
The Power of the Mayor: The Legal Framework

By Richard Briffault

Joseph P. Chamberlain Professor of Legislation at Columbia Law School

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SUMMARY

QUESTION: WHAT IS “IN SCOPE” FOR NEW YORK CITY GOVERNMENT?

WHY IMPORTANT:

1. *To recommend policies for the Mayor, one must understand the principal sources of law that determine the Mayor’s authority, and they are the City Charter and State Law. These legal frameworks can either empower or constrains the Mayor’s ability to adopt and affect the policies.*
 2. *Though the City might not be able to mandate a program, impose a tax, or adopt or repeal a law, the City might be able to direct its spending, offer loans or incentives, use its procurement powers, or use its service delivery authority to advance a policy in the same area.*
 3. *Deciding exactly what the City can do in many areas requires a close parsing of the relevant state laws. It may also require careful consideration of the tools the City has at its disposal.*
 4. *The Mayor is a very powerful figure within the structure of city government but, in many areas, the Mayor’s ability to effectuate policy change will require some degree of cooperation from the State.*
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RECOMMENDATIONS:

1. *As the CEO of the City, the Mayor has very significant authority over the forecasts used in the City’s budget, including operating and capital expenditures, and, especially, revenues. All local laws require mayoral approval; a mayoral veto can be overridden only by a two-thirds vote of the Council.*
2. *New York City, like the State, can act broadly to promote the general welfare of its residents — subject to some significant constraints. For instance, although the text of the state constitution limits the ability of the legislature to preempt City action*



by a targeted “special” law — a request from the Mayor is necessary before the legislature can pass such a law.

- 3. Public education is an area in which the City can adopt significant policy changes - though it is controlled by the state legislature, in practice, local officials wield considerable responsibility for the day-to-day operation of the city’s public schools, including school assignment policies, the creation and operation of magnet schools, initiatives to address segregation, and the response to the COVID-19 pandemic.*
- 4. The City has considerable control over city-owned land and can use that control through land sales, leases, or franchises to promote specific economic development policies.*
- 5. The City can raise revenue through the adoption of fees and charges for city services — to cover the costs of implementing a regulation, or to offset the costs imposed by private behavior — but not as a means of raising general revenue.*
- 6. Though the Mayor has no role to play in the governance of the Port Authority, the Mayor has a considerably greater role in regulating the streets; sidewalks; traffic; and, through the Taxi & Limousine Commission, taxi cabs; for-hire, commuter vans; and paratransit vehicles..*

CONSTRAINTS:

- 1. The principal constraint on mayoral power comes from state law. Although the state constitution grants local governments, including New York City, broad authority to adopt local laws that deal with local matters, it also places limits on city power.*

INTRODUCTION

Any assessment of what policies the Mayor of New York should adopt must be based on an understanding of what policies the Mayor has the legal power to adopt and affect. This paper provides a brief introduction to the legal framework that both empowers and constrains the Mayor. It has two parts. It first examines the principal sources of law that determine the Mayor’s authority — the City Charter and state law, particularly the New York State Constitution. It finds that the Mayor has enormous power under the City Charter — over the City’s administration, the City’s budget, and the policies that the City’s government may pursue. The principal constraint on mayoral power comes from state law. Although the state constitution grants local governments, including New York City, broad authority to adopt local laws that deal with local matters, it also places limits on city power. Certain subjects are reserved by the constitution to the state,



although the legislature can delegate certain responsibilities even in these areas to the City. Conversely, even in areas in which the City can act in the first instance, the state retains the power to restrict the City, impose obligations, or displace city authority. The City's actual ability to act in any area will depend on the specifics of state laws setting responsibilities and granting or denying powers.

The next part then turns to a handful of relevant policy areas — education, environmental and public health regulation, land use planning and zoning, taxation, and transportation — to provide a rough assessment of the scope of the City's power in each of these areas. As the discussion will indicate, often the relevant question will be technique rather than topic. In other words, the City might not be able to mandate a program, impose a tax, or adopt or repeal a law, but it might be able to direct its spending, offer loans or incentives, use its procurement powers, or use its service delivery authority to advance a policy in the same area. And, of course, the situation is always potentially fluid: the City may be able to obtain the necessary authority from Albany, or, conversely, Albany might preempt authority the City currently has.

