919), *appeal dismissed for want of jurisdiction*, 251 U.S. 545, 40 S. Ct. 219, 64 L.Ed. 407 (1920).

**Ordinance of home rule city in clear opposition to general state law is invalid.** *City & County of Denver v. Sweet*, 138 Colo. 41, 329 P.2d 441 (1958); *Vick v. People*, 166 Colo. 565, 445 P.2d 220 (1968).

Where the subject matter of a municipal ordinance is of statewide concern and the terms of the ordinance authorize what the general assembly has forbidden, or forbid what the general assembly has expressly authorized, the ordinance must fail. *Bennion v. City & County of Denver*, 180 Colo. 213, 504 P.2d 350 (1972).

While this provision established exclusive home rule over matters of local concern, statutes dealing with matters of statewide concern operate to the exclusion of conflicting local ordinances. *Century Elec. Serv. & Repair, Inc. v. Stone*, 193 Colo. 181, 564 P.2d 953 (1977).

Statute declaring rent control a matter of statewide importance preempted conflicting home rule town ordinance that mandated affordable housing mitigation. *Lot Thirty-Four Venture, L.L.C. v. Town of Telluride*, 976 P.2d 303 (Colo. App. 1998), *aff'd on other grounds*, 3 P.3d 30 (Colo. 2000).

**Both home rule city and state may legislate on same subject.** There is nothing basically invalid about legislation on the same subject by both a home rule city and the state. *Vela v. People*, 174 Colo. 465, 484 P.2d 1204 (1971); *Bennion v. City & County of Denver*, 180 Colo. 213, 504 P.2d 350 (1972); *City of Aurora v. Martin*, 181 Colo. 72, 507 P.2d 868 (1973).

**Both the state and home rule cities may legislate in matters of local concern**, however a local ordinance will supersede any conflicting state statute on a local matter. *R.E.N. v. City of Colo. Springs*, 823 P.2d 1359 (Colo. 1992); *Winslow Constr. Co. v. City and County of Denver*, 960 P.2d 685 (Colo. 1998); *Boulder County Apt. Ass'n v. City of Boulder*, 97 P.3d 332 (Colo. App. 2004).

**Factors to consider in determining whether the state's interest is sufficient to justify preemption of the inconsistent home rule provisions include:** (1) The need for statewide uniformity of regulation; (2) the extraterritorial impact, i.e., the impact of the municipal regulation or home rule provision on persons living outside the municipal limits; (3) any other state interests; and (4) the asserted local interests in the municipal regulation contemplated by the home rule provision, e.g., does the Colorado constitution specifically commit a particular matter to state or local regulation. *Fraternal Order of Police, Lodge 27 v. Denver*, 926 P.2d 582 (Colo. 1996).

**Test for determining whether municipal ordinance and statute conflict** is whether the ordinance authorizes what the state forbids or forbids what the state has expressly authorized. *City of Aurora v. Martin*, 181 Colo. 72, 507 P.2d 868 (1973); *R.E.N. v. City of Colo. Springs*, 823 P.2d 1359 (Colo. 1992).

**City has no preemptive right.** Even where there is a demonstrable local interest, as well as a state interest, a home rule city does not by virtue of this article derive preemptive authority. *Century Elec. Serv. & Repair, Inc. v. Stone*, 193 Colo. 181, 564 P.2d 953 (1977).

**State statute is not preemption of subject matter.** The mere enactment of a state statute does not constitute a preemption by the state of the matter regulated so as to void municipal ordinances on the same subject matter. *City of Aurora v. Martin*, 181 Colo. 72, 507 P.2d 868 (1973).

Where a subject of statewide concern is involved, a state statute on the matter does not necessarily preempt the home rule city from adopting a city charter provision or ordinance. *Conrad v. City of Thornton*, 191 Colo. 444, 553 P.2d 822 (1976).

**Difference in penalties in statute and ordinance does not necessarily establish conflict.** Except in felony categories, mere difference in penalty provisions in a statute and municipal ordinance does not necessarily establish a conflict. *City of Aurora v. Martin*, 181 Colo. 72, 507 P.2d 868 (1973).

If a statute provides for a substantially greater penalty than does a similar municipal ordinance, this fact may be considered in ruling whether the general assembly intended, by enactment of the statute, to preempt that field of regulation. *City of Aurora v. Martin*, 181 Colo. 72, 507 P.2d 868 (1973).

**Statute specifically delegating power of regulation to cities or towns** would be useful in deciding that the state did not intend to preempt that field of regulation, but the absence of such a statute is not determinative of the issue. *City of Aurora v. Martin*, 181 Colo. 72, 507 P.2d 868 (1973).

**State may reduce area of municipal authority.** In the field of local and municipal matters, the authority granted home rule cities by this article may be taken away by subsequent amendments to the constitution or by legislative acts broadening the concept of what constitutes matters of statewide concern. *City & County of Denver v. Sweet*, 138 Colo. 41, 329 P.2d 441 (1958).

**The state may delegate additional power in areas of both local and state concern.** The authority of the state to delegate police powers to the municipality in those areas where the subject matter, although predominantly general, is also to some extent municipal is an approved practice even though there be a state statute on the same subject. *Davis v. City & County of Denver*, 140 Colo. 30, 342 P.2d 674 (1959).

A state may grant legislative authority to a home rule municipality on a subject such as gambling which has both

general and local attributes. *Woolverton v. City & County of Denver*, 146 Colo. 247, 361 P.2d 982 (1961).

**In such areas, home rule city has supplemental, not superseding, authority.** In matters of both local and state interest, the home rule city does not have a superseding authority; it has a supplemental authority which permits its ordinance to coexist with the state statute, so long as they are not in conflict. *Vick v. People*, 166 Colo. 565, 445 P.2d 220 (1968), cert. denied, 394 U.S. 945, 89 S. Ct. 1273, 22 L.Ed.2d 477 (1969); *R.E.N. v. City of Colo. Springs*, 823 P.2d 1359 (Colo. 1992).

**Mutual exclusion doctrine is not applicable.** Some subjects are neither strictly local nor exclusively statewide, and the mutual exclusion doctrine is not applicable to these intermediate subjects. *Woolverton v. City & County of Denver*, 146 Colo. 247, 361 P.2d 982 (1961).

**State interest in uniformity does not outweigh a home rule city's interest in preventing tax avoidance by purchasing outside the city.** Although the general assembly has an interest in promoting the free flow of commerce between jurisdictions and preventing multiple taxation by local governments, a home rule city collecting a use tax of only the difference between what would have been collected in sales tax had the equipment been purchased in the home rule city and any sales or use tax previously paid to another municipality does not conflict with state interests. *Winslow Constr. Co. v. City & County of Denver*, 960 P.2d 685 (Colo. 1998).

**Cities may regulate in areas where state has acted.** In the absence of constitutional limitations, the general assembly may confer police power on a municipal corporation over subjects within the provisions of existing general state statutes, and, if there is no conflict with general law, municipal corporations, under their general police powers, may regulate on municipal subjects on which the state has acted. *Davis v. City & County of Denver*, 140 Colo. 30, 342 P.2d 674 (1959).

Where the charter or legislation confers on a municipality express power to legislate on a particular subject, both state and city may legislate thereon even though it is not a subject of local concern. *Davis v. City & County of Denver*, 140 Colo. 30, 342 P.2d 674 (1959).

**City is state agency in matters of state control.** There being no constitutional provision requiring that in matters of statewide interest the regulation thereof be conducted by the state alone to the exclusion of a home rule city, it follows that in matters beyond the scope of this article in the area of state control, a city is an agency of the state and subject to control by the general assembly. *Davis v. City & County of Denver*, 140 Colo. 30, 342 P.2d 674 (1959).

After the adoption of the article, the city and county of Denver, as a municipality, continued to be, as the city was before, an agency of the state for the purpose of government and as such amenable to state control in all matters of a public, as distinguished from matters of a local, character as are other municipalities. *Keefe v. People*, 37 Colo. 317, 87 P. 791 (1906); *People ex rel. Hershey v. McNichols*, 91 Colo. 141, 13 P.2d 266 (1932); *Spears Free Clinic & Hosp. for Poor Children v. State Bd. of Health*, 122 Colo. 147, 220 P.2d 872 (1950).

A municipality is an agency of the state; to it the state delegates certain powers and duties. *City of Canon City v. Merris*, 137 Colo. 169, 323 P.2d 614 (1958); *Evert v. Ouren*, 37 Colo. App. 402, 549 P.2d 791 (1976).

**Constitutional exemptions cannot be changed by home rule cities.** At the time of the adoption of this article, the public policy of the state provided for a constitutional exemption from general taxation of cemeteries not for profit, and a statutory exemption from local assessments, which applies to every portion of the state. It is just as applicable to the home rule cities now as it was and is to municipalities organized under general statutes. *City & County of Denver v. Tihen*, 77 Colo. 212, 235 P. 777 (1925).

Denver is subject to the public policy of the state which expressly exempts cemeteries from special assessments for local improvements. *City & County of Denver v. Sweet*, 138 Colo. 41, 329 P.2d 441 (1958).

**State never relinquished power to enact laws to punish crimes and misdemeanors,** and the operation of such laws embraces all of the people of the state, whether living in municipalities or counties created directly by the constitution or organized under general laws. Such legislation would not be valid if it expressly exempted the city and county of Denver from its operation. *Keefe v. People*, 37 Colo. 317, 87 P. 791 (1906).

**Larceny being the subject of statute and of statewide concern** is distinguished from a local and municipal matter in which municipalities may exercise jurisdiction, and a municipal ordinance purporting to cover such field is invalid. *Gazotti v. City & County of Denver*, 143 Colo. 311, 352 P.2d 963 (1960).

**Shoplifting ordinance held not constitutionally applicable to petty theft.** When a municipal shoplifting ordinance which does not limit shoplifting to goods not exceeding \$100 in value and thereby goes beyond a municipal or local matter contains no severable operative provisions, and when plaintiff allegedly takes articles valued over \$100, the ordinance cannot be constitutionally applied to petty theft. *Quintana v. Edgewater Mun. Court*, 178 Colo. 213, 496 P.2d 1009 (1972).

**Prosecution and deterrence of juveniles who commit minor offenses** such as shoplifting and unlawful concealment of a weapon is a matter of mixed local and state concerns. *R.E.N. v. City of Colo. Springs*, 823 P.2d 1359 (Colo. 1992).

**Registration of vital statistics.** The general assembly has power to impose upon Denver a liability to pay the compensation of a local registrar of vital statistics, and the city cannot avoid the expense by failing to have such an officer of its own selection appointed. *People ex rel. Hershey v. McNichols*, 91 Colo. 141, 13 P.2d 266 (1932).

Section [25-2-101](#) et seq., concerning vital statistics, is a valid exercise of the police power of the state, and it operates in all parts of the state including Denver and other home rule cities. *People ex rel. Hershey v. McNichols*, 91 Colo. 141, 13 P.2d 266 (1932).

**Regulation of traffic in intoxicating liquors.** The collection of liquor license fees by a city is not a local and municipal matter, because art. XXII, Colo. Const., concerning intoxicating liquor, applies to the whole state. *Walker v. People*, 55 Colo. 402, 135 P. 794 (1913); *City & County of Denver v. People*, 103 Colo. 565, 88 P.2d 89, appeal dismissed sub nom. *City & County of Denver v. Colo.*, 307 U.S. 615, 59 S. Ct. 1044, 83 L.Ed. 1496 (1939).

Art. XXII, Colo. Const., applies to the whole state and supersedes all possibility of authority in the city of Denver to regulate the traffic in intoxicating liquors contained in this article. *People ex rel. Carlson v. City Council*, 60 Colo. 370, 153 P. 690 (1915).

**Small loans.** The state has preempted small loans regulation by legislating upon it. *City & County of Denver v. Sweet*, 138 Colo. 41, 329 P.2d 441 (1958).

**Public utility rates.** The addition of art. XXV, Colo. Const., determined that all power to regulate rates of public utilities within a home rule city, as well as elsewhere in the state, should be vested in the public utilities commission. *Pub. Utils. Comm'n v. City of Durango*, 171 Colo. 553, 469 P.2d 131 (1970).

