

State Constitution	Constitutional Environmental Provisions	Home Rule Authority (county/municipality)	Misc.
Colorado	No	<p><i>Article XX</i></p> <ul style="list-style-type: none"> * ordinances made pursuant to home rule “shall supersede...any law of the state in conflict therewith.” * grants the “full right of self government.” * statutes of the state apply, “except insofar as superseded by the [charters or ordinances].” <p><i>Article XIV, section 16</i></p> <ul style="list-style-type: none"> • County home rule authority 	<p>* <i>Voss v. Lundvall Bro., Inc.</i>, 830 P.2d 1061 (Colo. 1992) (home rule cannot be used to ban oil and gas drilling in Greeley).</p>
Louisiana	<p><i>Article IX, Section 1</i></p> <p>* “The natural resources of the state, including air and water, and the healthful, scenic, historic, and esthetic quality of the environment shall be protected, conserved, and replenished insofar as possible and consistent with the health, safety, and welfare of the people. The legislature shall enact laws to implement this policy.”</p>	<p><i>Article VI</i> (municipal and county)</p> <p>* “Subject to...this constitution, any local governmental subdivision may draft, adopt, or amend a home rule charter [subject to general law]...”</p>	<p><i>Energy Mgmt. Corp. v. City of Shreveport</i>, 397 F.3d 297 (5th Cir. 2005) (local ban on oil and gas drilling preempted by pervasive and comprehensive system of state oil and gas regulation – even absent express preemption).</p>

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Montana	<p><i>Article II, Section 3</i> * Certain inalienable rights include the “right to a clean and healthful environment.”</p> <p><i>Article IX - Environment and Natural Resources</i> * The state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations. The legislature shall provide for the administration and enforcement of this duty.</p>	<p><i>Article II, Section 2</i> * Exclusive, self-executing right to self government.</p> <p><i>Article XI</i> * County and incorporated city and town home rule authority</p>	<p><i>Mont. Code. Ann. § 76-2-209</i></p> <p>* Local governments cannot adopt rules or ordinances completely prohibiting the use, development, or recovery of any mineral, forest, or agricultural resource.</p>

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New Mexico	<p><i>Article XVI, Section 2</i> * Unappropriated water belongs to the public, subject to prior appropriation.</p> <p><i>Article XX, Section 21</i> * “The protection of the state’s beautiful and healthful environment is hereby declared to be of fundamental importance to the public interest, health, safety and the general welfare. The legislature shall provide for control of pollution and control of despoilment of the air, water and other natural resources of this state, consistent with the use and development of these resources for the maximum benefit of the people.”</p> <p><i>Article XIII</i> • All lands are public</p>	<p><i>Article X, Section 6 (D.)</i> * “A municipality which adopts a charter may exercise all legislative powers and perform all functions not expressly denied by general law or charter.”</p> <p><i>Article II, Section 3</i> * “The people of the state have the sole and exclusive right to govern themselves as a free, sovereign and independent state.”</p>	<p><i>E.g. Rio Arriba Oil and Gas Ordinance¹</i></p> <ul style="list-style-type: none"> • Separate permitting requirements for oil and gas E&P within the county and specific design and development standards. No specific fracking requirements. • No county home rule authority

¹ New Mexico’s Constitution does not provide for county-home rule authority, but the Rio Arriba Ordinance in fact pertains to the entire county.

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New York	<p><i>Article XIV, Section 4 - Conservation</i></p> <ul style="list-style-type: none"> * Policy of the state to conserve and protect natural resources. * The legislature shall include adequate provision for the abatement of air and water pollution, and of excessive and unnecessary noise, and the development and regulation of water resources. 	<p><i>Article IX</i> (municipal and county)</p> <ul style="list-style-type: none"> * Section 1 Bill of Rights, including enumerated rights of self-government. * Power to adopt local laws not inconsistent with the general law. <p><i>New York Code Municipal Home Rule Law § 10</i></p> <ul style="list-style-type: none"> * Municipalities may adopt or amend local laws on the protection and enhancement of its physical and visual environment (not inconsistent with general law). * Municipalities may adopt or amend local laws regard the safety, health, and well-being of persons therein (not inconsistent with general law). 	<p><i>Frew Run Gravel Prods. v. Town of Carroll</i>, 518 N.E.2d 920 (1987) (holding a town zoning law prohibiting mining in one district did not conflict with the State’s comprehensive mining law because it regulates “land use” and only incidentally controls mining operations).</p>
Ohio	<p><i>Article I, Section 19b</i></p> <ul style="list-style-type: none"> * Grants property owners an inviolate property interest (subservient to the public welfare) in reasonable use of ground water, water in a lake, or watercourse located on or flowing through riparian land. 	<p><i>Article X, Section 1</i></p> <ul style="list-style-type: none"> * Granting county home rule. <p><i>Article XVIII</i></p> <ul style="list-style-type: none"> * Granting municipal home rule, power of self-government, police power. 	<p><i>Beachwood v. Bd. Of Elections of Cuyahoga Cty.</i> 167 Ohio St. 369, 371 (1958) (Exercise of municipal power must not conflict with general law of the state or affect territory outside the municipality’s borders).</p>