THE FORMAL FRAMEWORK

The City Charter

Under the Charter, the Mayor is the “chief executive officer of the city,” and is vested with very broad powers over the executive branch of the city's government. The Mayor can appoint multiple deputy mayors with such duties as the Mayor determines, and create or abolish executive offices, and reorganize City agencies. The Mayor has broad authority to appoint and remove — without the advice or consent of the Council — the heads of virtually all city agencies, including the police, fire, sanitation, education, and health departments; and to appoint all or a majority of the members of a host of city boards and commissions — the civil service commission, the procurement policy board, the franchise and concessions review committee, and the human rights commission, as examples. In some instances — the commissioner of investigation, the corporation counsel (as a result of a charter amendment adopted in 2019), the city planning commission, the landmarks preservation commission, and the taxi and limousine commission — council consent for mayoral appointments is required.

The Mayor has very significant authority over the forecasts used in the City's budget, including operating and capital expenditures, and, especially, revenues. The Mayor submits a proposed budget to the Council. The Council's power to modify the budget is limited, and any addition to the Mayor's budget is subject to veto, which may be overridden only by a two-thirds vote. Importantly, the Council cannot modify the submitted revenue estimates, giving the Mayor de facto control over total spending as well. Through the Procurement Policy Board (three of whose five members are



appointed by the Mayor), the Mayor can set City contracting policies that are used to engage with companies and nonprofits outside the direct control of the City. The Mayor has power to approve or deny franchise agreements, and any use, lease, or sale of City property requires mayoral approval. All local laws require mayoral approval; a mayoral veto can be overridden only by a two-thirds vote of the Council.

The State Constitution and State Laws

In New York, as in every other state, cities derive their powers from grants from their states. The New York Constitution grants local governments home rule; that is the power “to adopt and amend local laws...relating to [local] property, affairs or government” as well as to adopt local laws in a number of specified other areas including, most importantly, “the government, protection, order, conduct, safety, health and well-being of persons or property therein.”¹ In other words, New York City, like the State, can act broadly to promote the general welfare of its residents — subject to some significant constraints.

First, the constitution reserves some areas to the State — the courts, education, taxation. These do not fall within the home rule grant, although the State can delegate — and has delegated — some powers to the City even in these areas. Second, a local action is valid only if it is “not inconsistent” with the state’s constitution and the state’s “general” laws; that is, a state law that is generally applicable to all local governments, or to all of a class of local governments, such as cities. A long string of court decisions has struggled over the meaning of “inconsistent.” A local law expressly prohibited by state law is, of course, “inconsistent” with state law, but courts have extended the concept of inconsistency to include local regulatory laws that go beyond a state-set floor and require a higher standard of care or are more restrictive than state laws. Some decisions have also held that, when the State has regulated an area extensively, the State has “occupied the field” to the exclusion of local laws, even local laws not literally inconsistent with the state’s laws. The cases themselves are “inconsistent,” and have not always been hostile to local autonomy. The unpredictability of judicial handling of preemption cases is almost as great of a problem as the doctrine itself.

Third, although the text of the state constitution limits the ability of the legislature to preempt City action by a targeted “special” law — a request from the Mayor is necessary before the legislature can pass such a law — the State Court of Appeals has eviscerated this requirement by holding that the legislature may enact a special law preempting the City when it is dealing with a “matter of state concern,” and the court has embraced a sweeping approach to “state concern.” In the most recent significant case, the court

¹ “The Laws of New York: ARTICLE 2: General Powers of Local governments to Adopt and Amend Local Laws; Restrictions,” *The New York State Senate*, <https://www.nysenate.gov/legislation/laws/MHR/10>.



upheld a state law regulating taxis in New York City — the law authorized the green cabs that operate outside the Manhattan central business district — even though taxi regulation had long been handled exclusively by the City. The court explained that “efficient transportation service in the State’s largest city...is important to the entire State.”² On that logic, it’s hard to see how any state law dealing with New York City would not be a matter of state concern.