Where a city had regulatory power only as long as it saw fit to exercise it and withdrew from the field of the regulation of rates charged by public utilities by a charter amendment, thereupon the law of the state was automatically effective. The public utilities commission had jurisdiction to regulate the rates of the public service company from and after the date of the charter amendment without regard to the question of whether the company operations were of local and municipal or statewide concern. *Zelinger v. Pub. Serv. Co.*, 164 Colo. 424, 435 P.2d 412 (1967).

**Privately owned public utilities.** The purpose of art. XXV, Colo. Const., was to grant to the general assembly the authority to regulate privately owned public utilities within home rule cities, and, without the grant of such power, the regulation of service among the inhabitants of the city was a local matter, and laws of the state in conflict with ordinances and charter provisions enacted pursuant to this article had no force and effect within the municipality. *City & County of Denver v. Pub. Utils. Comm'n*, 181 Colo. 38, 507 P.2d 871 (1973).

**Municipally owned utility.** A municipally owned public utility, as to service furnished consumers beyond its territorial jurisdiction, should be subject to the same regulation to which a privately owned public utility must conform in similar circumstances. *City & County of Denver v. Pub. Utils. Comm'n*, 181 Colo. 38, 507 P.2d 871 (1973).

**Statewide telephone system,** with its need for coordinated intra and interstate communications is a matter of statewide concern heavily outweighing any possible municipal interest. *City of Englewood v. Mountain States Tel. & Tel. Co.*, 163 Colo. 400, 431 P.2d 40 (1967); *City & County of Denver v. Qwest Corp.*, 18 P.3d 748 (Colo. 2001).

A municipal ordinance that conflicts with the specific provisions of a state statute concerning telecommunications providers, which imposes express limitations on local regulation of telecommunications providers, is preempted

and invalid. *City & County of Denver v. Qwest Corp.*, 18 P.3d 748 (Colo. 2001).

**Gas company franchise.** A franchise ordinance adopted by a home rule city granting to a gas company the right to operate a gas plant in the city and to supply gas service to citizens of that city did not suspend the power of the state to regulate and did not intend to do so. *Pub. Utils. Comm'n v. City of Durango*, 171 Colo. 553, 469 P.2d 131 (1970).

**Denver housing authority** is an independent entity not subject to the charter of Denver even though the city forms a part of the district. Insofar as the exercise of any power granted to the Denver housing authority under applicable state statutes is concerned, this article has no application. *People ex rel. Stokes v. Newton*, 106 Colo. 61, 101 P.2d 21 (1940).

**Urban renewal authority** is a proper exercise of the police power of the state, and, if a city has not exercised the authority to legislate by amending its charter, the state law controls. *Rabinoff v. District Court*, 145 Colo. 225, 360 P.2d 114 (1961).

**Regulation of state personnel employees.** Under the charter of Colorado Springs, adopted under the authority of this article, classification affecting the position of persons in the classified service must be by the state personnel board; that body alone may properly determine the order of dismissal of employees, and the city council and manager of safety cannot justify unwarranted dismissals on the ground of effecting municipal economy or of promoting efficiency. *Birdsall v. Sanders*, 96 Colo. 275, 42 P.2d 194 (1935).

**The determination of whether an employee is entitled to unemployment compensation benefits is a matter of statewide concern** and state statutes supercede ordinances of home rule cities. *Colo. Springs v. Indus. Comm'n*, 720 P.2d 601 (Colo. App. 1985), *aff'd*, 749 P.2d 412 (Colo. 1988).

**Social services system** is a matter of statewide rather than local or municipal concern. *Evert v. Ouren*, 37 Colo. App. 402, 549 P.2d 791 (1976); *Dempsey v. City & County of Denver*, 649 P.2d 726 (Colo. App. 1982).

**Firemen's pension act.** Because the subject of firemen's pensions has statewide dimensions, inconsistent provisions of a city ordinance must fail insofar as they are inconsistent with the firemen's pension act, and the act must be enforced. *Huff v. Mayor of Colo. Springs*, 182 Colo. 108, 512 P.2d 632 (1973).

The establishment of pension plans for firemen is a matter of statewide concern. *City of Colo. Springs v. State*, 626 P.2d 1122 (Colo. 1980).

**Licensing of electricians.** The state has a clear concern in ensuring that Colorado electricians have free access to markets throughout the state in eliminating duplicative and expensive licensing and in establishing a statewide policy on the required competence of electricians, and therefore the licensing ordinance of a home-rule city could not supersede state law. *Century Elec. Serv. & Repair, Inc. v. Stone*, 193 Colo. 181, 564 P.2d 953 (1977).

**Regulation of obscenity.** The question of the regulation of obscenity is properly a matter of statewide concern under this section. *Pierce v. City & County of Denver*, 193 Colo. 347, 565 P.2d 1337 (1977).

Regulation of obscenity as a matter of statewide concern under this section is consistent with the community-based standards required by the first amendment of the United States Constitution. *Pierce v. City & County of Denver*, 193 Colo. 347, 565 P.2d 1337 (1977).

**State's interest in efficient oil and gas development and production as manifested in the Oil and Gas Conservation Act preempts** a home-rule city from totally excluding all drilling operations within city limits. *Voss v. Lundvall Bros., Inc.*, 830 P.2d 1061 (Colo. 1992).

**While the Oil and Gas Conservation Act does not totally preempt a home-rule city's exercise of land-use authority over oil and gas development and operations within the territorial limits of the city**, the state-wide interest in the efficient development and production of oil and gas resources in a manner calculated to prevent waste, as well as in protecting the correlative rights of owners and producers in a common pool or source to a just and equitable share of the profits of production, prevents a home-rule city from exercising its land-use authority so as to totally ban the drilling of oil, gas, or hydrocarbon wells within the city. *Voss v. Lundvall Bros., Inc.*, 830 P.2d 1061 (Colo. 1992).

**Bond issuance.** City charter provision that gives city power to issue bonds is not inconsistent with § [29-2-112](#), so

the suppression doctrine of this section does not apply. *Leek v. City of Golden*, 870 P.2d 580 (Colo. App. 1993).

**The protection of adjudicated delinquent children in need of state supervision and appropriate treatment is a matter of statewide concern** and is sufficiently dominant to override a home rule city's interest in regulating the number of registered juvenile sex offenders who may live in one foster care family. *City of Northglenn v. Ibarra*, 62 P.3d 151 (Colo. 2003).

### III. POWERS GRANTED TO CHARTER CITIES.

#### A. Control of Local and Municipal Matters.

**Purpose of section.** The purpose of this section is to give municipalities exclusive control in matters of local concern only. *Speer v. People ex rel. Rush*, 52 Colo. 325, 122 P. 768 (1912); *Mauff v. People ex rel. Clay*, 52 Colo. 562, 123 P. 101 (1912); *City & County of Denver v. Tihen*, 77 Colo. 212, 235 P. 777 (1925); *People ex rel. Hershey v. McNichols*, 91 Colo. 141, 13 P.2d 266 (1932); *Vela v. People*, 174 Colo. 465, 484 P.2d 1204 (1971).

Home rule cities under this section have exclusive control only over matters of truly local concern. *City & County of Denver v. Eggert*, 647 P.2d 216 (Colo. 1982); *City & County of Denver v. Qwest Corp.*, 18 P.3d 748 (Colo. 2001).

A home rule city's police powers are supreme only in matters of purely local concern, and the fact that an ordinance is justified as a legitimate exercise of a city's police powers in no way establishes that its substance is purely a matter of local concerns and in no way alters its powers vis-a-vis state statutes in matters of mixed or statewide concern. *City & County of Denver v. Qwest Corp.*, 18 P.3d 748 (Colo. 2001).

Even though an ordinance may be an otherwise legitimate exercise of a municipality's police powers, to the extent that it conflicts with a state statute concerning a matter of mixed statewide and local concern, it is invalid. *City & County of Denver v. Qwest Corp.*, 18 P.3d 748 (Colo. 2001).

Under this section the city may assume exclusive control of all matters of local and municipal concern. *Bd. of Comm'rs v. City of Colo. Springs*, 66 Colo. 111, 180 P. 301 (1919); *City & County of Denver v. Bossie*, 83 Colo. 329, 266 P. 214 (1928).

The city and county of Denver is a municipal corporation created by this article as a home rule city with exclusive power to legislate on matters of local and municipal concern. *Independent Dairymen's Ass'n v. City & County of Denver*, 142 F.2d 940 (10th Cir. 1944).

The very essence of a home rule city is embodied in the constitutional mandate that, in its local and municipal affairs, it has full, complete, and exclusive authority and the general assembly is powerless to change such essential concept of home rule. *Four-County Metro. Capital Imp. Dist. v. Bd. of County Comm'rs*, 149 Colo. 284, 369 P.2d 67 (1962).

**Constitution confers upon home rule city legally protected interest in its local concerns.** *Denver Urban Renewal Auth. v. Byrne*, 618 P.2d 1374 (Colo. 1980).

**How home rule city exercises exclusive jurisdiction.** Where purely local or municipal matters are involved, a home rule city may exercise exclusive jurisdiction by adopting a charter provision or by passing an ordinance which will supersede a state statute. *Conrad v. City of Thornton*, 191 Colo. 444, 553 P.2d 822 (1976).

**This power equals that possessed by general assembly in granting charters.** This article confers upon municipalities organized hereunder, and which have adopted such a charter, every power possessed by the general assembly in granting charters generally. *Londoner v. City & County of Denver*, 52 Colo. 15, 119 P. 156 (1911); *People ex rel. Moore v. Perkins*, 56 Colo. 17, 137 P. 55 (1913); *Watson v. City of Ft. Collins*, 86 Colo. 305, 281 P. 355 (1929); *Fishel v. City & County of Denver*, 106 Colo. 576, 108 P.2d 236 (1940); *Lehman v. City & County of Denver*, 144 Colo. 109, 355 P.2d 309 (1960); *Four-County Metro. Capital Imp. Dist. v. Bd. of County Comm'rs*, 149 Colo. 284, 369 P.2d 67 (1962); *Roosevelt v. City of Englewood*, 176 Colo. 576, 492 P.2d 65 (1971).

This article intended to confer not only the powers specially mentioned but to bestow upon the people of Denver every power possessed by the general assembly in the making of a charter for Denver. *City & County of Denver v. Hallett*, 34 Colo. 393, 83 P. 1066 (1905); *City & County of Denver v. Sweet*, 138 Colo. 41, 329 P.2d 441 (1958);

Lehman v. City & County of Denver, 144 Colo. 109, 355 P.2d 309 (1960).

The power granted by this section is determined by ascertaining whether the general assembly in the absence of the article could have conferred upon the municipality the power in question. *Londoner v. City & County of Denver*, 52 Colo. 15, 119 P. 156 (1911); *City & County of Denver v. Mountain States Tel. & Tel. Co.*, 67 Colo. 225, 184 P. 604 (1919), appeal dismissed for want of jurisdiction, 251 U.S. 545, 40 S. Ct. 219, 64 L.Ed. 407 (1920); *City & County of Denver v. Henry*, 95 Colo. 582, 38 P.2d 895 (1934); *Four-County Metro. Capital Imp. Dist. v. Bd. of County Comm'rs*, 149 Colo. 284, 369 P.2d 67 (1962).

This article confers upon home rule cities all powers in local and municipal matters which the general assembly could grant. *Laverty v. Straub*, 110 Colo. 311, 134 P.2d 208 (1943).

**Home rule city not inferior to general assembly concerning own affairs.** By virtue of this article, a home rule city is not inferior to the general assembly concerning its own local and municipal affairs. *Denver Urban Renewal Auth. v. Byrne*, 618 P.2d 1374 (Colo. 1980); *Bd. of County Comm'rs v. City of Thornton*, 629 P.2d 605 (Colo. 1981); *Fraternal Order of Police, Lodge 27 v. Denver*, 926 P.2d 582 (Colo. 1996).

**With respect to purely local matters, the legislative power of special charter cities is,** with exceptions not material here, as comprehensive as that of our general assembly over municipalities organized under the general statutes. *Sanborn v. City of Boulder*, 74 Colo. 358, 221 P. 1077 (1923).

