

What is Home Rule?

In substance, it is the right of people to govern themselves, locally, as they see fit. In Massachusetts it is a constitutional right guaranteed by Article 89 of Amendment to the State Constitution.

Home Rule is the right of local self-government. Article 89 § 1. The Home Rule Amendment is supposed to "reaffirm the customary and traditional liberties of the people with respect to the conduct of their local government, and to grant and confirm to the people of every city and town the right of self-government in local matters." *Id*

Article 89 was adopted in November 1966 by a ballot vote of 1,186,608 to 270,087. It provides for local government to be protected from some aspects of state control. It also confers upon municipalities an "independent" police power to adopt any law for the public good, as long as it is not prohibited by the state constitution or general law.

"Massachusetts has the strongest type of home rule." *Connors v. City of Boston* 430 Mass. 31, 35 (1999)

What is the impact of Home Rule on Zoning

Zoning, rules limiting the use of local property, is inherently a local power. *See Hanover Bd. Of Appeals v. Dept. of Community Affairs*, 363 Mass. 339,359 (1973) ("Therefore, we hold that the zoning power is one of a city's or town's independent municipal powers included in art. 89, Section 6's broad grant of powers to adopt ordinances or by-laws for the protection of the public health, safety, and general welfare.").

Before the Home Rule Amendment, all power including zoning derived from the Legislature and the State. *Attorney Gen. v. Dover*, 327 Mass. 601. (1951) ("Power of General Court over zoning is supreme."). The Home Rule Amendment changed all that. *Hanover Bd. Of Appeals*. 363 Mass. at 357 ("It is true that art. 89's adoption has effected substantial changes in the legislative powers of the General Court and the cities and towns.").

Since zoning is a local power, utilized by municipalities without the consent or approval of the state, the State has no business telling cities and town what to zone or where. The counterargument is that the Legislature can "preempt" local rules. But since Home Rule preemption has always been in the negative (you cannot do this) not in the positive (you must do this). The Federal version of Home Rule, the 10th Amendment, prohibits commandeering" local government, and the Home Rule Amendment appears to do the same. If the Legislature want to enact zoning, they can (maybe) but they did not. They tried to command municipalities to do it, which is prohibited.

The municipal zoning power belongs solely to the cities and towns, and they cannot be compelled to use it, or vote for it.

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Some General Thoughts On Home Rule

Art. 89 (the Home Rule Amendment) was adopted to "reaffirm the customary and traditional liberties of the people with respect to the conduct of their local government, and to grant and confirm to the people of every city and town the right of self-government in local matters"

Home rule is an important provisions that helps assure the liberty of the people, in the same way the division of power between the state and federal governments "split the-atom of sovereignty." The entire nature of checks and balances is that liberty is secure when power is divided, not concentrated.

Home rule is also a simple recognition that local governments are best equipped to handle local problems. Not only is local government smaller and more responsive to the needs of its citizens, but it is nimbler and better equipped to handle local issues.

"Massachusetts has the strongest type of home rule." *Connors v. City. of Boston*, 430 Mass. 31, 35 (1999).

With larger governments come less nuanced solutions. Home Rule ensures that municipal governments can implement tailored solutions, while larger entities are stuck issuing one-size-fits-all solutions out of some pre-made cookbook.

Municipal government is also where citizens voices are best heard, and heard the loudest--one vote out of a thousand means more than one vote in a million.

Home Rule is the legal muscle which gives local government its frame and fills out the ossature (skeletal framework). All praise you have ever heard for local government or for Town Meeting would be empty words without Home Rule which is the constitutional principle that local government can act as it sees best for its own citizens.

Alexis de Tocqueville "Town Meetings are to liberty what primary schools are to science; they bring it within the people's reach, they teach men how to use and enjoy it."

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