



# **United States: Local Government Responses to COVID-19**

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# United States: Local Government Responses to COVID-19

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**SUMMARY** Local government entities in the United States, such as municipalities, cities, and counties, are granted powers under state law to enact ordinances, codes, and directives to carry out their general business and maintain public services, pursuant to authority reserved to the states by the Tenth Amendment of the US Constitution. Additionally, local governments have state-granted emergency response powers when facing situations like the ongoing global pandemic. At times, local governments have been left with difficult and contentious decisions when responding to the coronavirus pandemic, while simultaneously navigating the boundaries of state and local government authority. Local governments have been responsible for responding to the pandemic within varying contexts, including responding to shortfalls in tax revenue, administering public school operations, implementing facial covering and social distancing guidelines, and maintaining public access to government meetings and resources. As the pandemic continues to persist, local governments will remain on the forefront of emergency response efforts.

## I. Introduction

The COVID-19 pandemic has caused local governments to implement policies based upon the powers that they hold within their respective states. Local governments function within a hierarchical framework of emergency powers stemming from federal and state grants of authority. Local governments' powers vary depending on their location and the privileges and restrictions imposed upon them by state laws, including state statutes and constitutions. Many local governments have created more specific guidance on COVID-19 responses and implemented restrictions when the state and federal governments have remained silent, or have explicitly left certain decisions up to local governments.

This report explains local government authority related to emergency powers and emergency intervention. First, it summarizes the history of local government powers and their relationship with the state and federal government. Second, it describes funding resources generally available to local governments that have been impacted by the ongoing pandemic. Finally, it elaborates on specific examples of emergency actions taken by local governments across the country, including examples that illustrate the dynamics between state and local governments.

## II. Overview of Local Government Powers in the United States

The Tenth Amendment to the US Constitution states "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."<sup>1</sup> Courts have interpreted the states' reserved powers under the Tenth

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<sup>1</sup> US Const. amend. X, <https://perma.cc/MU2V-B7EY>.

Amendment to include police powers, such as the authority to take action in response to a public health emergency.<sup>2</sup> Although the Tenth Amendment discusses the states' authority, it is silent on the interplay between a state government and the powers of local government entities existing within its borders. This broad issue has been addressed by the US Supreme Court on multiple occasions since the mid-1800s.

In various opinions, the US Supreme Court has explained in general terms the powers of local government entities. In *Hunter v. City of Pittsburgh*, the Court held that

[m]unicipal corporations are political subdivisions of the State, created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them . . . . The number, nature and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the State.<sup>3</sup>

This principle is commonly known as Dillon's Rule, which is named after a nineteenth-century Iowa Supreme Court justice who authored an opinion on this topic and, while subsequently serving as a federal appellate judge, an influential work on municipal corporations. The US Supreme Court reiterated and upheld *Hunter's* holding in *Trenton v. New Jersey*. In *Trenton*, the court noted,

[i]n the absence of state constitutional provisions safe-guarding it to them, municipalities have no inherent right of self government which is beyond the legislative control of the State. A municipality is merely a department of the State, and the State may withhold, grant or withdraw powers and privileges as it sees fit. However great or small its sphere of action, it remains the creature of the State exercising and holding powers and privileges subject to the sovereign will.<sup>4</sup>

Based on these Supreme Court precedents, it is generally accepted that local governments may exercise only (1) powers expressly granted by the state, (2) powers necessarily and fairly implied from the grant of power, and (3) powers crucial to the existence of local government.<sup>5</sup>

In the early twentieth century, states began enacting statutes or amending their constitutions to provide greater autonomy to municipal governments.<sup>6</sup> Part of this process involved municipal governments creating charters to define local governmental powers and functions. A county or city charter is analogous to a local constitution.<sup>7</sup> This relationship between state and local governments is known as "home rule," which allocates to local governments specific areas of

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<sup>2</sup> Jorge E. Galva, Christopher Atchison & Samuel Levey, *Public Health Strategy and the Police Powers of the State*, 120 Pub. Health Rep. 20, 21-22 (Supp. 1 2005), <https://perma.cc/H68H-5NKG>.