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Oklahoma	No	<p><i>Article XVIII, Section 3(a)</i></p> <p>* Granting municipal home rule, consistent with and subject to the general law</p>	* No county home rule authority
Pennsylvania	<p><i>Article I, Section 27</i></p> <p>* Right to clean air, pure water, and preservation of environmental values. Public natural resources are common property of all the people.</p>	<p><i>Article IX, Sections 2 & 4</i></p> <p>* Granting municipal and county home rule authority.</p> <p><i>Article I, Section 2</i></p> <p>* All power is inherent in the people; inalienable and indefeasible right to self-government.</p>	<p>* <i>Pending Range Resources v. South Fayette Township</i> (suit filed in August 2011 regarding 4,000 acre leasehold in the township over Township's ordinance. Grounds include preemption, substantive due process, regulatory taking, and other statutory).</p> <p>* <i>Payne v. Kassab</i>, 312 A.2d 86 (Pa. Commw.Ct. 1973) (Article 1, Section 27 does not create citizen rights; rather imposes an obligation on the commonwealth to ensure Commonwealth's natural resources are reasonably protected).</p>

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Texas	No	<p><i>Article I, Section 2</i> * All political power is inherent in the people</p> <p><i>Article XI, Section 5</i> * Granting municipal home rule authority. See <i>City of Abilene v. EPA</i>, 325 F.3d 657, 664-65 (5th Cir. 2003) (home-rule municipalities in Texas “enjoy a considerable degree of self-governance.”); see also <i>Lower Colo. River Auth. v. City of San Marcos</i>, 523 S.W.2d. 641, 643 (Tex. 1975) (home rule cities derive their power from the Constitution not the Legislature; “it is necessary to look to the acts of the legislature not for grants of power to such cities but only for limitations on their power.”).</p>	<p>* Long history of courts recognizing concurrent authority of municipalities to regulate O&G.</p> <ul style="list-style-type: none"> • <i>Unger v. State</i>, 629 S.W.2d. 811 (Tex. App-Fort Worth 1982 (the reasonableness of a municipal ordinance is presumed unless the unreasonableness is fairly free from doubt); see extensive ordinance in Fort Worth regulating, among other things, air, setbacks, permit requirements, notification, financial assurance, noise, specific fracking requirements, cleanup, and closure. Additional regulations proposed, but not enacted. <p>* No county home rule authority</p>

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Utah	No	<p><i>Article I, Section 2</i></p> <p>* “All political power is inherent in the people.”</p> <p>* Municipal home rule (<i>1932 Const. Amendment</i>).</p> <p><i>Article XI</i></p> <p>* County home rule</p>	<p>* <i>See Title 17, Chapter 27a</i> – granting counties general land use authority necessary for health, safety, welfare <i>etc</i> (cited by Emery County O&G Ordinance).</p>
West Virginia	No	<p><i>Article VI, Section 39a</i></p> <p>* Granting municipal home rule authority (charters must be consistent with state law).</p>	<p>* <i>Northeast v. City of Morgantown</i> (Aug. 12, 2011 Circuit Court) (home rule authority used to ban drilling within (and 1 mile outside) city limits preempted by state statutory and regulatory scheme over oil and gas drilling).</p> <p>* No county home rule authority</p>

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Wyoming	No	<p><i>Article 13, Section 1</i></p> <ul style="list-style-type: none"> * cities and towns empowered to determine local affairs by ordinance, subject to statutes uniformly applicable to all cities and towns. * powers and authority granted to cities and towns shall be liberally construed to give the largest measure of self-government. 	* No county home rule authority