

# A FRAMEWORK FOR FURTHER DISCUSSION

The conversation at BIG Ideas relies heavily on research conducted by the Local Government Research Collaborative (LGRC) in advance of the meeting. With a topic like local autonomy and a nation-wide audience, the difficulties of speaking the same language and staying focused on local government and state relations became glaringly apparent. Multiple issues were introduced based on geographical differences from homelessness to hydraulic fracturing, the sharing economy to the choice of bathrooms. As local officials, it is too easy for the conversation to switch tracks towards solving the immediate problem without tackling the overarching issue of state and local relations. However, one observation from Mayor Strickland from Tacoma, Washington highlighted the importance of keeping the conversation focused on local autonomy. According to Strickland, cities are being put in the “Special interest” box and reduced to the same playing field as other lobbyists in Washington, DC and the state legislatures rather than being viewed as partners.

## FACTORS

This year’s Work Paper, “Navigating the Waters between Local Autonomy and State Preemption,” by Dr. David Swindell, Dr. Carl Sternberg and Dr. James Svara lays out a framework to both discuss and assess the state of local government autonomy. Given the growing concern about the recent growth in state restrictions and preemptions of municipal and county authority, the goal of the work paper, and its framework, is to help elected and administrative local government officials understand the legislative environment and be equipped to take actions that meet their local community needs.

There are numerous examples of cities that are trying to “do the right thing,” resulting in state actions that both negatively impact the state and ultimately can result in cities losing funding, becoming economically disadvantaged, or further preemption. In the case of the bathroom bill in North Carolina, state actions

have led to cities losing potential tourism and convention dollars from organizations that are boycotting the state. In other cities, state funding has been threatened in the same way the removal of federal funding has been threatened to “sanctuary cities.” In response to the City of Tempe, Arizona attempting to destroy seized weapons, almost all local regulation of guns have been preempted, including the ways in which the city can dispose of their own property. Better understanding the environment may result in better outcomes that meet both the goals of the states and the cities within their legal authority.

The nature and breadth of state delegation of authority is only one of many factors that share the autonomy of local governments in a state. The framework identifies a range of state-local relations by the types of actions taken by the state or local governments and how they may differ in home-rule and Dillon’s-rule states. The nature of state-local interaction depends upon the issue of the situation; states may permit local action, restrict local action and/or require local action as part of this framework. In each instance, the framework can be used to develop a greater awareness of the factors that shape the autonomy, or lack thereof, of local governments in a state.

What are the factors that determine the degree of local autonomy that you have? The table below, as identified by the LGRC in the BIG Ideas 2017 Work Paper, compares the nature of state-local interaction with the type of state-local relationships.

### Big Ideas Work Paper: Navigating the Waters between Local Autonomy and State Preemption

<http://bit.ly/2lou3lx>

### NLC Paper: City Rights in an Era of Preemption: A State-by-State Analysis

<http://bit.ly/2lny49Z>

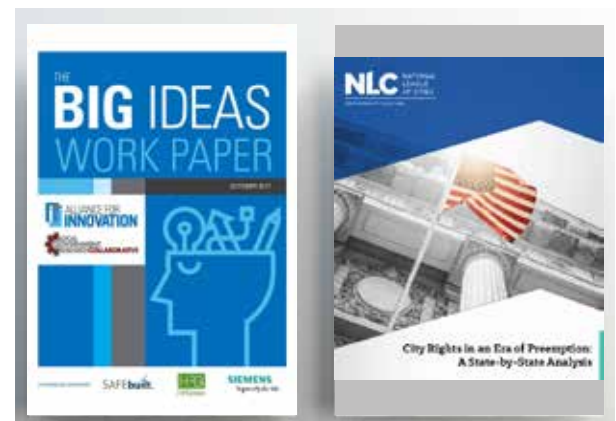


Table 1: Factors Contributing to Variations in Local Autonomy

Nature of state-local interaction	Type of Action		Type of state-local legal relationship	
			Home rule states or local governments	Dillon's rule/non-home-rule states or local governments
Permit local action	Broad or specific authorization <sup>1</sup>		Broad authorization to all or to designated municipalities plus specific authorization in laws	Express powers granted to city in charters or in state law
	Limited or targeted authorization		Use classification to permit some cities to act	Local bill to grant power to a specific city (if local legislation is allowed) or group of cities
Restrict local action	Omission		Fall to include in general authorization <sup>2</sup>	Fall or refuse to grant express power
	Targeted restriction		Use classification to prevent some cities from acting	Intervention in single jurisdiction (if local legislation allowed)
	Nullification		Nullify local policy / program / practice in conflict with state laws	Intervention in single jurisdiction (if local legislation allowed)
	Prohibition		Forbid local action that is not consistent with the state law	Forbid local action that is not consistent with the state law
	Penalize		Sanctions imposed for specified actions	Sanctions imposed for specified actions
	Preemption		Preempt the authority of local governments to act in specified areas	Preempt the authority of local governments to act in specified areas
Require Local Action	Requirements		Set standards that all governments must meet	Set standards that all governments must meet
	Mandates		Require all governments to act (e.g., unfunded mandate) or comply with requirements	Require all governments to act (e.g., unfunded mandate) or comply with requirements

<sup>1</sup> Cities and counties must agree to use the authority. Only one city in Utah uses a home rule charter. • <sup>2</sup> Iowa provides home rule in the state constitution, but does not permit local fiscal autonomy. • <sup>3</sup> For example, forbidding “lunch shaming” programs. • <sup>4</sup> For example, penalties for “sanctuary cities.” • <sup>5</sup> For example, requiring local governments to apply the same property tax rate to all property owners regardless of income.