<sup>3</sup> *Hunter v. City of Pittsburgh*, 207 U.S. 161, 178 (1907), <https://perma.cc/9YHX-DJ7Z>.

<sup>4</sup> *City of Trenton v. New Jersey*, 262 U.S. 182, 187 (1923), <https://perma.cc/ASS3-MRSK>.

<sup>5</sup> *Cities 101 – Delegation of Power*, National League of Cities (Dec. 13, 2016), <https://perma.cc/QHR9-NCGZ>.

<sup>6</sup> Paul Diller, *Intrastate Preemption*, 87 B.U. L. Rev. 1113, 1124 (2007), <https://perma.cc/WPL6-3Q6R>.

<sup>7</sup> *Cities 101 – Charters*, National League of Cities (Dec. 16, 2016), <https://perma.cc/XX26-6LTL>.

authority, with which the state government generally may not interfere.<sup>8</sup> Home rule statutes and constitutional provisions vary state-by-state; likewise, local charters vary by jurisdiction. Examples of home rule dynamics can be found on state government websites: Minnesota's legislature explains local government functions within the state;<sup>9</sup> Nebraska's legislature offers a similar primer on state and municipal government interactions.<sup>10</sup> Typically, local governments may not step outside their state-granted powers, and local laws cannot conflict with state legislation or the state constitution.<sup>11</sup>

When federal and state governments are silent on specific regulations and emergency responses, local governments (such as municipalities, cities, and counties) generally use their own emergency powers to respond, so long as they do not conflict with federal or state laws.<sup>12</sup> The following examples illustrate some current revenue forecasts for municipal governments and actions that local government entities across the country have taken in response to the pandemic.

### III. Funding for Local Governments During the Pandemic (New York)

Municipal governments rely on tax revenue, including sales tax in many states, to run local government institutions and programs. Sales taxes are connected to consumer spending on products and services such as dining and retail. In New York State, for example, outside of New York City, local governments' sales tax revenue accounted for over one-quarter of county revenues and nearly one-fifth of city revenues in fiscal year 2018.<sup>13</sup> Shelter-in-place orders and travel restrictions have reduced consumer spending considerably. Many local governments are bracing for millions of dollars in revenue shortfalls.<sup>14</sup> Revenue from sales tax is used to fund local government institutions, including emergency responders, public schools, healthcare, and libraries, among other programs and services.

Although the long-term consequences of reduced consumer spending are currently unknown, the New York State Association of Counties has estimated that county sales tax collections outside of New York City could fall by as much as 22% over the course of a year, amounting to \$1.8 billion

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<sup>8</sup> Diller, *supra* note 6, at 1124-27, <https://perma.cc/WPL6-3Q6R>.

<sup>9</sup> Deborah A. Dyson, *State-Local Relations*, Minnesota House Research Department (Nov. 2019), <https://perma.cc/7LFY-ZL6P>.

<sup>10</sup> Travis Moore, *Dillon Rule and Home Rule: Principles of Local Governance*, Nebraska Legislative Research Office (Feb. 2020), <https://perma.cc/8GZL-YV4R>.

<sup>11</sup> Richard Briffault et al., *Principles of Home Rule for the 21st Century* 46-52 (Apr. 2, 2020) (Working Paper, National League of Cities), <https://perma.cc/32X9-JRN3>.

<sup>12</sup> See Whitney K. Novak, Cong. Research Serv., LSB10487, *Congress and Law Enforcement Reform: Constitutional Authority* 1-2 (June 4, 2020), <https://perma.cc/D7R4-T864>.

<sup>13</sup> Thomas P. DiNapoli, Office of New York State Comptroller, *Under Pressure: Local Government Revenue Challenges During the COVID-19 Pandemic* 2 (July 2020), <https://perma.cc/N2HG-WV82>.