For the government and administration of its local and municipal matters, the people of Denver are given the power to legislate to the same extent as the general assembly may with respect to statutory municipalities concerning their local and municipal matters. *City & County of Denver v. Tihen*, 77 Colo. 212, 235 P. 777 (1925).

There is nothing in the charter which supports an argument that Denver, as a home rule city, is more restricted than a so-called legislative city. *Lehman v. City & County of Denver*, 144 Colo. 109, 355 P.2d 309 (1960).

**This section grants home rule cities plenary legislative authority** over matters exclusively local in nature. *McNichols v. City & County of Denver*, 101 Colo. 316, 74 P.2d 99 (1937); *City & County of Denver v. Palmer*, 140 Colo. 27, 342 P.2d 687 (1959); *Kelly v. City of Fort Collins*, 163 Colo. 520, 431 P.2d 785 (1967).

The city of Denver, pursuant to this article, adopted in 1904 what is known as a home rule charter. By this action of the city, the people within the territory of the city and county of Denver were vested, in virtue of said article, with the power to legislate for themselves as to all rightful subjects of legislation and were no longer subject to the legislative power of the state. *City & County of Denver v. Stenger*, 277 F. 865 (8th Cir. 1921).

**As a general rule, the powers vested in home rule cities,** not specifically limited by constitution or charter, may be exercised through their legislative authority. *People ex rel. McQuaid v. Pickens*, 91 Colo. 109, 12 P.2d 349 (1932); *Fishel v. City & County of Denver*, 106 Colo. 576, 108 P.2d 236 (1940); *Laverty v. Straub*, 110 Colo. 311, 134 P.2d 208 (1943).

Under this article the city and county of Denver has implied authority to carry out its functions as a charter city which are not of statewide concern or prohibited by other constitutional provisions. *City & County of Denver v. Sweet*, 138 Colo. 41, 329 P.2d 441 (1958).

Home rule cities are granted every power possessed by the general assembly as to local and municipal matters, unless restricted by the terms of their charter. *Serv. Oil Co. v. Rhodus*, 179 Colo. 335, 500 P.2d 807 (1972).

**General assembly is deprived of this power.** By this section the general assembly has been deprived of only a part of its powers; namely, the power to legislate concerning matters of local and municipal concern, as distinguished from those of general, statewide concern. The amendment does not create a state within a state. As to matters of general, statewide concern, the powers of the general assembly remain unimpaired. *City & County of Denver v. Henry*, 95 Colo. 582, 38 P.2d 895 (1934); *Vela v. People*, 174 Colo. 465, 484 P.2d 1204 (1971).

After the adoption of this article, the general assembly had nothing to give in the way of power or authority to provide capital improvements to a new superstructure of government encompassing multiple counties, towns, and cities and was deprived of all power it might otherwise have had to legislate concerning matters of local and municipal concern. This is particularly true where a home rule city has adopted a charter or ordinances governing such matters. *Four-County Metro. Capital Imp. Dist. v. Bd. of County Comm'rs*, 149 Colo. 284, 369 P.2d 67 (1962).

**Home rule city cannot delegate exclusive power.** When the people by constitutional provision have lodged exclusive power in a political subdivision of government such as a home rule city, that power may be exercised only by the entity to which it was granted, and the home rule city cannot delegate the power elsewhere. *Four-County Metro. Capital Imp. Dist. v. Bd. of County Comm'rs*, 149 Colo. 284, 369 P.2d 67 (1962).

Elected officials responsible for performing legislative functions may not constitutionally delegate their ultimate decision-making authority to persons who are unaccountable to the electorate. *City & County of Denver v. Denver Firefighters Local 858*, 663 P.2d 1032 (Colo. 1983).

**Grievance arbitration pursuant to existing contract.** When an arbitrator is required to interpret the provisions of an existing agreement, he or she acts in a judicial capacity rather than in a legislative one. The authority to interpret an existing contract, therefore, does not constitute legislative authority, and the nondelegation principle is not implicated in grievance arbitration. *City & County of Denver v. Denver Firefighters Local 858*, 663 P.2d 1032 (Colo. 1983).

**General assembly cannot confer power on other entity.** The general assembly could not undertake to create by statute a super-municipal body politic superimposed over the city and county of Denver and surrounding cities and counties. Such enactment would clash with this provision of the constitution. *Four-County Metro. Capital Imp. Dist. v. Bd. of County Comm'rs*, 149 Colo. 284, 369 P.2d 67 (1962).

**"Local and municipal"** is not a fixed expression that may be eternalized. What is local, as distinguished from general and statewide, depends somewhat upon time and circumstances. Technological and economic forces play their part in any such transition. *People v. Graham*, 107 Colo. 202, 110 P.2d 256 (1941); *City & County of Denver v. Pike*, 140 Colo. 17, 342 P.2d 688 (1959).

**Classification of local concerns subject to change.** What once was a matter of local or local and statewide concern may by constitutional amendment become a matter solely of statewide concern. The people have not surrendered their right to amend the constitution in any manner in which they see fit, and such amendments are always valid unless repugnant to the constitution of the United States. *City & County of Denver v. Sweet*, 138 Colo. 41, 329 P.2d 441 (1958).

**Whether a particular business activity is a matter of municipal concern** to a city under this article depends upon the inherent nature of the activity and the impact or effect which it may have or may not have upon areas outside of a municipality. *City & County of Denver v. Sweet*, 138 Colo. 41, 329 P.2d 441 (1958); *Hamilton v. City & County of Denver*, 176 Colo. 6, 490 P.2d 1289 (1971).

**Activity of entity taxed is not controlling** when testing whether Denver is acting in a purely local and municipal matter. *Security Life & Accident Co. v. Temple*, 177 Colo. 14, 492 P.2d 63 (1972).

**Charter and ordinances on local concerns may supersede conflicting state statutes.** This section empowers cities and towns of the state to adopt charters which shall be the organic law and extend to all local and municipal matters. Such charter and the ordinances made pursuant thereto in such matters supersede within the territorial limits and other jurisdiction any law of the state in conflict. *City & County of Denver v. Tihen*, 77 Colo. 212, 235 P. 777 (1925); *City of Canon City v. Merris*, 137 Colo. 169, 323 P.2d 614 (1958); *City & County of Denver v. Sweet*, 138 Colo. 41, 329 P.2d 441 (1958); *Gidley v. City of Colo. Springs*, 160 Colo. 482, 418 P.2d 291 (1966).

Where home rule municipalities have properly adopted regulatory ordinances which are purely in the municipal domain, existing state laws upon the same subject are inapplicable because the local ordinance controls. *Kelly v. City of Fort Collins*, 163 Colo. 520, 431 P.2d 785 (1967); *Vick v. People*, 166 Colo. 565, 445 P.2d 220 (1968), cert. denied, 394 U.S. 945, 89 S. Ct. 1273, 22 L.Ed.2d 477 (1969).

In purely local and municipal matters, home rule cities may exercise exclusive jurisdiction by passing ordinances which supersede state statutes. *Vela v. People*, 174 Colo. 465, 484 P.2d 1204 (1971); *DeLong v. City & County of Denver*, 195 Colo. 27, 576 P.2d 537 (1978); *Boulder County Apt. Ass'n v. City of Boulder*, 97 P.3d 332 (Colo. App. 2004).

Home rule cities may pass viable ordinances which supersede state statutes upon the same subject matter where the matters contained therein are matters of exclusively local concern. *Bennion v. City & County of Denver*, 180 Colo. 213, 504 P.2d 350 (1972).

Both the state and a home rule city may legislate in matters of local concern, however a local ordinance will supersede a conflicting state statute on a local matter. *R.E.N. v. City of Colo. Springs*, 823 P.2d 1359 (Colo. 1992); *City & County of Denver v. Qwest Corp.*, 18 P.3d 748 (Colo. 2001).

**For state statute to be superseded by ordinance of home rule city**, two requirements must be met. The state statute and the ordinance must be in conflict, and the ordinance must pertain to a purely local matter. Where both of these conditions exist, the state statute is clearly without effect within the jurisdiction of the home rule city. *Vela v. People*, 174 Colo. 465, 484 P.2d 1204 (1971).

**Nonconflicting legislation by state and city may coexist.** As to a home rule ordinance and a state statute, if neither piece of legislation permits or licenses what the other forbids and prohibits, the legislation is not in conflict, and both pieces of legislation may validly coexist. *Vela v. People*, 174 Colo. 465, 484 P.2d 1204 (1971); *Boulder County Apt. Ass'n v. City of Boulder*, 97 P.3d 332 (Colo. App. 2004).

It is not necessary that each legislative subject be classified and fitted into either a statewide or local and municipal category, with the result that either the home rule city or the state, but not both, is empowered to exercise exclusive authority. This section does not impose any such strict requirement. *Woolverton v. City & County of Denver*, 146 Colo. 247, 361 P.2d 982 (1961).

The mere fact that the state, in the exercise of the police power, has made certain regulations does not prohibit a municipality from exacting additional requirements. So long as there is no conflict between the two and the requirements of the municipal bylaw are not in themselves pernicious as being unreasonable or discriminatory, both will stand. *Woolverton v. City & County of Denver*, 146 Colo. 247, 361 P.2d 982 (1961).

If a subject matter is of both local and statewide concern, then a home-rule charter provision or ordinance and a state statute may coexist if they do not conflict. A home-rule city possesses what has been labeled a "supplemental authority" to legislate on a subject matter of concurrent concern. *DeLong v. City & County of Denver*, 195 Colo. 27, 576 P.2d 537 (1978).

**In matters of local and state concerns, nonconflicting legislation enacted by the state and a home rule city may coexist**, but if conflicting, state statute would supersede the local ordinance. *R.E.N. v. City of Colo. Springs*, 823 P.2d 1359 (Colo. 1992).

**Local, state, or mixed local and state concern analysis appropriate** when considering a statute and a possibly conflicting municipal charter or ordinance. *U S West Commc'ns v. City of Longmont*, 948 P.2d 509 (Colo. 1997).

**Local, state, or mixed local and state concern analysis not appropriate** when considering a municipal charter or ordinance and a possibly conflicting filed tariff. *U S West Commc'ns v. City of Longmont*, 948 P.2d 509 (Colo. 1997).

**Common law rule requiring utilities to pay relocation costs arises only when** a future contract, franchise agreement, or state statute specifically requires a municipality to bear such costs. *U S West Commc'ns v. City of Longmont*, 948 P.2d 509 (Colo. 1997).

**Where a home rule provision of the constitution conflicts with a statutory enactment of the general assembly** and the respective authorities of the state legislature and the home rule municipality must therefore be reconciled, the court has recognized three broad categories of regulatory matters: (1) Matters of local concern; (2) matters of statewide concern; and (3) matters of mixed state and local concern. The determination that a matter is of local concern, statewide concern, or of mixed state and local concern controls the ultimate resolution of such a conflict. *Fraternal Order of Police, Lodge 27 v. Denver*, 926 P.2d 582 (Colo. 1996).

**A counterpart ordinance** is one which deals with a local and municipal matter, enactment of which supersedes the state statute on a subject within the boundaries of the municipality. *Davis v. City & County of Denver*, 140 Colo. 30, 342 P.2d 674 (1959).

**Municipal ordinance on gambling valid** despite existing state statute. *Woolverton v. City & County of Denver*, 146 Colo. 247, 361 P.2d 982 (1961).

**State statute as to disturbing peace not superseded** by nonconflicting home rule ordinance. *Vela v. People*,

174 Colo. 465, 484 P.2d 1204 (1971).

**Control of outdoor advertising signs.** Control of outdoor advertising signs along the roads of state highway system within a home-rule municipality is a matter of mixed local and statewide concern which may be regulated by the home-rule municipality, but state law supersedes where municipal regulation conflicts. *Nat. Advertising Co. v. State Dept. of Hwys.*, 751 P.2d 632 (Colo. 1988).

**Municipal ordinance which provides that delinquent assessments for water or sewer services be certified to the county treasurer for collection** may coexist with similar state legislation if there is no conflict. *City of Craig v. Hammat*, 809 P.2d 1034 (Colo. App. 1990).

