

ON THE BUBBLE: WHAT HAPPENS TO AN ILLINOIS HOME RULE MUNICIPALITY WHEN ITS POPULATION DROPS BELOW 25,001?

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This article summarizes the home rule powers granted by the Illinois Constitution and the process municipalities must follow when their populations fall below the more-than-25,000-person threshold required to automatically retain home rule. In these instances, continuation of home rule must be approved by referendum. The results show that there have been 12 instances over four census cycles in which municipal populations have dropped below the threshold. In two cases—Villa Park and Westmont—the municipalities subsequently lost their home rule authority. In the upcoming 2020 U.S. Census, several more municipalities may be on the bubble for home rule retention.

In accordance with U.S. constitutional requirements, the federal government will conduct a national census in 2020. There has been much discussion about the implications of count accuracy, as the enumeration will be used to reapportion congressional district boundaries and affect population-based federal funding distribution formulas. There are also implications at the state level in Illinois, as the census numbers will be used to reconfigure and set state house and senate legislative districts for the next decade.

Illinois' 2018 gubernatorial election featured debates regarding the rate at which people are moving out of the state, placing additional significance on the 2020 U.S. Census. One key area in which Illinois municipalities could be affected relates to home rule powers. This article summarizes the home rule powers granted by the Illinois Constitution, reviews past census outcomes since home rule powers were granted to municipalities, and offers a conservative projection of which municipalities might be affected directly or are "on the bubble" of having their home rule powers affected by the 2020 U.S. Census based on population trends.

The Illinois Constitution of 1970 granted counties and municipalities the opportunity to enact home rule powers that had previously not been allowed. The enacting language was considered some of the broadest and farthest-reaching of any state at the time of its ratification (Banovetz, 2002). Article VII of the Illinois Constitution begins:

A County which has a chief executive officer elected by the electors of the county and any municipality which has a population of more than 25,000 are home rule units. Other municipalities may elect by referendum to become home rule units. Except as limited by this Section, a home rule unit may 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. (Ill. Const., art. VII, sec. 6a, 1970)

The constitution took effect on July 1, 1971, and at that time a total of 67 municipalities were automatically granted home rule authority by virtue of having populations of more than 25,000, based on the 1970 Census (Banovetz, 2002). As stated above, the Illinois Constitution included a provision that allows municipalities with populations below 25,001 to obtain home rule powers via voter referenda. Since 1971, many municipalities have gained home rule powers through voters' approval. Notably, 49 gained these powers between 2000 and 2010 alone (Kearney, 2016).

Also included in the Illinois Constitution is a provision that "A home rule unit by referendum may elect not to be a home rule unit" (Ill. Const., art. VII, sec. 6b, 1970). Since 1971, five municipalities that once had home rule authority have had that power rescinded by their voters: a) Lisle in 1977, b) Villa Park in 1980, c) Lombard in 1981, d) Rockford in 1983, and e) Westmont in 2012. Other groups of residents have unsuccessfully attempted to remove a municipality's home rule powers through referenda, most recently in the City of Batavia in November of 2018, where residents voted more than 3:1 to allow the city to retain its powers (Hitzeman, 2018).

Once a municipality gains home rule power via referendum, those powers remain unless removed through a subsequent referendum by its residents, no matter the population of the municipality. This is not the case for municipalities gaining home rule powers through population as deemed by census numbers, specifically by exceeding the 25,000-person floor outlined in the constitution.

Municipalities that have gained home rule powers by meeting the population floor in a previous census are at risk of losing those powers in a subsequent census if their populations drop below 25,001 individuals. The upcoming 2020 Census, together with concerns about the number of individuals who have left Illinois in recent years, may put a variety of municipalities at risk of losing their home rule powers.

WHAT ARE HOME RULE POWERS?

Why is home rule authority important to municipalities? The Illinois Constitution sets out four specific areas in which a municipality can act in its own right through majority approval of its city council or village board, as long as state law has not specifically prohibited the action. These four areas include the power to a) regulate, b) license, c) tax, and d) incur debt. A later clause in the constitution states that “powers and functions of home rule units shall be construed liberally” (Ill. Const., art. VII, sec. 6m, 1970). Kearney (2014) points out that it may be easier to understand the breadth of home rule power by looking at the absence of such powers. Without home rule, “a municipality has, and can, exercise only those powers which the state grants to it” (p. 39–40). Essentially, a home rule municipality can act within the four constitutionally designated areas in instances where the state law is silent or at least non-restricted.