<sup>14</sup> Alison Felix, *COVID-19 Challenges State and Local Government Finances* 2, *kcFED Econ. Bull.* (May 13, 2020), <https://perma.cc/AL2P-V2UR>.

in lost revenue.<sup>15</sup> According to the New York State Comptroller, “[i]n May, retail sales were down 7.7 percent over May 2019, with much steeper drops in some of the most important taxable sales, including clothing and accessories (-63 percent), gasoline stations (-32 percent), electronics and appliance stores (-31 percent) and department stores (-26 percent).”<sup>16</sup>

The Coronavirus Aid, Relief, and Economic Security (CARES) Act allocated \$150 billion in funding for state governments, which was then apportioned to municipalities. This funding, however, had to be used to cover “necessary expenditures incurred due to the COVID-19 public health emergency from March 1, 2020 to December 30, 2020.”<sup>17</sup> Municipal governments were also entitled to CARES Act funding under the Education Stabilization Fund (\$30.75 billion), the Federal Emergency Management Act Disaster Relief Fund (\$45 billion), and the Municipal Liquidity Facility (\$500 billion), all of which had to be used for specific purposes related to the coronavirus pandemic. On October 1, 2020, the House of Representatives passed the proposed Heroes Act, which earmarks \$179 billion for local governments.<sup>18</sup> The Heroes Act is currently being reviewed in the Senate. As of the date of this report, Congress and the executive branch are negotiating additional federal emergency funding measures.

#### IV. School Boards and Education (Philadelphia, Pennsylvania)

According to data from the US Department of Education, in the United States, state and local governments administer approximately 13,500 public school districts.<sup>19</sup> Frequently, state governments regulate schools, oversee curricula, develop standards, and provide some funding, but much of the funding, and the bulk of administrative activities, are provided at the local level. For example, in the 2019–2020 school year, the Philadelphia School District received 51% of its funding from the state of Pennsylvania, 48% from the city of Philadelphia, and 1% from the federal government.<sup>20</sup>

In response to the coronavirus pandemic, school districts have been required to reimagine instruction methods, including educating students remotely. In Philadelphia, the local school district began the school year with all students learning remotely. The school district will reassess local conditions in November and may transition to a hybrid of in-person and digital learning if state and local health authorities indicate that it is safe to do so.<sup>21</sup>

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<sup>15</sup> John F. Marren & Stephen J. Acquario, *Lost Revenue and State Aid Cuts: Coronavirus Economic Impact on Counties 3*, New York State Association of Counties (May 2020), <https://perma.cc/EPN7-YZ8Z>.

<sup>16</sup> DiNapoli, *supra* note 13, at 3.

<sup>17</sup> *Id.* at 11.

<sup>18</sup> H.R. 925, 116th Cong. (House engrossed amendment, Oct. 1, 2020), <https://perma.cc/K8R8-PH5Y>.

<sup>19</sup> *Number of Public School Districts and Public and Private Elementary and Secondary Schools: Selected Years, 1869-70 through 2017-18*, National Center for Education Statistics, <https://perma.cc/MS44-KEPN>.

<sup>20</sup> *Quick Budget Facts: 2019-2020 Adopted Operating Budget*, School District of Philadelphia, <https://perma.cc/F7HQ-4J7X> (last modified July 1, 2020).

<sup>21</sup> *School Year 2020-2021: Advancing Education Safely*, School District of Philadelphia, <https://perma.cc/HYF6-QB5M> (last modified Sept. 25, 2020).