**Regulation of pesticides** is a matter affecting the health and welfare of the people and therefore is within the legislative power of a home rule city. *Coparr, Ltd. v. City of Boulder*, 735 F. Supp. 363 (D. Colo. 1989).

**Enumerated purposes of § 1 of this article were superseded** by the general standard in this section of "local and municipal matters". *Karsh v. City & County of Denver*, 176 Colo. 406, 490 P.2d 936 (1971).

The limitation of "said powers and purposes" in § 1 upon home rule cities was removed by the grant of powers in local and municipal matters contained in this provision. *Karsh v. City & County of Denver*, 176 Colo. 406, 490 P.2d 936 (1971).

Specific grant of powers to provide water works for inhabitants of Denver in § 1 of this article does not prevent Denver from providing water to users outside its boundaries. *Denver v. Colo. River Water Conservation Dist.*, 696 P.2d 730 (Colo. 1985).

**Because the state's interest under the Peace Officers Standards and Training Act was not sufficient to outweigh Denver's home rule authority**, the provisions of this section supersede the conflicting provisions of the POST Act. *Fraternal Order of Police, Lodge 27 v. Denver*, 926 P.2d 582 (Colo. 1996).

**The qualification and certification of Denver deputy sheriffs is a local concern**, specifically, where it was shown that there was no need for statewide uniformity of training that would include Denver deputy sheriffs; that the extraterritorial impact of Denver deputy sheriffs is, at best, de minimis; that Denver deputy sheriffs do not substantially impact public safety beyond the boundaries of Denver; and that Denver's interest in the training and certification of its deputy sheriffs is substantial and has direct textual support in the Colorado Constitution and in case law precedent. *Fraternal Order of Police, Lodge 27 v. Denver*, 926 P.2d 582 (Colo. 1996).

**The holding regarding the training and certification under the POST Act is limited to Denver deputy sheriffs** since Colorado Constitution article XX, § 2, pertains only to the city and county of Denver. *Fraternal Order of Police, Lodge 27 v. Denver*, 926 P.2d 582 (Colo. 1996).

**Municipal policy equivalent of state action.** The municipal policy exercised by a home rule city in Colorado is the equivalent of "state action" when exercised in connection with municipal affairs. *Pueblo Aircraft Serv., Inc. v. City of Pueblo*, 498 F. Supp. 1205 (D. Colo. 1980), *aff'd*, 679 F.2d 805 (10th Cir. 1982), *cert. denied*, 459 U.S. 1126, 103 S. Ct. 762, 74 L.Ed.2d 977 (1983).

**As to state action exemptions under federal antitrust laws**, see *Comty. Commc'ns Co. v. City of Boulder*, 455 U.S. 40, 102 S. Ct. 835, 70 L.Ed.2d 810 (1982).

## B. Specific Powers.

### 1. In General.

**The object of this section** and § 4 of article 20 is to give the taxpaying electors of home rule cities absolute control over the granting of franchises to use city streets, alleys, and public places. *City of Greeley v. Poudre Valley R. Elec.*, 744 P.2d 739 (Colo. 1987), *appeal dismissed for want of a properly presented federal question*, 485 U.S. 949, 108 S. Ct. 1207, 99 L.Ed.2d 409 (1988).

**City council cannot enter into a contract which will bind succeeding city councils** and thereby deprive them of the unrestricted exercise of the legislative power. Therefore, the city council could adopt a new pay plan for city employees. *Keeling v. City of Grand Junction*, 689 P.2d 679 (Colo. App. 1984).

**The right of home rule cities to grant franchises** is not unconstitutionally interfered with by § [40-3-106](#) (4), which results in the customers within a municipality which have granted a franchise paying the cost of the franchise fee as part of the rates for the service. *City of Montrose v. Pub. Utils. Comm'n*, 732 P.2d 1181 (Colo. 1987).

**Section [40-3-106](#) (4)** does not affect either a home rule city's ability to negotiate and grant franchises and to collect franchise fees or a fixed utility's obligation to pay to a municipality the entire amount of the franchise fee negotiated and, therefore, does not violate this section or § 4 of this article or article XXV of this constitution. *City of Montrose v. Pub. Utils. Comm'n*, 732 P.2d 1181 (Colo. 1987).

**Municipal court.** Under this article a municipal court for the city and county of Denver may be created by ordinance. *People ex rel. McQuaid v. Pickens*, 91 Colo. 109, 12 P.2d 349 (1932).

**Home rule cities may not deny substantive rights of state citizens.** This constitutional authority, broad as it is concerning the creation, organization, and administration of municipal courts, is limited in scope to those aspects of court organization and operation which are local and municipal in nature and does not empower home rule cities to deny substantive rights conferred upon all of the citizens of the state by the general assembly. *Hardamon v. Municipal Court*, 178 Colo. 271, 497 P.2d 1000 (1972).

**Right to jury in petty offense cases.** Since the right to a jury in petty offense cases is a substantive right granted to all of the citizens of the state, without regard to the place where the offense may have occurred or the court in which trial may be held, home rule cities do not have the power to deny such a right by reason of the authority constitutionally vested in home rule cities by this section. *Hardamon v. Municipal Court*, 178 Colo. 271, 497 P.2d 1000 (1972).

**Jurisdiction of municipal court.** A home rule city does not have the power to adopt and enforce in its municipal courts an ordinance concerning larceny which is not a matter of local and municipal concern in which a home rule city may exercise jurisdiction. *Gazotti v. City & County of Denver*, 143 Colo. 311, 352 P.2d 963 (1960).

Municipal courts are particularly adaptable to the handling of the crime of shoplifting of articles of relatively small value, and this type of theft should be combated not only by state authorities in state courts but by police departments in municipal courts. *Quintana v. Edgewater Mun. Court*, 178 Colo. 213, 496 P.2d 1009 (1972).

Where ordinances adopted pursuant to this article are violated which have counterparts in the statutory law of the state and the trial and determination of such violations has been in accordance with criminal procedure, the municipal courts have the power to impose consecutive sentences for such violations. *Schooley v. Cain*, 142 Colo. 485, 351 P.2d 389 (1960).

**Municipal court judges.** When acting pursuant to amended art. VI, Colo. Const., the court functions as a state court and the judge as a state judge; whereas, acting pursuant to this section, the court functions as a municipal or police court and the judge as a municipal or police judge. The validity of municipal judges functioning in a dual capacity, exercising jurisdiction under a municipal charter and ordinances and also under state laws as justices of the peace, has been expressly recognized. *Blackman v. County Court ex rel. City & County of Denver*, 169 Colo. 345, 455 P.2d 885 (1969).

**Appointment of municipal judges.** Section [13-10-105](#) (1)(a), relating to appointment of municipal judges, read in context with this section makes it clear that the statute's unambiguous language offers home rule cities the opportunity to specify the terms under which a municipal judge holds his or her office. *People ex rel. People of Thornton v. Horan*, 192 Colo. 144, 556 P.2d 1217 (1976), cert. denied, 431 U.S. 966, 97 S. Ct. 2922, 53 L.Ed.2d 1061 (1977); *Artes-Roy v. City of Aspen*, 856 P.2d 823 (Colo. 1993).

**Police court.** Subsection (b) authorizes the creation of police courts by home rule cities and grants power to define and regulate jurisdiction and appoint officers for these courts. *Blackman v. County Court*, 169 Colo. 345, 455 P.2d 885 (1969); *Huff v. Police Court*, 173 Colo. 414, 480 P.2d 561 (1971).

**When a home rule municipality grants its municipal court exclusive original jurisdiction** over all matters arising under its charter, ordinances, and other enactments, the district court is deprived of subject matter jurisdiction over such matters. *Town of Frisco v. Baum*, 90 P.3d 845 (Colo. 2004); *Olson v. Hillside Cmty. Church SBC*, 124 P.3d 874 (Colo. App. 2005).

**Ordinances for public health and safety.** Under this section the city and the council have full authority to provide for public health and safety by ordinance. *Averch v. City & County of Denver*, 78 Colo. 246, 242 P. 47 (1925).

The enactment of adequate measures by municipalities to insure safe and healthful living conditions through housing codes designed to protect the health and welfare of the public is the exercise of the police power in its purest sense. *Apple v. City & County of Denver*, 154 Colo. 166, 390 P.2d 91 (1964).

**Police power prevails.** As between proprietary powers given to a special district and the police power to protect its citizens given to a home rule city, the police power prevails. *Metro. Denver Sewage v. Commerce City*, 745 P.2d 1041 (Colo. App. 1987).

**Zoning** under this section is a local and municipal matter. *Roosevelt v. City of Englewood*, 176 Colo. 576, 492 P.2d 65 (1971); *City of Colo. Springs v. Securcare Self Storage, Inc.*, 10 P.3d 1244 (Colo. 2000).

A zoning ordinance adopted by a home rule city, aimed at establishing low-cost housing in a specific area within that city, is a matter of purely local concern, and the city derives its authority to enact zoning ordinances of this type and content under the home rule provisions of the constitution and not from state statute. Any alleged conflict, between the ordinance and state code provisions as to which controls, is resolved in favor of the local ordinance. *Moore v. City of Boulder*, 29 Colo. App. 248, 484 P.2d 134 (1971).

The general assembly has power to legislate zoning regulations applicable to statutory cities, but where, however, the charter of a home rule city exercises the power delegated to it by the Colorado Constitution as to matters of purely local concern, the general assembly has no power. *Serv. Oil Co. v. Rhodus*, 179 Colo. 335, 500 P.2d 807 (1972).

Where a city has adopted a home rule charter, the supreme court must look to the charter and ordinances of the city to determine the proper procedures to be followed in amending the zoning map to encompass the newly annexed land. *McArthur v. Zabka*, 177 Colo. 337, 494 P.2d 89 (1972).

Colorado Springs is a home rule city. As such, its zoning policies and authority are governed by its own charter and ordinances. *City of Colo. Springs v. Smartt*, 620 P.2d 1060 (Colo. 1980).

Where the zoning body has established requirements governing a particular use and the developer has met those requirements, the zoning body exceeded its jurisdiction when it rejected the developer's plan. *Sherman v. City of Colo. Springs Planning Comm'n*, 680 P.2d 1302 (Colo. App. 1983).

In the case of a home rule city, the legislative authority to adopt and implement zoning policies is governed and limited by constitutional limitations and the municipality's own charter and ordinances. *City of Colo. Springs v. Securcare Self Storage, Inc.*, 10 P.3d 1244 (Colo. 2000).

**Power to challenge county zoning.** The constitution mandates that a home rule city be given the right to challenge in court the legality of a county's master plan and zoning ordinances which affect the value of city property. *Bd. of County Comm'rs v. City of Thornton*, 629 P.2d 605 (Colo. 1981).

**Capital improvements.** The matter of financing a program of capital improvements by a home rule city is one dealing with a local and municipal matter. *Davis v. City of Pueblo*, 158 Colo. 319, 406 P.2d 671 (1965).

The city and county of Denver alone has the power to function in the field of capital improvements within its boundaries, to acquire needed personal property, and to provide capital improvements. By specific charter provision, it has accepted this exclusive grant of power from the people of Colorado. *Four-County Metro. Capital Imp. Dist. v. Bd. of County Comm'rs*, 149 Colo. 284, 369 P.2d 67 (1962).

Municipal corporations are not limited to providing public improvements for the material necessities of their citizens. Anything calculated to promote the education, the recreation, or the pleasure of the public is to be included within the legitimate domain of public purposes. *Ginsberg v. City & County of Denver*, 164 Colo. 572, 436 P.2d 685 (1968).

**Erection of city auditorium.** The city and county of Denver has the power to provide by charter for the erection of an auditorium, to purchase a site therefor, and to issue bonds to discharge the indebtedness. *City & County of*

Denver v. Hallett, 34 Colo. 393, 83 P. 1066 (1905).

**Erection and maintenance of Denver courthouse.** The building and maintenance of a Denver courthouse is not such a matter of local and municipal concern as to exempt the municipality from the operation of a statute requiring the use of Colorado materials in public works. *City & County of Denver v. Bossie*, 83 Colo. 329, 266 P. 214 (1928); *City & County of Denver v. Sweet*, 138 Colo. 41, 329 P.2d 441 (1958).