The taxi case illustrates another aspect of the state-local relationship in New York. The state law in dispute was enacted at the behest of Mayor Michael Bloomberg, after he had tried and failed to get the measure passed by the City Council. The state-local conflict was really an intra-local conflict, with the State acting to empower the Mayor at the expense of the Council. Indeed, many state laws impacting New York City are adopted in response to pressures from groups within the City rather than as an imposition by upstate or the suburbs. Some, like the taxi law, might empower the Mayor; others might displace the Mayor or the City’s regulatory authority or impose new obligations or limitations on the city budget. But these laws still involve using the power of the State to further someone’s city policy agenda.

SPECIFIC POLICY AREAS: TOPICS AND TOOLS

In considering specific policy areas, it is important to be aware that mayoral power turns as much on regulatory technique as substantive topic. For example, the Mayor acting through the Board of Health may have the authority to require the posting of calorie counts and — with the consent of the Council — to limit the sale of sugary drinks,³ but, without state legislative authorization, the City cannot impose a soda tax.⁴ Similarly, the City may lack the legal authority to decriminalize certain offenses, but the Mayor can set policing policy to reduce or eliminate arrests for those offenses. And, in many areas, both the State and City play a role. For example, state law sets the basic framework for the rent stabilization and rent control systems, but the New York City Rent Guidelines Board, consisting of mayoral appointees, administers that system,

² “Greater New York Taxi Association v. State of New York,” Court of Appeals of New York, 21 NY3d 289 (2013), <https://www.leagle.com/decision/innyco20130606257>.

³ The Court of Appeals’ decision striking down Mayor Bloomberg’s sugary drink restriction focused on the lack of Council approval of the action. E. C. Gogolak, “Appeals Court Rules Against Bloomberg Beverage Restrictions,” The New York Times, July 30, 2013, <https://www.nytimes.com/2013/07/31/nyregion/appeals-court-rules-against-bloomberg-beverage-rules.html>.

⁴ Philadelphia has imposed a soda tax. The Pennsylvania Supreme Court reasoned that the tax fell within a broad grant of taxing authority from the legislature. The New York legislature has not delegated a comparably broad grant of taxing power to New York City. Laura McCrystal, “Pa. Supreme Court upholds Philadelphia soda tax,” The Philadelphia Inquirer, July 18, 2018, <https://www.inquirer.com/philly/news/soda-tax-philadelphia-supreme-court-pennsylvania-20180718.html>.



including the determination of permissible rent adjustments. What follows are brief discussions focused on a handful of policy areas.

Education

Under the state constitution, “the maintenance, support or administration of the public school system” is exempted from home rule and reserved for control by the state legislature. The state’s Education Law includes a detailed prescription of requirements for New York City’s public schools. In practice, however, local officials wield considerable responsibility for the day-to-day operation of the city’s public schools, including school assignment policies, the creation and operation of magnet schools, initiatives to address segregation, and the response to the COVID-19 pandemic. Yet, this occurs against the background of ultimate state control. The current school governance structure of control by a mayor-appointed schools’ chancellor required state legislation — and, given the sunset provision built into the law, will continue to require state approval. Additionally, state law continues to govern matters general — curricular and testing requirements — and specific, such as the controversial mandate to use a specific test for admission to the city’s specialized high schools. And, funding for the public schools also depends to a considerable degree on the state’s aid formula. Public education is an area in which the City can adopt significant policy changes, but against the backdrop of state limitations, constraints, and mandates.

As for public higher education, the Mayor can name 5 of the 17 members of the CUNY board of trustees; the Governor appoints 10; and two others serve ex officio. So, although the Mayor can have input, CUNY is effectively a state agency.