In furtherance of educational equity, the Philadelphia School District purchased laptop computers “to ensure all students have access to digital learning opportunities while schools remain closed long-term due to COVID-19 (coronavirus) response efforts.”<sup>22</sup> The school district is also working closely with local internet service providers to provide internet access for students who do not have it at home.<sup>23</sup> Although the total financial cost of the school district’s transition to an online learning environment is unknown, the Philadelphia Board of Education approved spending \$11 million on the laptop initiative.<sup>24</sup>

## V. Emergency Funding Expenditures (Sacramento, California)

Under the CARES Act, funding was made available to local governments to aid their response to the pandemic through the Coronavirus Relief Fund (CRF). The State of California received \$15 billion, and then divided that up among local government entities. The City of Sacramento received a grant of \$89.6 million from the CRF. Sacramento presented surveys to the entire community to guide grant expenditures. One such initiative for which the city provided funding was to increase internet connectivity among households in Sacramento, in order to support access to digital resources while public resources such as libraries and schools operate at a limited capacity.<sup>25</sup>

On August 17, 2020 a notice of funding availability (NOFA) was published by the City of Sacramento, seeking applications for its Work-Based Learning & Workforce Readiness Program.<sup>26</sup> The City Council approved the program created by PRO Youth and Families, a local nonprofit focusing on providing tools and services to under-resourced communities, officially awarding funding on September 8, 2020.<sup>27</sup>

The City of Sacramento’s program has several major goals in providing funding in this manner. These goals include targeting a population of young people between 12 to 24 years of age, providing participants with workforce training, and paying participants a stipend. The program also requires that the funding be used before the end of this year.

## VI. Local Police Powers and Mask Mandates

Cities and counties are responsible for funding and administering local police departments and sheriff’s offices. State laws generally govern the roles and responsibilities of state police forces, but most police enforcement activities fall under the purview of city police departments.

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<sup>22</sup> *Chromebooks*, School District of Philadelphia, <https://perma.cc/KF6Q-TH67>.

<sup>23</sup> *Internet Access Options for Families*, School District of Philadelphia, <https://perma.cc/FA57-A89V> (last modified Aug. 31, 2020).

<sup>24</sup> Press Release, School District of Philadelphia, School District Will Use \$11 Million to Help Bridge the Digital Divide Among Students (Mar. 26, 2020), <https://perma.cc/J93L-DJD5>.

<sup>25</sup> City of Sacramento, *Notice of Funding Availability (NOFA) and Request for Applications* (July 29, 2020), <https://perma.cc/D82V-MGPN>.

<sup>26</sup> City of Sacramento, *Notice of Funding Availability (NOFA) and Request for Applications* (August 17, 2020), <https://perma.cc/3FKQ-GA76>.

<sup>27</sup> City of Sacramento, *City Council Report* (Sept. 8, 2020), <https://perma.cc/VW74-745C>.



Additionally, local governments may enact rules and regulations for emergency management at the local level, which may be enforced by local police departments.<sup>28</sup> The United States has seen a variety of responses to social distancing mandates and the interaction of state and city governments and local police departments in enforcing these measures.

### **A. Atlanta, Georgia**

On July 8, 2020, Mayor Keisha Lance Bottoms of Atlanta, Georgia, issued Executive Order Number 2020-113, which, among other provisions, required all individuals to wear a cloth face covering “when inside a commercial entity or other building or space open to the public, or when in an outdoor public space, wherever it is not feasible to maintain appropriate social distancing from another person not in the same household.”<sup>29</sup> In response, Georgia Governor Brian Kemp sued Atlanta’s mayor and the city council. Governor Kemp requested that the court strike down the mayor’s executive order, arguing that the mayor’s mandate exceeded her legal authority and contradicted a statewide executive order that the governor’s office had issued, which did not mandate wearing face masks but “strongly encourage[d]” wearing them.<sup>30</sup>

In August 2020, Governor Kemp voluntarily dismissed the lawsuit against Atlanta and issued an executive order empowering local governments to require face coverings under certain circumstances. That order allows private businesses to decide whether masks are required within their establishments, regardless of whether the business is within a city with a mask mandate.<sup>31</sup>

### **B. Moscow, Idaho**

The State of Idaho does not have a mask mandate. Instead, the governor has allowed local governments to create policies regarding face coverings.<sup>32</sup> The city of Moscow has been under Public Health Emergency Order No. 20-03 since March 13, 2020. That order has been amended several times, including the addition of a mask mandate on July 1, 2020.<sup>33</sup> That mask mandate was set to expire on October 6, 2020. At the last city council meeting, the order was extended to January 5, 2021.<sup>34</sup>

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<sup>28</sup> See Nathan James et al., Cong. Research Serv., R43904, *Public Trust and Law Enforcement – A Discussion for Policymakers* 3-4 (July 13, 2020), <https://perma.cc/T7YY-T756>.