**A sports stadium** is for the recreation of the public and hence is for a public purpose, although it is not a public "utility, work, or way". A public improvement or facility need not be a "public utility", and, having the power to lease a public building, the city has authority to agree by contract on the service charges to be collected from users of the stadium facility. *Ginsberg v. City & County of Denver*, 164 Colo. 572, 436 P.2d 685 (1968).

User agreements, under which the company will make use of the public stadium facility in connection with the operation of the Bears and the Broncos professional sports teams, do not amount to an unlawful delegation of powers which can only be exercised by the city. *Ginsberg v. City & County of Denver*, 164 Colo. 572, 436 P.2d 685 (1968).

**Power to erect waterworks.** A self-chartered city under this article has constitutional power to erect waterworks, and there is no constitutional provision requiring a vote of the electors for this purpose. *Newton v. City of Fort Collins*, 78 Colo. 380, 241 P. 1114 (1925).

The general assembly has empowered municipalities to operate and maintain water facilities for the benefit of users within and without their territorial boundaries. *Colo. Open Space Council, Inc. v. City & County of Denver*, 190 Colo. 122, 543 P.2d 1258 (1975).

**Sale of water.** The general assembly has specifically defined selling water by a municipality both within and without its territorial boundaries to be a proper exercise of its powers. *Colo. Open Space Council, Inc. v. City & County of Denver*, 190 Colo. 122, 543 P.2d 1258 (1975).

**Development of water project outside boundaries.** Denver is not immune from regulation by Grand county in the development of a water project without its local boundaries and on national forest lands within Grand county. *City & County of Denver v. Bergland*, 517 F. Supp. 155 (D. Colo. 1981), *aff'd in part and rev'd on other grounds*, 695 F.2d 465 (10th Cir. 1982).

Denver's water projects are matters of mixed local and state interest. Where Denver's charter conflicts with state act that authorizes local governments to designate projects as matters of state interests and to promulgate rules and regulations to administer such projects, the state act controls. *City & County of Denver v. Bd. of County Comm'rs*, 760 P.2d 656 (Colo. App. 1988), *aff'd*, 782 P.2d 753 (Colo. 1989).

**Ordinances to alleviate severe local water drainage problems.** The police power authorizes home-rule cities to pass ordinances to alleviate severe local water drainage problems, however, the authority granted by such ordinances may not be exceeded. *Wood Bros. Homes, Inc. v. City of Colo. Springs*, 193 Colo. 543, 568 P.2d 487 (1977).

**Light plants.** Power granted with respect to light plants concerned local or municipal matters or both. *Cook v. City of Delta*, 100 Colo. 7, 64 P.2d 1257 (1937).

**The public utilities commission cannot authorize** a power company operating pursuant to a certificate of public convenience and necessity in an area annexed by a home rule municipality to expand its system and use city streets without obtaining a franchise from such municipality. *City of Greeley v. Poudre Valley R. Elec.*, 744 P.2d 739 (Colo. 1987), *appeal dismissed for want of a properly presented federal question*, 485 U.S. 949, 108 S. Ct. 1207, 99 L.Ed.2d 409 (1988).

**The consent of both the municipality and the public utilities commission** is necessary to operate a public utility within a home rule city, but neither the general assembly nor the public utilities commission is empowered to grant a franchise to a public utility to use the streets, alleys, and public places of a home rule municipality without the municipality's consent. *City of Greeley v. Poudre Valley R. Elec.*, 744 P.2d 739 (Colo. 1987), *appeal dismissed for want of a properly presented federal question*, 485 U.S. 949, 108 S. Ct. 1207, 99 L.Ed.2d 409 (1988).

**Eminent domain.** The people delegated to Denver by this article have full power to exercise the right of eminent

domain in the effectuation of any lawful, public, local, and municipal purpose. *Fishel v. City & County of Denver*, 106 Colo. 576, 108 P.2d 236 (1940); *Town of Glendale v. City & County of Denver*, 137 Colo. 188, 322 P.2d 1053 (1958); *Toll v. City & County of Denver*, 139 Colo. 462, 340 P.2d 862 (1959).

This article grants to home-rule municipalities ample power to acquire by condemnation property already devoted to a public use. *City of Thornton v. Farmers Reservoir & Irrigation Co.*, 194 Colo. 526, 575 P.2d 382 (1978); *Beth Medrosh Hagodol v. City of Aurora*, 127 Colo. 267, 248 P.2d 732 (1952).

The city may condemn private property outside its boundaries for its local public use and also where such land is to be given to the United States to be used as the site for an Army school. *Fishel v. City & County of Denver*, 106 Colo. 576, 108 P.2d 236 (1940).

**Acquisition of land for Denver airport.** Denver, as a charter city under this article, is not restricted by § [41-4-201](#) et seq., to the acquisition, construction, and operation of an airport to the territory within five miles of its boundaries. *City & County of Denver v. Bd. of Comm'rs*, 113 Colo. 150, 156 P.2d 101 (1945).

Denver does not need to first obtain the consent of Arapahoe county to the acquisition, for an airport, of lands already zoned for airport purposes by the Arapahoe county officials, which lands are traversed by county roads. *City & County of Denver v. Bd. of Comm'rs*, 113 Colo. 150, 156 P.2d 101 (1945).

**Operating airport outside Pueblo city limits is exercise of home rule.** Even though Pueblo airport is located outside the territorial limits of the city of Pueblo, Pueblo, in operating the airport, is exercising its home rule authority. *Pueblo Aircraft Serv., Inc. v. City of Pueblo*, 498 F. Supp. 1205 (D. Colo. 1980), aff'd, 679 F.2d 805 (10th Cir. 1982), cert. denied, 459 U.S. 1126, 103 S. Ct. 762, 74 L.Ed.2d 977 (1983).

**Right-of-way for transportation of water.** Denver is vested with ample authority under both the constitution and statutes to condemn flowage easements and channel improvement rights for transportation of diverted water to storage facilities. *Toll v. City & County of Denver*, 139 Colo. 462, 340 P.2d 862 (1959).

**Consent of incorporated town not required before acquiring rights-of-way.** Under § 1 of this article the city and county of Denver is not required to obtain the consent of an incorporated town before acquiring title and possession of rights-of-way through such town by condemnation proceedings. *Town of Glendale v. City & County of Denver*, 137 Colo. 188, 322 P.2d 1053 (1958).

**Denver may be required to comply with reasonable construction standards** lawfully established by such town. *Town of Glendale v. City & County of Denver*, 137 Colo. 188, 322 P.2d 1053 (1958).

Denver cannot with impunity and without regard to local ordinances of a traversed municipality construct its sewer lines in its streets irrespective of water lines, water works, sewers, or wells in line of or in the vicinity of the proposed construction. At the point where the public health and safety become involved, a municipality traversed can withhold its consent unless proper, safe, and healthful construction methods are followed. *Town of Glendale v. City & County of Denver*, 137 Colo. 188, 322 P.2d 1053 (1958).

**Power to impound animals.** A city organized under this article has power to impound animals running at large, within its bounds, and to charge the owner a reasonable amount for discharging this duty. Such an imposition is a matter of local concern, and the amount thereof is not to be limited. *City of Pueblo v. Kurtz*, 66 Colo. 447, 182 P. 884 (1919); *Thiele v. City & County of Denver*, 135 Colo. 442, 312 P.2d 786 (1957).

**Grant of right to use of city streets.** The granting by the city to a corporation, of the rights to use the streets of the city, like a similar grant by the general assembly to use the highways of the state, is the exertion of the proprietary power of the sovereign. *City & County of Denver v. Mountain States Tel. & Tel. Co.*, 67 Colo. 225, 184 P. 604 (1919), appeal dismissed for want of jurisdiction, 251 U.S. 545, 40 S. Ct. 219, 64 L.Ed. 407 (1920).

**Both state and local governments can alleviate urban blight, provided no statutory conflict.** Both the general assembly and a local government can act to alleviate the problem of urban blight, provided the state and the local law do not conflict. *Denver Urban Renewal Auth. v. Byrne*, 618 P.2d 1374 (Colo. 1980).

**Railroad crossings.** This section does not prohibit the public utilities commission from abolishing railroad crossings in the interest of public safety pursuant to § [40-4-106](#). *City of Craig v. Pub. Utils. Comm'n*, 656 P.2d 1313 (Colo. 1983).

**Power to accept gifts of charitable bequests.** The city and county of Denver is, by express provision of § 1 of this article, authorized to accept gifts in the nature of charitable bequests and is capable of taking the property and executing the trust in accordance with the provisions of the will. *Clayton v. Hallett*, 30 Colo. 231, 70 P. 429 (1902); *Haggin v. Int'l Trust Co.*, 69 Colo. 135, 169 P. 138 (1917).

**Power to receive gift is discretionary.** Section 1 of this article concerning gifts to the city and county of Denver confers upon the municipality a power to be exercised or not as it wills. Such grants of power have never been considered as a mandate that they be exercised. *In re Nicholson's Estate*, 104 Colo. 561, 93 P.2d 880 (1939).

**Police powers.** This article gives home rule cities the right to exercise police power as to local matters, possibly subject to the limitation that they may not exercise police power in such manner as to interfere with the state's exercise of its police power where it has elected to deal with the same subject matter. *McCormick v. City of Montrose*, 105 Colo. 493, 99 P.2d 969 (1940).

Courts will not interfere with the exercise of municipal power by enjoining any reasonable regulations in the interest of public safety and particularly where there is no interference with private rights. *Heron v. City of Denver*, 131 Colo. 501, 283 P.2d 647 (1955).

Neither the fourteenth amendment to the federal constitution nor any provision of the constitution of this state was designed to interfere with the police power to enact and enforce laws for the protection of the health, peace, safety, morals, or general welfare of the people. The same tests are applied to municipal ordinances. *Davis v. City & County of Denver*, 140 Colo. 30, 342 P.2d 674 (1959).

**Issuing concealed weapons permits not inherent power of police.** The issuance of permits for concealed weapons does not fall within the category of inherent powers of a police chief or a sheriff, who can fully perform such functions without this power. *Douglass v. Kelton*, 199 Colo. 446, 610 P.2d 1067 (1980).

**Disturbances of the peace.** No limitation is implied upon the traditional but statutory rights of municipalities to prevent disturbances of the peace and to maintain law and order by appropriate police action. It is only when the city's acts or regulations attempt to interfere with or cover a field preempted by the state or which is of statewide concern that they must fail. It makes no difference whether the attempted exercise of power by a city is reasonable or is wholly prohibitory. *City of Golden v. Ford*, 141 Colo. 472, 348 P.2d 951 (1960).

**Vagrancy** is a problem in populous areas. It is definitely a local and municipal concern. Being such, the city and county of Denver had authority under this article to adopt an appropriate ordinance to cope with the problem. *Dominguez v. City & County of Denver*, 147 Colo. 233, 363 P.2d 661 (1961).

As to city ordinance defining vagrancy, see *Zerobnick v. City & County of Denver*, 139 Colo. 139, 337 P.2d 11 (1959).

**Council has power to remove member.** The power to remove a member or officer of a legislative body is a legislative power. The council of a home rule city has power to remove a member, including its president. *Laverty v. Straub*, 110 Colo. 311, 134 P.2d 208 (1943).

**Limits of public officers' authority.** City's power to determine limits of its public officers' authority, by charter or amendment to its charter, is exclusive. *Int'l Bhd. of Police Officers Local 127 v. City & County of Denver*, 185 Colo. 50, 521 P.2d 916 (1974).

**Residency of municipal employees is a matter of local concern** subject to legislation by charter provision or ordinance of home rule city. Section [8-2-120](#), which prohibits municipalities from imposing residency requirements for municipal employees, is preempted by a conflicting home rule provision. *City & County of Denver v. State*, 788 P.2d 764 (Colo. 1990).

**Power to grant group health insurance benefits to spousal equivalents is a matter of local concern** subject to limitation imposed by charter of home rule city. *Schaefer v. City & County of Denver*, 973 P.2d 717 (Colo. App. 1998).

**Power to determine employees.** The people of Denver by charter amendment have specifically determined that sheriffs' deputies and jail guards are "employees". This they had the power to do under this article. *City & County of Denver v. Rinker*, 148 Colo. 441, 366 P.2d 548 (1961).

