

Local municipalities can work to pass alcohol laws and ordinances limiting access to alcohol by youth. Strategies limiting access to alcohol by youth are some of the most powerful and well-documented approaches to reducing underage drinking and related problems. Before a municipality begins the process of examining whether or not to enact an alcohol ordinance, it is important to understand Illinois Home Rule and the authority it grants to a community. This document was developed to help community members understand Illinois Home Rule and how Illinois Home Rule can play a part in creating local alcohol ordinances that are enforceable and sustainable.

Overview of Illinois Home Rule

Prior to 1971, municipalities and counties were limited in their creation of ordinances for the efficient operation of their communities. Counties and municipalities had only the authority expressly granted to them by the Illinois legislature. Any time a municipality or county wanted to create a new ordinance, the Illinois Statutes limited them. If there was no express grant of authority in the Statutes, they were prohibited from enacting the ordinance. Many communities found this to be an inefficient way to manage a community and worked to change the constitution. In 1970, the Illinois constitution was adopted, which also created home rule for certain municipalities and counties. Home rule became effective on July 1, 1971. Home rule expanded communities' powers to enact ordinances for the efficient operation of their communities. The Illinois Constitution allows any home rule community to "exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; to license; to tax; and to incur debt."¹ Because of the adoption of home rule, many communities now have the ability to act autonomously.

Home rule status is not granted to every community in Illinois. The Illinois Constitution in Article VII sets forth the guidelines for establishing home rule units as follows:²

1. A county which has a chief executive officer elected by the people of the county
2. Units of local government with a population base in excess of 25,000 inhabitants
3. Other municipalities may elect by referendum to become home rule units

The Goal of Illinois Home Rule

The goal of Illinois Home Rule is to allow certain counties and cities to self-govern, thereby having more local control over the day-to-day operations of their communities. This grant of constitutional authority allows local home rule communities the ability to enact and enforce in a broad manner. Just a few examples of areas in which home rule communities can act are, zoning regulations, building codes, and regulating businesses. A home rule unit's authority to act is expansive and can be concurrent with the state. In fact, a home rule unit's ordinance can be more restrictive than the state. Illinois courts have held that "when the exercise of a

power by the State and home rule units is concurrent, the courts must enforce ordinances promulgated by the latter, even where the ordinances are more stringent than State law.”³

Why Illinois Home Rule is Important to Communities

If your community is a home rule community, you are allowed to address issues as they arise in your community without needing approval of the State legislature. The ordinance can be crafted to address the specific needs of your community based upon a localized assessment and community-wide input. Given the local input into the ordinance’s development, it is far more likely to be implemented and enforced. Remember: local people solve local problems best, people support what they help create, and science matters.

Considerations for Illinois Home Rule

While home rule authority powers are construed liberally, a home rule unit’s authority to act can be limited. One must consider the scope of the proposed ordinance, pre-emption, and basic issues of constitutionality. Consequently, when considering if a proposed ordinance is within the purview of the municipality to act upon, two questions need to be asked:

1. Does the proposed regulation address matters of local concern only or does it involve a broader issue?
2. Has the state chosen to regulate in this area?

If the proposed ordinance is local in nature and the issue has not been pre-empted, then more likely than not the home rule unit will be deemed to have the authority to impose the ordinance.

For example, the Illinois Liquor Control Act of 1934 gives local communities broad discretion in licensing and regulating liquor establishments,⁴ but a home rule unit cannot change the age of purchase/consumption because the State has chosen to pre-empt local units from regulating this area. Local municipalities could, however, regulate the age of entry into various licensed liquor establishments since the state has not chosen to regulate in this area.⁵ Since the state does not regulate the age of entry into licensed liquor establishments, local municipalities are allowed to set the minimum age requirement of entry, with some establishments allowing entry to those under the age of 21.

Helpful Tips and Suggestions

Before investing significant time and energy into the development of a new ordinance, you should always conduct a thorough review of existing state laws and local ordinances to ensure that the proposed ordinance is in fact necessary. A law or ordinance addressing your concerns may already exist and is simply not being enforced at an adequate level.

There are many reasons why a community might consider developing and passing a local alcohol ordinance. It is possible that a community determines a local ordinance would be easier to enforce and prosecute or allow for greater sanctions than a state law. Also, local laws may be more sustainable over time. When an ordinance is developed by local people to address a local problem, there is often strong buy-in and community support for the ordinance. Law enforcement might also be more willing to enforce an ordinance that has broad community support.

If you determine that there is the need for a new ordinance, make sure to solicit input from everyone who may be impacted by the proposed change, including alcohol industry members, law enforcement, and elected officials. In addition, you should seek the assistance of the municipal clerk and the legal counsel for the home rule unit to ensure that all requirements of the municipality have been met (e.g., filing fees, signatures, formatting issues, etc.). Soliciting the proper input in the drafting process will not only help ensure that your ordinance will withstand legal challenges, but as previously noted, it will also ensure greater public support and is more likely to be enforced.

Resources and Tools

Illinois Municipal League Handbook - <https://www.iml.org/>

Illinois Municipal League Liquor Licensing and Regulation Handbook 2017 - <https://www.iml.org/>

Illinois Liquor Control Commission <https://www.illinois.gov/ilcc/Pages/Home.aspx>

References

1. Illinois Constitution Article VII (6)(a) Powers of Home Rule Units
2. Illinois Constitution Article VII (6)(a) Powers of Home Rule Units
3. People v. Jaudon, 307 ILL. App. 3d 427 (1st Dist. 1999).
4. 235 ILCS 5/4-1 “Jurisdiction over Retail Selling in City Councils, Boards of Trustees and County Boards – Minors
5. 235 ILCS 5/6-18 “Home Rule Units – Powers”