<sup>29</sup> Exec. Ord. No. 2020-113, City of Atlanta (July 8, 2020), <https://perma.cc/9KK2-PQ46>.

<sup>30</sup> *Kemp v. Bottoms*, No. 2020CV338387 (Ga., Fulton Cty. Super. Ct. July 16, 2020) (Complaint for Declaratory and Injunctive Relief), <https://perma.cc/9JUF-JRE3>.

<sup>31</sup> Ga. Exec. Ord. 08.15.20.01 (Aug. 15, 2020), <https://perma.cc/9WPZ-MK56>.

<sup>32</sup> James Dawson, *Callers Demand Statewide Mask Mandate in Idaho from Gov. Brad Little*, Boise State Public Radio (NPR) (Sept. 30, 2020), <https://perma.cc/J7FX-P9MU>.

<sup>33</sup> Amend. Pub. Health Emerg. Ord. No. 20-03, City of Moscow (July 1, 2020), <https://perma.cc/PTQ6-9XML>.

<sup>34</sup> Garrett Cabeza, *Moscow Face Mask Order Extended*, Moscow-Pullman Daily News (Sept. 22, 2020), <https://perma.cc/MEW8-FN4X>.

In response to the mask mandate issued by the City of Moscow, there have been protests against mask wearing and even arrests involving people who refused to follow the guidelines.<sup>35</sup> Although most of northern Idaho has been averse to mask mandates, Moscow is also home to the University of Idaho, which is currently following similar mask mandates and social distancing guidelines while holding in-person classes.<sup>36</sup>

## VII. Limits on Large Gatherings (Norman, Oklahoma)

Oklahoma has been under a state of emergency since March 15, 2020, due to the coronavirus.<sup>37</sup> The governor of Oklahoma, J. Kevin Stitt, has opposed a statewide mask mandate and has left that decision up to local governments. The government has also had limited involvement in regulating the size of gatherings, leaving that up to local governments. The state government has been following its “Open Up and Recover Safely Plan,” which, as of June 1, 2020, was in its final phase.<sup>38</sup>

Based on state guidance, individual local governments had to enact their own mask and capacity guidelines. Norman, Oklahoma, is the home of the University of Oklahoma, a large public university known for its football program. The city government passed an emergency order regarding public building capacities on football game days. On September 8, 2020,<sup>39</sup> the city council passed Ordinance O-2021-11, providing guidance on several categories of public spaces, specifically noting amended capacity rules when the University of Oklahoma plays home football games.<sup>40</sup>

## VIII. Virtual Government Meetings

Local government meetings in the United States are generally open to the public. During the coronavirus pandemic, local governments have come up with different methods to maintain public health while balancing an interest in transparency and public participation.

### A. Asheville, North Carolina

Asheville’s city charter requires the council to hold meetings in a manner that is open to the public and gives the public reasonable opportunity to be heard.<sup>41</sup> Adapting to the pandemic while still following this law, the city’s government has been holding its city council meetings virtually.

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<sup>35</sup> Garrett Cabeza, *Candidate Rensch Arrested at Downtown Moscow Event*, Moscow-Pullman Daily News (Sept. 23, 2020), <https://perma.cc/HD6Y-Y25Z>.

<sup>36</sup> Memorandum from Blaine Eckles, Vice Provost for Student Affairs and Dean of Students, to University of Idaho Parents and Families on 2020 Fall Plans (Aug. 10, 2020), <https://perma.cc/K9MP-9XLK>.

<sup>37</sup> Okla. Exec. Ord. 2020-07 (Mar. 15, 2020), <https://perma.cc/57QS-KHG2>.