**Pension funds.** A home rule city has authority to contract with its firemen and policemen to refund the employees' individual contributions to the respective pension funds on termination of employment prior to qualification for pension benefits. *Conrad v. City of Thornton*, 191 Colo. 444, 553 P.2d 822 (1976).

Policemen's and firemen's pensions are not a matter exclusively of local concern. *Conrad v. City of Thornton*, 191 Colo. 444, 553 P.2d 822 (1976).

**Mandatory retirement provision** of a charter amendment is not invalid because it allegedly is a question of statewide concern, since tenure is a subject over which constitution grants the power of regulation to home rule cities. *Coopersmith v. City & County of Denver*, 156 Colo. 469, 399 P.2d 943 (1965).

**Disposition of workmen's compensation benefits.** While the subject of workmen's compensation may be a matter of statewide concern, the disposition made by a home rule city of benefits received is certainly a local and municipal matter. *City and County of Denver v. Thomas*, 176 Colo. 483, 491 P.2d 573 (1971).

**Tortious acts of municipal police officers.** Governmental immunity for tortious acts of municipal police officers is a matter of both statewide and local concern. *DeLong v. City & County of Denver*, 195 Colo. 27, 576 P.2d 537 (1978); *Frick v. Abell*, 198 Colo. 508, 602 P.2d 852 (1979); *Brown v. Gray*, 227 F.3d 1278 (10th Cir. 2000).

A municipality may provide greater monetary compensation to victims of torts committed by the municipality's own police officers than that provided by state statute. *DeLong v. City & County of Denver*, 195 Colo. 27, 576 P.2d 537 (1978); *Frick v. Abell*, 198 Colo. 508, 602 P.2d 852 (1979).

Whether a municipality provides its police officers with defense costs against tort actions is a matter of both state and local concern. Therefore, to the extent, if any, that the municipal charter conflicts with state law, § [39-5-111](#) supersedes the charter. *Brown v. Gray*, 227 F.3d 1278 (10th Cir. 2000).

**Labor activities.** No statute or constitutional provision has expressly given Colorado municipalities power to regulate labor disputes or picketing and soliciting by employees. Nor can it be said to be an implied power when the proper conduct of labor activities is a matter of statewide concern. *City of Golden v. Ford*, 141 Colo. 472, 348 P.2d 951 (1960).

**Regulation of intoxicating liquor.** The city could not enlarge on the state-provided hours of sale; however, where local conditions have been found to require reasonably fewer hours of dispensing fermented malt beverage, such action does not infringe upon the state's legislative prerogative or objectives. *Kelly v. City of Fort Collins*, 163 Colo. 520, 431 P.2d 785 (1967).

The subject of fermented malt beverages is a matter of statewide concern, and home rule municipalities have no constitutionally derived power generally to legislate on the subject as a matter of local concern, but a city may reasonably regulate the sale of 3.2 beer. *Kelly v. City of Fort Collins*, 163 Colo. 520, 431 P.2d 785 (1967).

**Construction of and apportionment of costs for viaducts** is a matter of mixed local and state-wide concern, and, where there is a conflict between a city charter and § [40-4-106](#)(3)(b) (costs for grade separation projects), § [40-4-106](#) must supersede the charter. *Denver & R. G. W. R. R. v. City & County of Denver*, 673 P.2d 354 (Colo. 1983).

**Weights and measures.** The Denver weights and measures ordinance is a valid exercise of legislative power granted to it by the state, in a legitimate area of local concern, and such ordinance has not been rendered ineffective, null and void by the enactment of the weights and measures statute. *Blackman v. County Court ex rel. City & County of Denver*, 169 Colo. 345, 455 P.2d 885 (1969).

**Educational complex.** Since the issuance of general obligation bonds for the purchase of lands to be donated to the United States to be used for the purposes of an air corps technical school and bombing field has been held to be for a local and municipal purpose, an educational complex is even more definitely embraced within a local and municipal purpose. *Karsh v. City & County of Denver*, 176 Colo. 406, 490 P.2d 936 (1971).

## 2. Control of Municipal Elections.

**Municipal elections are expressly made local matters.** The people, by the adoption of the home rule amendment, have declared that municipal elections are local and municipal matters, upon which the people of

municipalities have the power to legislate. *People ex rel. Tate v. Prevost*, 55 Colo. 199, 134 P. 129 (1913).

**Qualification of voters in local and municipal elections is a matter of local concern.** *May v. Town of Mountain Vill.*, 969 P.2d 790 (Colo. 1998).

**General assembly cannot divest home rule city of its plenary power** to deal with municipal elections. *Gosliner v. Denver Election Comm'n*, 191 Colo. 328, 552 P.2d 1010 (1976).

**Such power is not restricted.** The grant of power to home rule cities relative to municipal elections is not restrictive. *Hoper v. City & County of Denver*, 173 Colo. 390, 479 P.2d 967 (1971); *Gosliner v. Denver Election Comm'n*, 191 Colo. 328, 552 P.2d 1010 (1976).

This section was designed to vest home rule cities with the authority to opt for partisan elections if they so desired. It was not intended to limit the home rule city to nonpartisan elections. *Hoper v. City & County of Denver*, 173 Colo. 390, 479 P.2d 967 (1971).

**Special elections to vote on issuance of municipal obligations.** Under the provisions of this section of the constitution and the charter of Colorado Springs, that city is given full power to call special elections for voting for the issuance of all kinds of municipal obligations for public improvements. *Clough v. City of Colo. Springs*, 70 Colo. 87, 197 P. 896 (1921).

**"Special election" and "general state election".** The "special election" mentioned in this section, although not specifically so designated, is a special municipal election, and, where a general election is mentioned in this section, referring to a state election at which a municipal matter is to be determined, such general election is specifically designated as a "general state election". *People ex rel. Austin v. Billig*, 72 Colo. 209, 210 P. 324 (1922).

**Special election may be held on the same day as general election.** A municipal election charter provision which states that a special election shall not be held within 45 days before or after a general election does not prohibit the municipality from holding a special election on the same day and at the same time as a general election. *Englewood Police Ben. Ass'n v. Englewood*, 811 P.2d 464 (Colo. App. 1990).

**Special election relating to income tax unauthorized.** Where a home rule city has no power to levy an income tax, the city council has no authority to call a special election to submit to the electors a proposal to confer such power upon the council, and injunction is the proper remedy to prevent such submission. *City & County of Denver v. Sweet*, 138 Colo. 41, 329 P.2d 441 (1958).

**Power to regulate and control form of ballots** and to establish minimum standards for ballot titles is clearly expressed in both the general and specific provisions of this section. *Hoper v. City & County of Denver*, 173 Colo. 390, 479 P.2d 967 (1971).

While the governing body of a home rule municipality may not circumvent or seek to avoid such constitutional requirements as the publication requirement, there is no illegality in a municipal charter requirement that the ballot title "show the nature of" the amendment. *Hoper v. City & County of Denver*, 173 Colo. 390, 479 P.2d 967 (1971).

**Purchase of voting machines.** While the right to use voting machines in general elections is a matter of state control, the purchase of such machines by a municipality is a local or municipal matter, and bonds issued under authority of § 8 of art. VII, Colo. Const., must also comply with the requirements of a charter adopted under authority of this section. *Kingsley v. City & County of Denver*, 126 Colo. 194, 247 P.2d 805 (1952).

**Local election districts must be apportioned in accord with population.** An apportionment plan pursuant to a charter mandate which is based on voter registration is not per se violative of the United States constitution, but its application must produce a distribution sufficiently comparable to that which would result from apportionment strictly in accord with population. *Hartman v. City & County of Denver*, 165 Colo. 565, 440 P.2d 778 (1968).

When the state apportions its general assembly, it must have due regard for the equal protection clause. Similarly, when the state delegates lawmaking power to local government and provides for the election of local officials from districts specified by statute, ordinance, or local charter, it must insure that those qualified to vote have the right to an equally effective voice in the election process. *Hartman v. City & County of Denver*, 165 Colo. 565, 440 P.2d 778 (1968).

**Referendum and initiative reserved to voters of municipalities.** The language in § 1 of art. V, Colo. Const., that "The initiative and referendum powers reserved to the people by this section are hereby further reserved to the legal voters of every city, town and municipality as to all local, special, and municipal legislation of every character" is not language of maximum limitation. Its only limiting effect is from the standpoint of the minimum referendum which must be reserved to the people of a locality. *Burks v. City of Lafayette*, 142 Colo. 61, 349 P.2d 692 (1960).

**Charter may provide that ordinances are subject to referendum.** A city charter can provide that all ordinances, with exceptions, are subject to a referendum provision. *City of Fort Collins v. Dooney*, 178 Colo. 25, 496 P.2d 316 (1972).

**Residency requirement as eligibility for office unconstitutional.** A five-year residency requirement in a city charter for eligibility for the offices of mayor or councilman is unconstitutional as a violation of equal protection. *Bird v. City of Colo. Springs*, 181 Colo. 141, 507 P.2d 1099 (1973).

**Where an election to authorize a general obligation bond issue is required,** the submission to the electorate of, and its vote upon, a charter amendment in fact constituted the election such that a delegation of power is not involved. *Karsh v. City & County of Denver*, 176 Colo. 406, 490 P.2d 936 (1971).

**Judicial review of grounds for recall may be limited.** To avoid any conflict between the Boulder charter and the constitution, the limitation on judicial review of the grounds for recall found in the constitution is incorporated by implication in the Boulder charter. *Bernzen v. City of Boulder*, 186 Colo. 81, 525 P.2d 416 (1974).

**City may not allow recalled officer to succeed himself.** Home-rule cities may not make it possible to frustrate the will of the majority by allowing a recalled officer to succeed himself. *Bernzen v. City of Boulder*, 186 Colo. 81, 525 P.2d 416 (1974).

### 3. Power to Raise Revenue.

**Power to levy taxes based on this section.** The power to levy a tax in home rule cities, on those who live or sojourn there, for expenses of local and municipal government, stems from a grant by the people by constitutional provision and is not based upon the police power. *City & County of Denver v. Tihen*, 77 Colo. 212, 235 P. 777 (1925); *Berman v. City & County of Denver*, 156 Colo. 538, 400 P.2d 434 (1965).

The right of home rule municipalities to enact taxes applicable to local matters is not contested. *Hamilton v. City & County of Denver*, 176 Colo. 6, 490 P.2d 1289 (1971).

**Exercise of such power may not be prohibited.** The state, even when acting under its regulatory powers, cannot prohibit home rule cities from exercising a power essential to their existence, such as local taxation. *Security Life & Accident Co. v. Temple*, 177 Colo. 14, 492 P.2d 63 (1972).

**Power to tax is not absolute or unrestricted.** The people in adopting this article did not intend to confer upon municipalities organized thereunder the absolute and unrestricted power to tax or to make assessments for local improvements regardless of public policy. The people intended to confer such powers subject to existing or future constitutional and statutory provisions relating to exemptions of cemeteries from taxation and local assessments. *City & County of Denver v. Tihen*, 77 Colo. 212, 235 P. 777 (1925).

**Assessments for local improvements.** Under this article the powers of a municipal corporation with reference to assessments for local improvements are plenary. *Bd. of Comm'rs v. City of Colo. Springs*, 66 Colo. 111, 180 P. 301 (1919).

A municipality has power to levy special improvement taxes on county property both by the general law and by its charter under this article of the constitution. *Bd. of Comm'rs v. City of Colo. Springs*, 66 Colo. 111, 180 P. 301 (1919); *Bd. of County Comm'rs v. Town of Castle Rock*, 97 Colo. 33, 46 P.2d 747 (1935).

**Assessment for improvement district** does not violate this section. This section relates to assessments for local purposes. Assessments for the Moffat tunnel improvement district do not relate to purposes local to Denver but to the district. *Milheim v. Moffat Tunnel Imp. Dist.*, 72 Colo. 268, 211 P. 649 (1922), *aff'd*, 262 U.S. 710, 43 S. Ct. 964, 67 L.Ed. 1194 (1923).