## TAKING ACTION

The limiting of local government authority can occur independently, whether your city operates in a Dillon’s rule state or a home-rule state; however, different approaches may be more successful to address the situation depending upon this relationship. In addition to an assessment of the opportunities and constraints derived from this relationship, the framework identifies possible approaches that may have greater success depending upon the state-local legal relationship.

The following table from the BIG Ideas 2017 Work Paper refers to how local governments can take action by comparing the types of state-local legal relationships.



Table 2: How Local Governments Can take Action

Type of Action	Type of state-local legal relationship	
	Home rule states or local governments	Dillon’s rule/non-home-rule states or local governments
Use legal powers and test the limits	Locally initiated legal action within broad powers. Take advantage of home rule option if available	Locally initiated legal action within granted powers
Request additional powers	Seek broad authorization for all cities from legislature for previously un-granted power	Seek specific authorization from legislature for all local governments or request local bill to permit action
“Workaround”	Find method that is consistent with state law	Find method that complies with or circumvents restrictions
Referendum	Change state policies	
Defiance	Resist preemption and limitations	
Advocacy & voluntary efforts	Awareness raising by the government and partnerships with nongovernmental organizations to promote preferred policy outcome	

## HOW TO APPLY THE FRAMEWORK

### Applying the Framework to Specific Issues

Attendees were asked to discuss two case studies, one on minimum wage and the other on broadband, and report out on their discussions. Of the framework and approaches to what local governments should be permitted to legislate, attendees agreed that we should look more closely at the option of government raising awareness and forging partnerships with non-governmental organizations to promote policies and outcomes. Cities and counties can work together to leverage local government authority. If a city does not have the power to

take certain actions, due to the possibility of putting their own organizations in jeopardy, partnering may help; for example, asking local leadership groups for their opinions where cities are lacking influence. Additionally, attendees noted that knowing who should lead is critically important. Stakeholders can be so emotional that they become a weak link in creating the solution. The governing body may not have the expertise to best respond to the issue. In these cases, local governments can form partnerships, not just with other levels of governments, but with the people who are stakeholders in these issues or whose rights may be in jeopardy.

What is trying to be accomplished may appear to be precluded, but alternative methods may be applied to address the issue. An example listed in the work paper regarding tax relief in a gentrified area shows that a city can accomplish the same goals by attempting to address an issue in an innovative way or through a workaround. In this case, the goal to provide tax relief was accomplished through an indirect subsidy to the low-income residents who live in the gentrified areas rather than solving the problem by changing state regulation.

The likelihood of success in this political climate may not be the best for those challenging the state or federal government for greater local authority, but that should not preclude acting on issues that are of great concern to your residents. As noted by Alliance Board Member and ICMA Southeast Regional Director, Randall Reid, “Polarization is not solving anything.” Instead of pointing fingers, there is the opportunity to simplify processes and create community conversations. Local government officials can create a place that is safe for both resident and employees to discuss these topics. “If we are not actively listening, we are not allowing them to govern,” deftly stated Sarah Poulton, Downtown Special Projects Manager for the Town of Chapel Hill, NC.

Cities must be wise about the battles they choose. Questions to ask may be: Are citizens really concerned? Are all voices being heard? Is it financially or politically worthwhile to take an action?

As a city is taking action, leaders should have a clear understanding of the issue, remain flexible and stay focused. City leaders must also learn how to better tell their story and explain the return on investment when speaking to state leaders.



### Applying the Framework to Leadership

Conversations around these issues, not surprisingly, continued to revolve around the notion of leadership. The better the leadership, the better the outcomes. When applying this framework, managers need to remember that they are not the elected officials. Local government administrative leaders

feel a calling to lead and a connection with democracy, but do not lead in the same way as an elected official. In the role of a local government employee, the focus is on educating the council and ascertaining whether elected officials want to push certain conversations forward given full knowledge of the current political climate and the likelihood of success. When constituents demand that the city take a stand on a social issue, then a manager may act, but it should, in most cases, start with the community, not the manager. Additionally, some attendees noted that when we are talking about issues and deciding upon policy, or even publishing information for the public discourse, it should not be assumed that all members of the community will think that what is being done is good or right.

Leadership still has to be a major element in how local government employees approach their jobs and the people they serve. City administrators can educate by leading by example and setting a tone for the rest of the organization. As part of their efforts, they can instill trust and build a better brand for their communities.

Local government leadership is critical to addressing core issues. The rural versus urban divide is an issue that continues, one which we have seen have negative consequences at times when urban core communities are pitted against rural communities. Putting aside differences, local governments can work together to create intergovernmental partnerships that address these disparities and advocate for flexible solutions at the state and national level. For instance, in the state of Pennsylvania, the municipal league is advocating for a toolbox of local taxing solutions that can be adopted in each municipality based on their local conditions and needs rather than advocating for one solution that would meet the needs of only rural communities or urban communities.