<sup>38</sup> Press Release, Oklahoma Governor, Governor Stitt Announces “Open Up and Recover Safely” Plan (Apr. 22, 2020), <https://perma.cc/S6HE-26DX>.

<sup>39</sup> *Norman Coronavirus Updates*, City of Norman, Oklahoma (last visited Oct. 27, 2020), <https://perma.cc/KF6Q-TH67>.

<sup>40</sup> Ord. O-2021-11, City of Norman, Oklahoma (Sept. 8, 2020), <https://perma.cc/SA8Y-Z5AL>.

<sup>41</sup> Asheville, N.C., Mun. Code pt. 1, art. II, § 9 (1985), <https://perma.cc/XBH8-BDS3>.

Virtual city council meetings began on March 24, 2020.<sup>42</sup> The city council announced a new process for virtual public participation for its meeting on July 28, 2020.<sup>43</sup> Both the county and city governments have followed guidance from the state government in their response to the pandemic. Beginning on October 2, 2020, the state governor allowed indoor gatherings of up to 25 persons, and the county followed suit.<sup>44</sup> Nevertheless, Asheville has decided to continue to hold its city council meetings remotely.<sup>45</sup>

## B. Surprise, Arizona

The City of Surprise had been holding public meetings virtually until September 15, 2020, when government officials announced they would be reopening meetings for in-person participation. The city council may change the date, time, or location of a meeting by majority vote. Surprise's City Code provides that members must be physically present at the meeting in order to participate; however, elected officials amended the Code under Ordinance No. 2020-12 in March to allow for some members to participate virtually.<sup>46</sup>

In Arizona, local governments are subject to the Open Meeting Law, Ariz. Rev. Stat. § 38-431.01(A). Under that statute, local government meetings must be made open to the public.<sup>47</sup> In order to help local governments respond to the pandemic while still performing their governmental functions, Arizona Attorney General Mark Brnovich released guidance on how local governments could satisfy the Open Meeting Law's requirements while still maintaining social distancing and complying with other regional and national public health guidelines.<sup>48</sup>

## IX. Conclusion

Local governments hold varying levels of power when it comes to responses to emergency situations. Depending on the powers granted to the locality by the state government, local responses may be limited or more robust than the overall state government response.

The federal government often issues broad guidance, leaving the states to issue their own, more specific, directives. From there, local governments often create more detailed plans based on the guidance received from state and federal authorities. As the United States continues to adapt to

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<sup>42</sup> Polly McDaniel, *Asheville City Council Meeting to Be Held Following CDC, State and Local Guidelines*, City of Asheville (Mar. 21, 2020), <https://perma.cc/H4WZ-J664>.

<sup>43</sup> Polly McDaniel, *Asheville City Council Continues Remote Meetings with New Public Comment Procedure*, City of Asheville (July 24, 2020), <https://perma.cc/UW94-YUM5>.

<sup>44</sup> *Buncombe County's Stay Safe, Stay Smart Order Update*, Buncombe County (Oct. 1, 2020), <https://perma.cc/BF5V-Q466>.

<sup>45</sup> *City Council Regular Meeting Agenda*, City of Asheville (last visited Oct. 2, 2020), <https://perma.cc/E7LB-SVH8>.

<sup>46</sup> Ord. No. 2020-12, City of Surprise, Arizona (Mar. 17, 2020), <https://perma.cc/T4UM-UPUE>.

<sup>47</sup> Ariz. Rev. Stat. § 38-431.01(A), <https://perma.cc/5H9Z-2BX8>.

<sup>48</sup> Memo from Attorney General Mark Brnovich Re: Concerns Relating to Arizona's Open Meeting Law and COVID-19 (Mar. 13, 2020), <https://perma.cc/53TE-R2LW>.

the ongoing pandemic, it is likely that more directives will be instituted at all levels, and local entities will take center stage in the implementation of public health, public safety, and educational responses.