**Assessment levied prior to amendment valid.** The home rule amendment, although enacted after the levy of an assessment, ratifies and validates all that had been previously done by charter, and so, inasmuch as all that the city had done in the present matter was within the scope of local and municipal matters, it must be considered as ratified and validated. *Bd. of Comm'rs v. City of Colo. Springs*, 66 Colo. 111, 180 P. 301 (1919).

**State taxation in the same field as that of a municipality can coexist.** *Berman v. City & County of Denver*, 156 Colo. 538, 400 P.2d 434 (1965).

**Income taxation.** A Colorado home rule city does not have the legal authority to enact a city income tax by council action or by vote of the qualified electors or by both council action and vote of the electors. *City & County of Denver v. Sweet*, 138 Colo. 41, 329 P.2d 441 (1958).

**Ordinance imposing transportation utility fee invalid** to extent it allows transfer of excess transportation utility revenues to be used for purpose of defraying general governmental expenses unrelated to maintenance of city streets. *Bloom v. City of Ft. Collins*, 784 P.2d 304 (Colo. 1989).

**Occupational excise taxes.** Municipal authority, in the absence of constitutional restrictions, to impose occupational excise taxes at a fixed rate purely for revenue for the support of its government no longer is open to serious question. *City of Englewood v. Wright*, 147 Colo. 537, 364 P.2d 569 (1961); *City & County of Denver v. Duffy Storage & Moving Co.*, 168 Colo. 91, 450 P.2d 339, appeal dismissed for want of substantial federal question, 396 U.S. 2, 90 S. Ct. 23, 24 L.Ed.2d 1 (1969).

**Excise tax on privilege.** A home rule city has the authority to levy an excise tax on a privilege within the city limits. This power has been found to be essential to the full exercise of the right to self-government granted to home rule cities by this section. *Deluxe Theatres, Inc. v. City of Englewood*, 198 Colo. 771, 596 P.2d 771 (1979).

**State cannot prohibit taxes on privilege of doing business.** With the grant of the taxing power to home rule cities, the state general assembly cannot, under the guise of its police power to regulate the insurance industry, prohibit a home rule city from taxing such businesses their share of the benefits enjoyed for the privilege of doing business therein. *State Farm Mut. Auto. Ins., Co. v. Temple*, 176 Colo. 537, 491 P.2d 1371 (1971).

**Nondiscriminatory tax on income earned for services rendered to or work done for government** does not represent a legally recognizable interference with the activities of that government so as to constitute a tax upon that government. *Hamilton v. City & County of Denver*, 176 Colo. 6, 490 P.2d 1289 (1971).

Reasonable, nondiscriminatory taxes may be imposed by one governmental unit upon the employees of another where not precluded by applicable law. *Hamilton v. City & County of Denver*, 176 Colo. 6, 490 P.2d 1289 (1971).

**Application of Denver "head tax"** to members of an enumerated class in no way interferes with, or imposes a condition precedent to, employment by the state, for an employee is taxed because he is physically present within the taxing jurisdiction of Denver, which furnishes such employee the same facilities and services which are available to its permanent residents, and for which such employees are required to pay a reasonable share. *Hamilton v. City & County of Denver*, 176 Colo. 6, 490 P.2d 1289 (1971).

**Sales and use taxes.** Home rule cities have the power to adopt a sales and use tax under the grant of authority given by the constitution. The right to levy a tax to raise revenue for the affairs and business of the city is clearly within the constitutional grant of power. *Berman v. City & County of Denver*, 156 Colo. 538, 400 P.2d 434 (1965).

The power to levy sales and use taxes for the support of the local home rule government is essential to the full exercise of the right of self-government granted to such cities. *Security Life & Accident Co. v. Temple*, 177 Colo. 14, 492 P.2d 63 (1972).

The complete autonomy of a home rule city such as Denver in the enactment of purely local excise taxes and the sales tax is set out in strong language. *Security Life & Accident Co. v. Temple*, 177 Colo. 14, 492 P.2d 63 (1972).

**A home rule municipality formed pursuant to this section is constitutionally empowered to adopt a sales tax.** *Apollo Stereo Music v. City of Aurora*, 871 P.2d 1206 (Colo. 1994).

**Municipal ordinance creating a lien for the collection of its sales taxes that is superior to a lien held by a bank was a proper exercise of the municipality's authority under this section and especially paragraph**

**(g).** The priority of local liens for unpaid sales taxes, at least with respect to their superiority over private commercial liens, is a local and municipal concern for which the municipality may legislate, even if such legislation were to conflict with a state statute. Given that the levy and collection of a local sales tax by a home-rule municipality is a local and municipal concern, it would be anomalous to conclude that, while the general assembly may grant priority to the sales tax liens of statutory cities and towns, a home rule municipality may not make its sales tax lien superior to the commercial lien of a private lender. *Town of Avon v. Weststar Bank*, 151 P.3d 631 (Colo. App. 2006).

**Revenue bonds.** The limitations on the power of cities and towns to borrow money in § 8 of art. XI, Colo. Const., are not binding upon home rule cities. A home rule city which undertakes to issue bonds and finance a program of capital improvements, which is a matter of local and municipal concern, is not limited in its power to do so by that section. *Berman v. City & County of Denver*, 156 Colo. 538, 400 P.2d 434 (1965); *Davis v. City of Pueblo*, 158 Colo. 319, 406 P.2d 671 (1965); *Fladung v. City of Boulder*, 165 Colo. 244, 438 P.2d 688 (1968).

The home rule amendment specifically empowers a home rule city to issue bonds. If there is no limitation on the bonds in question in the city charter, neither art. XI, Colo. Const., nor this article is violated. *Davis v. City of Pueblo*, 158 Colo. 319, 406 P.2d 671 (1965); *Ginsberg v. City & County of Denver*, 164 Colo. 572, 436 P.2d 685 (1968).

A bond issue authorized by municipal ordinance does not violate the limitations imposed by section 8 of this article concerning conflicting provisions of the constitution. *Davis v. City of Pueblo*, 158 Colo. 319, 406 P.2d 671 (1965).

**Special improvement district does not create debt for city**, and it is only when there is such a debt sought to be created that voter approval is necessary. *Fladung v. City of Boulder*, 165 Colo. 244, 438 P.2d 688 (1968).

**Urban renewal tax allocation structure provides relationship between increased revenues and project financed.** The tax allocation structure provided by § [31-25-107](#) (9)(e) has been carefully drafted so that there is a direct relationship between the increased valuation of property within the urban renewal project area, and thus increased ad valorem tax revenues, and the project financed by the bond issue. *Denver Urban Renewal Auth. v. Byrne*, 618 P.2d 1374 (Colo. 1980).

**Transportation utility fee which was imposed by home-rule municipality** on developed lots adjoining city streets for the purpose of providing revenues for maintenance of city streets and which was reasonably designed to defray the municipality's cost of providing the service is a valid charge within the legislative authority of the municipality. *Bloom v. City of Ft. Collins*, 784 P.2d 304 (Colo. 1989).

**Municipality cannot compel state officials to collect municipal taxes.** Even with all the powers granted home rule cities, a home rule city is still a subdivision of the state, and no municipality, absent statutory authority, can compel the state or its officials to collect municipal taxes. *City of Boulder v. Regents of Univ. of Colo.*, 179 Colo. 420, 501 P.2d 123 (1972).

**City admissions tax invalid as to university-sponsored public events.** A city cannot, under its home rule powers, compel the regents of a state university to collect an admissions tax on charges for attendance at public events the university sponsors, because such duties would interfere with the regents' control of the university. *City of Boulder v. Regents of Univ. of Colo.*, 179 Colo. 420, 501 P.2d 123 (1972).

The home rule authority of a city does not permit it to tax a person's acquisition of education furnished by the state, and therefore a city admissions tax is invalid when applied to university lectures, dissertations, art exhibitions, concerts, and dramatic performances. *City of Boulder v. Regents of Univ. of Colo.*, 179 Colo. 420, 501 P.2d 123 (1972).

**City admissions tax valid as to football games.** Absent a showing that football is so related to the educational process that its devotees may not be taxed by a home rule city, the court will uphold the validity of a city admissions tax as applied to football games sponsored by a state university. *City of Boulder v. Regents of Univ. of Colo.*, 179 Colo. 420, 501 P.2d 123 (1972).

**Budgeting of anticipated revenue is matter of local concern.** The people of each home rule city are vested with the power to make, amend, add to, or replace its charter, which shall be its organic law and extend to all its local and municipal matters, so the budgeting of its anticipated revenue for the operation of the city government is strictly a matter of local and municipal concern. *City & County of Denver v. Blue*, 179 Colo. 351, 500 P.2d 970

(1972).

It does not follow from the fact that the culmination of the budget process--the adoption of the budget, the appropriation of money to fund the budget, and the fixing of the tax levy--is legislative that the preparation of the budget is legislative. *City & County of Denver v. Blue*, 179 Colo. 351, 500 P.2d 970 (1972).

**Responsibility for preparation of budget is on mayor.** *City & County of Denver v. Blue*, 179 Colo. 351, 500 P.2d 970 (1972).

#### 4. Regulation of Motor Vehicles.

**Regulation of motor vehicles and traffic is mixed concern.** As motor vehicle traffic in the state and between home rule municipalities becomes more and more integrated, it gradually ceases to be a "local" matter and becomes subject to general law. *People v. Graham*, 107 Colo. 202, 110 P.2d 256 (1941); *City & County of Denver v. Pike*, 140 Colo. 17, 342 P.2d 688 (1959); *City of Commerce City v. State*, 40 P.3d 1273 (Colo. 2002).

Even though the field of vehicle traffic control is generally considered to be local and municipal, there are some aspects wherein the police power of the state comes into play in order to bring about an integrated statewide policy governing violations which have general statewide character. *City & County of Denver v. Pike*, 140 Colo. 17, 342 P.2d 688 (1959); *City of Commerce City v. State*, 40 P.3d 1273 (Colo. 2002).

A city cannot contend that the licensing and regulation of vehicle operators is a matter exclusively local and municipal within this section, so that enactment of an ordinance would supersede a statute on the same subject. *Davis v. City & County of Denver*, 140 Colo. 30, 342 P.2d 674 (1959).

**Regulation of vehicular traffic.** A city having the power under this article to pass ordinances regulating vehicular traffic upon its streets cannot be deprived of that power by the passage of a state law. *City & County of Denver v. Henry*, 95 Colo. 582, 38 P.2d 895 (1934).

**Regulation of traffic at street intersections is matter of local concern**, and there being a conflict between a city ordinance and state statutes as to the right-of-way of automobiles at street intersections, the ordinance controls. *City & County of Denver v. Henry*, 95 Colo. 582, 38 P.2d 895 (1934); *City & County of Denver v. Pike*, 140 Colo. 17, 342 P.2d 688 (1959).

**Questions of speed, right-of-way, parking, designation of one-way streets, and similar measures, all regulatory in scope**, are matters of local and municipal concern. *City of Canon City v. Merris*, 137 Colo. 169, 323 P.2d 614 (1958); *City & County of Denver v. Pike*, 140 Colo. 17, 342 P.2d 688 (1959); *Davis v. City & County of Denver*, 140 Colo. 30, 342 P.2d 674 (1959).

Under this article, regulation of the speed of vehicles may be treated as a matter solely of local and municipal concern by charter cities. *Wiggins v. McAuliffe*, 144 Colo. 363, 356 P.2d 487 (1960).

An ordinance of the city of Denver prohibiting the parking of vehicles in any private driveway or on private property is within the legislative authority granted by this article. *Lehman v. City & County of Denver*, 144 Colo. 109, 355 P.2d 309 (1960).

The authority for a home-rule city to regulate traffic speeds and penalize offenders is not found in the laws of the general assembly but rather is a matter of state constitutional law under this section. *People v. Hizhniak*, 195 Colo. 427, 579 P.2d 1131 (1978).

**Provision for stop at flashing red school lights.** Under this section a city of Boulder traffic ordinance providing for a stop at flashing red school lights relates to a matter of local and municipal concern and its adoption a proper exercise of the legislative power of the city of Boulder. *Pickett v. City of Boulder*, 144 Colo. 387, 356 P.2d 489 (1960).