Environmental, Consumer Protection, Public Health, and Anti-Discrimination Regulation

In recent years, the City has repeatedly taken the initiative in adopting environmental, consumer protection, public health, workplace, and anti-discrimination measures. A relatively random list of local actions in these areas include air pollution control measures, adoption of building energy efficiency standards, e-waste regulations, and a ban on foam containers; regulation of debt collection practices, the sale of fireworks, funeral home pricing, and the hours of operation of night clubs; multiple restrictions on the sale of tobacco and smoking, and menu labelling requirements; a paid sick leave law; and the extension of anti-discrimination rules to private clubs. These all fall within the City’s broad authority to promote the local public “health, safety, and well-being” — subject to the possibility of preemption by state law. Sometimes a preemption challenge succeeds, but, in many cases, the City has prevailed.



Land Use and Zoning

Land use is an area in which the City, more than the State, plays the leading regulatory role, and the Mayor, through the Department of City Planning, can take the initiative. The City has control of the zoning process and can change zoning requirements to target different areas for up zoning, downzoning, or changes in permissible uses in particular neighborhoods or districts. Actions illustrating the City's relatively broad powers with respect to land use range from the "adult zoning" law restricting the locations of so-called "adult" establishments, to the Mandatory Inclusionary Housing amendment, to the City's zoning law promoted by Mayor Bill de Blasio, to siting facilities for the homeless. To be sure, nothing prevents the State from coming in and displacing a City policy. But this has long been an area of City control.

The City also has considerable control over city-owned land, and can use that control through land sales, leases, or franchises to promote specific economic development policies.

Taxation

Taxation is largely controlled by the State. New York City has some control over the real property tax. It can generally lower or raise (subject to a state constitutional cap) the rate and generally lower the assessment ratio. However, any changes targeted on a subset of taxpayers; or changes in the basic structure of the tax, such as the differential taxation of commercial versus residential property, or the treatment of apartment buildings or coops and condos; would require state legislation. And, the adoption, increase, or alteration of any other tax — such as applying the City's personal income tax to commuters — would require state authorization. The City can raise revenue through the adoption of fees and charges for city services — to cover the costs of implementing a regulation, or to offset the costs imposed by private behavior — but not as a means of raising general revenue.

Transportation

The subways and buses — and the seven bridges and two tunnels within New York City, plus the Staten Island Railway — are controlled by the MTA, which is a state agency. Its governing board consists of 14 voting members appointed by the New York Governor. The Governor must choose four of the 14 based on the recommendation of the Mayor; the other ten votes are cast by members appointed by the Governor or on the



recommendation of the suburban county executives. The trans-Hudson bridges and tunnels and the City's airports are controlled by the Port Authority of New York and New Jersey. All the members of the Port Authority's governing boards are selected by the governors of New York and New Jersey. The New York City Mayor has no role to play in the governance of the Port Authority.

The Mayor has a considerably greater role in regulating the streets; sidewalks; traffic; and, through the Taxi & Limousine Commission, taxi cabs; for-hire, commuter vans; and paratransit vehicles. Important local actions in this area in recent years have included the Citi Bike program, the expansion of bike lanes and creation of bus-only lanes, the Vision Zero traffic safety initiative, changes to parking rules, and the street and sidewalk dining program adopted in response to COVID-19. The City has also supported an expanded ferry transportation program. Even here, city actions must be threaded through the State's highway and vehicle and traffic laws (congestion pricing required state approval) and are subject to preemption, as the state law dealing with green cabs, previously discussed, indicates.

CONCLUSION

As the brief survey of a handful of subject matter areas indicates, it is difficult to reach clear conclusions about the scope of city power in many areas. In some areas, such as managing the municipal workforce, the City has broad authority, but subject to frequent state mandates, multiple restrictions, and possible preemption. Other areas are matters for the State, except that the State may delegate considerable operational responsibility to the City or provide the City with the authority needed to act. Deciding exactly what the City can do in many areas requires a close parsing of the relevant state laws. It may also require careful consideration of the tools the City has at its disposal. It may be able to use its spending authority, its control over city land, or its discretion to shape service delivery where it cannot act through taxation or direct regulation.

The Mayor is a very powerful figure within the structure of city government but, in many areas, the Mayor's ability to effectuate policy change will require some degree of cooperation from the State.

