

PRE-EMPTION
Will the Real King Please Rise

Prepared and Presented by
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Home Rule Municipalities

May exercise police power to the extent not prohibited by the United States or Texas Constitutions or federal or state law.

General-Law Municipalities

May exercise police power only as specifically authorized by the general laws of the United State or Texas Constitution or federal or state law.

**DOCTRINE OF
PREEMPTION**

Ordinance must be consistent,
and not conflict with federal
and state law.

- EXPRESS PREEMPTION**
- Federal or State Law
 - Has
 - Provision
 - Plainly Prohibits
 - Legislating in that area.

DOCTRINE OF PREEMPTION

No government may enact or enforce a law that makes any conduct covered by this code an offense subject to a criminal penalty.

Tex. Penal Code, § 1.06 (West 1994).

IMPLIED PREEMPTION

FIELD PREEMPTION

- Regulation
- So comprehensive
- Clear
- federal or state government
- intended to
- fully occupy the field

IMPLIED PREEMPTION

CONFLICT PREEMPTION

- conflict with
- federal or state law
- would result in preemption

LIMITED WAIVER

- Statute
- Provides
- Minimum
- Municipal Regulatory Scheme