**Careless driving ordinance.** Where a careless driving ordinance is out of conformity with the state statute in a material particular, the state statute is inoperative within the territorial limits of the home rule city for the reason that the ordinance relates to a matter of local and municipal concern, and the statutes of the state have been superseded by the ordinance adopted by the city. *People ex rel. City of Aurora v. Thompson*, 165 Colo. 172, 437 P.2d 537 (1968).

**State has right to regulate use of automobiles by license**, even though they may never leave the city in which they are operated. *Armstrong v. Johnson Storage & Moving Co.*, 84 Colo. 142, 268 P. 978 (1928).

The investigation and apprehension of a violator of requirements of §§ [42-4-1401](#) and 42-4-1403 requiring a driver involved in an accident to stop, render aid, and report is not exclusively a local matter. Infractions of these provisions are of general public concern. Moreover, these requirements do not necessarily relate to traffic control but provide certain necessary actions on the part of the motorist involved to be taken after an accident occurs to protect the life and property of the injured. When these offenses are charged they come under the general police power of the state and do not necessarily relate to regulation of motor vehicle traffic of a "local or municipal" nature although occurring in a municipality. *People v. Graham*, 107 Colo. 202, 110 P.2d 256 (1941).

**Power to establish licensing system includes authority to revoke and to penalize** the driving of a motor vehicle while the license of the operator has been suspended or revoked, and, the subject being predominately statewide and general, a municipal ordinance dealing with the identical subject is invalid. *Davis v. City & County of Denver*, 140 Colo. 30, 342 P.2d 674 (1959); *City & County of Denver v. Palmer*, 140 Colo. 27, 342 P.2d 687 (1959).

**Statutes limiting "photo radar" and "photo red light" citations supersede conflicting provisions of municipal ordinances.** Regulation of automated vehicle identification systems to enforce traffic laws is a matter of mixed local and state concern. In the event of conflict, state law prevails. *City of Commerce City v. State*, 40 P.3d 1273 (Colo. 2002).

**Driving motor vehicle while under influence of intoxicating liquor** is forbidden by state law, is a matter of statewide concern, and leaves nothing for a city to regulate. *City of Canon City v. Merris*, 137 Colo. 169, 323 P.2d 614 (1958); *City & County of Denver v. Pike*, 140 Colo. 17, 342 P.2d 688 (1959).

**Ordinance penalizing driving motor vehicle without license held ultra vires.** A municipal ordinance imposing a jail sentence of 90 days upon conviction of driving a motor vehicle without a license in the face of a state statute imposing a sentence of six months for the same offense is ultra vires, and the general assembly having failed to consent to the exercise of such authority requires a finding that the ordinance is void. *Davis v. City & County of Denver*, 140 Colo. 30, 342 P.2d 674 (1959).

**License fees.** A state statute imposing additional state license fees on motor trucks is of no concern to a city even though such trucks operated exclusively upon streets of home rule cities. *City & County of Denver v. Sweet*, 138 Colo. 41, 329 P.2d 441 (1958).

**Tax on gasoline.** The general assembly has the power to tax gasoline used in propelling motor vehicles on the streets of home rule cities. *People v. City & County of Denver*, 90 Colo. 598, 10 P.2d 1106 (1932).

**State regulation of freeway bisecting city.** Where, by a contract between a city and the state highway department concerning a freeway bisecting the city, both city and state intend that the city would regulate the traffic thereon subject to a minimum speed regulation and parking restrictions, the state has a regulatory interest therein justifying the imposition of its policies. *City & County of Denver v. Pike*, 140 Colo. 17, 342 P.2d 688 (1959).

**Non home rule cities may not enact or enforce ordinances superseding state statutes.** Cities and towns not organized as home rule cities may not enact or enforce any ordinance or regulation relating to motor vehicles which supersedes or attempts to nullify comparable state statute on same subject matter. *Vanatta v. Town of Steamboat Springs*, 146 Colo. 356, 361 P.2d 441 (1961).

**The ruling that a home rule city could consider the area of reckless and careless driving to be a matter of local and municipal concern** does not apply to a city that is not a home rule city when these offenses occurred. *City of Aurora v. Mitchell*, 144 Colo. 526, 357 P.2d 923 (1960).

#### 5. Violations of Municipal Ordinances.

**Cities may impose fines and penalties.** Among local and municipal matters upon which cities and towns may legislate is the imposition, enforcement, and collection of fines and penalties for the violation of any provisions of charters or of any ordinances adopted in pursuance to charters. *City of Canon City v. Merris*, 137 Colo. 169, 323 P.2d 614 (1958).

**Violations punishable by imprisonment are criminal.** Violations of ordinances for which offenders could be punished by imprisonment are criminal offenses, hence should be tried as criminal cases. *Geer v. Alaniz*, 138 Colo. 177, 331 P.2d 260 (1958).

Although a civil action, enforcement of an ordinance is quasi-criminal or penal where imprisonment may be imposed. *City of Canon City v. Merris*, 137 Colo. 169, 323 P.2d 614 (1958).

**Home rule ordinance violations are criminal if there are counterpart state criminal statutes.** *Geer v. Alaniz*, 138 Colo. 177, 331 P.2d 260 (1958).

Violation of an ordinance which is the counterpart of a criminal statute should be tried and punished under the protections applicable to criminal cases even though prosecuted in a municipal court. *Zerobnick v. City & County of Denver*, 139 Colo. 139, 337 P.2d 11 (1959); *City of Greenwood Vill. v. Fleming*, 643 P.2d 511 (Colo. 1982); *People v. Wade*, 757 P.2d 1074 (Colo. 1988).

Even though an ordinance effectually covers a local and municipal matter and it is a counterpart of a law of the state, its violation is triable and punishable as a crime where so designated by the statute. Such is the plain import of this section. Thereby, uniformity in treatment and disposition of an offense is achieved, whether the act is a statutory crime or a violation of an ordinance. *Schooley v. Cain*, 142 Colo. 485, 351 P.2d 389 (1960).

**Such as driving motor vehicle under influence of intoxicating liquor.** Whether driving a motor vehicle while under the influence of intoxicating liquor is a local and municipal matter or of statewide concern is immaterial. Since a statute makes such act a crime, its counterpart in the municipal law must be tried and punished as a crime. *City of Canon City v. Merris*, 137 Colo. 169, 323 P.2d 614 (1958).

**Where a city ordinance defining vagrancy is a counterpart of a state statute defining vagrancy and providing penalties therefor,** the offense should be tried and punished under the protections applicable to criminal cases even though prosecuted in a municipal court. *Zerobnick v. City & County of Denver*, 139 Colo. 139, 337 P.2d 11 (1959).

**Proceedings by complaint before magistrate are criminal.** When the method of procedure to enforce the payment of a fine or penalty is not by a suit at law, but by complaint before a municipal magistrate who is to determine the matter and impose a fine the proceedings have been sometimes deemed to be of a criminal or quasi-criminal nature. *City of Canon City v. Merris*, 137 Colo. 169, 323 P.2d 614 (1958).

**Defendant entitled to full protection of criminal law.** One prosecuted for a violation of an ordinance promulgated under a home rule charter is entitled to the full protection afforded by the law in criminal cases. *Pickett v. City of Boulder*, 144 Colo. 387, 356 P.2d 489 (1960).

When the state has proscribed certain conduct as a criminal offense, the counterpart provisions of this section prohibit a home-rule city from removing such basic criminal safeguards as proof of guilt beyond a reasonable doubt and the privilege against self-incrimination in a prosecution for violating a municipal ordinance proscribing the same conduct. *City of Greenwood Vill. v. Fleming*, 643 P.2d 511 (Colo. 1982).

**Defendant under risk of imprisonment entitled to notice of charge.** Where a judgment against a defendant may, under an ordinance, include imprisonment in the first instance, the failure to file a complaint giving adequate notice of the charge is inexcusable, especially where the violation of city ordinances are held to be in the nature of civil cases although of a quasi-criminal or penal nature where imprisonment may be inflicted. *City of Canon City v. Merris*, 137 Colo. 169, 323 P.2d 614 (1958).

**Notice of hearing and notice of withdrawal of counsel.** Where a motion to reinstate a jail sentence imposed following conviction of vagrancy under a city ordinance, and the case is treated as a civil proceeding, it is incumbent upon a city to serve a copy of such motion or a written notice of hearing thereon upon the defendant personally or through his counsel, and where counsel has withdrawn such notice must be served upon the defendant personally under C.R.C.P. [7\(b\)\(1\)](#). *Zerobnick v. City & County of Denver*, 139 Colo. 139, 337 P.2d 11 (1959).

**City cannot deny constitutional right to jury trial.** *City & County of Denver v. Sweet*, 138 Colo. 41, 329 P.2d 441 (1958).

A municipal charter provision that no party shall be entitled to a jury trial in a municipal court in any action arising under the ordinances and charter of the city and county of Denver is invalid wherever the ordinance violated has a counterpart in the criminal statutes of the state or the ordinance provides for imprisonment for its violation. *Geer v. Alaniz*, 138 Colo. 177, 331 P.2d 260 (1958).

**A city cannot deny the statutory right of appeal.** *City & County of Denver v. Sweet*, 138 Colo. 41, 329 P.2d 441 (1958).

**Procedures of municipal courts involving violations of municipal ordinances** are only required to afford constitutionally mandated procedures that protect due process rights of individuals. *R.E.N. v. City of Colo. Springs*, 823 P.2d 1359 (Colo. 1992).

**Suspension of sentence and probation may be granted.** Where a city ordinance relating to vagrancy is a counterpart of a state statute and offenders are prosecuted thereunder as in criminal actions, the privileges of suspension of sentence and of probation may be granted. *Zerobnick v. City & County of Denver*, 139 Colo. 139, 337 P.2d 11 (1959).

**"Uniformity in the treatment and disposition of an offense"** does not require that a home rule city's sentencing scheme evidence "consistency of philosophy in sentencing" with the state's sentencing provisions. Even if state statutes preclude the imposition of probation for a term longer than the maximum imprisonment authorized for a particular offense, that limitation is not a constraint on a home rule city's right to impose its own system of punishments for violations of its ordinances. *People v. Wade*, 757 P.2d 1074 (Colo. 1988).

**Rules of civil procedure are generally applicable in cases where fine or penalty is sought** by a suit of law, and the proceeding is civil rather than criminal. *City of Canon City v. Merris*, 137 Colo. 169, 323 P.2d 614 (1958).

**Single act is punishable as state and municipal offenses.** A single act, made punishable both by the general law of the state and by the ordinances of a town wherein it is committed, constitutes two distinct and several offenses, subject to punishment by the proper tribunals of the state and the municipality respectively. *City of Canon City v. Merris*, 137 Colo. 169, 323 P.2d 614 (1958).

Where an act is, in its nature, one which constitutes two offenses, one against the state and one against a municipal government, the latter may be constitutionally authorized to punish it, though it be also an offense under the state law; but the legislative intention that this may be done ought to be manifest and unmistakable, or the power in the corporation should be held not to exist. *Davis v. City & County of Denver*, 140 Colo. 30, 342 P.2d 674 (1959).

**Single act subject to prohibition against double prosecution.** The fact that the city has the power to legislate does not mean that there could ever be recognition of dual sovereignty or double prosecutions. The determination that there is nothing basically invalid about legislation on the same subject, for example, gambling, by both a home rule city and the state, does not affect the prohibition against double prosecution, nor does it undermine any basic safeguards. *Woolverton v. City & County of Denver*, 146 Colo. 247, 361 P.2d 982 (1961).

**Prosecution of juveniles under municipal ordinance does not conflict with Colorado Children's Code**, and, although municipalities are not prohibited from adopting same procedures as Children's Code, municipalities are not required to follow such procedures. *R.E.N. v. City of Colo. Springs*, 823 P.2d 1359 (Colo. 1992).

**Colorado Children's Code does not require that juvenile proceedings in municipal courts be civil in nature** as Children's Code and ordinances of municipality on juvenile proceedings do not conflict. *R.E.N. v. City of Colo. Springs*, 823 P.2d 1359 (Colo. 1992).

**City ordinance that regulates the number of adjudicated delinquent children that may reside in a particular foster home regulates a matter of statewide concern and is thus preempted.** *City of Northglenn v. Ibarra*, 62 P.3d 151 (Colo. 2003).