As an example of the regulatory authority provided, a home rule municipality could choose to restrict the use of plastic shopping bags by passing an ordinance prohibiting their use within that municipality’s jurisdiction, as was done in Evanston in 2014. The ordinance, which took effect on August 1, 2015, prohibited individual stores with floor space exceeding 10,000 square feet from providing a disposable plastic bag to any customer (Evanston Ordinance 66-0-14, 2014). The Evanston ordinance references the “liberally construed” clause of the Illinois Constitution, as well as a 1992 court case (*Scadron v. City of Des Plaines*) as justification for its regulatory authority in this matter. Also, in *Scadron v. City of Des Plaines* (1992), a case regarding sign ordinances, the Illinois Supreme Court ruled that a municipality could choose to have stricter ordinances than the State of Illinois. The decision states:

Home rule units may exercise and perform concurrently with the State any power or function of a home rule unit to the extent that the General Assembly by law does not specifically limit the concurrent exercise or specifically declare the State’s exercise to be exclusive.

The second specified area where home rule is referenced in the Illinois Constitution concerns licensure. Home rule municipalities have the power to require that particular operations or businesses within their jurisdiction obtain a license from the municipality to engage in the said operation. One example of this power would be the requirement for a mobile food truck operator to obtain a license to operate within that municipality's boundaries, as has been required by the City of Chicago (Chicago City Code, Chapter 4-8-036). Traditionally, licensure goes hand-in-hand with a home rule municipality's regulatory powers, as the granting of a license generally requires the operator to comply with specific regulations and potential inspections to obtain and maintain the license. A home rule municipality's licensing powers are broad, with two exceptions. The first exception is in instances where the state has specifically reserved exclusive power to license, such as the granting of licenses to operate a hospital. The second exception spelled out in the constitution is that a home rule municipality cannot "license for revenue" (Ill. Const., art. VII, sec. 6e2, 1970).

Taxation is the third area of home rule power specifically enumerated in the Illinois Constitution. Some might argue that it is this area that provides home rule municipalities the greatest flexibility in governing their own affairs. There are countless examples wherein home rule municipalities have created and collected specific taxes with this power. Three general taxes are discussed below, beginning with sales tax. A home rule municipality may charge an additional sales tax in excess of the rate available to non-home rule municipalities in increments of .25% at a time (65 ILCS 5/8-11-6). At the time of this writing, the required Illinois state sales tax was 6.25%. Of this percentage, all municipalities, home rule or not, receive 1% of the sales taxes collected within their jurisdictions. Home rule municipalities can introduce additional sales taxes. The City of Chicago (1.25%), the Village of Schaumburg (1%), the City of Naperville (0.75%), the City of Springfield (2.5%), and others have done so.

A second area of taxation relates to real estate or property taxes. Home rule municipalities are not limited in the rate of property tax assessed within their jurisdiction (Moss, 2005). Unlike non-home rule municipalities in Illinois, this authority allows home rule municipalities to alter their property tax rates without having to go to referendum. A third example commonly implemented by home rule municipalities is the hotel/motel tax. Home rule municipalities have the power to enact an additional tax on hotel and motel rooms rented within their jurisdiction above the state's required 6% tax on lodging.

In addition to allowing or prohibiting home rule municipalities the power to tax in certain areas, the state also has the authority to differentiate powers among home rule units of government themselves. Such was the case with the controversial sugary beverage tax that Cook County enacted in August 2017. State law allows home rule units of government with populations greater than 1 million people the power to tax bottled soft drinks (65 ILCS 5/8-11-6b). While this tax was enacted by Cook County, it is also a power available to the City of Chicago because its population exceeds the million-person threshold; this power is not afforded to home rule municipalities or counties with lower populations. With that said, public backlash against the Cook County sugary beverage tax was so heavy that it forced the county to repeal the tax just a few months after it was enacted in December 2017 (Bomey, 2017).

The fourth and final specific area granted to home rule units of government by the Illinois Constitution is the ability to incur debt. The only restriction provided by the constitution is that “a home rule unit does not have the power to incur debt payable from *ad valorem* property tax receipts maturing more than 40 years from the time it is incurred” (Ill. Const., art. VII, sec. 6d, 1970). In contrast, non-home rule units of government usually must seek approval of the voters through referendum to incur debt.

Considering the breadth of the powers described above, one can understand the concerns of municipal leaders about the potential loss of such authority. While previous research has looked at the cases in Illinois where home rule status was questioned via referendum due to citizen pressure (Banovetz, 2002; Kearney, 2016), there is a gap in the literature regarding what happens when a municipality’s population drops below the more-than-25,000 thousand as deemed by census counts. The following section discusses the 12 cases in Illinois history when this has occurred since the ratification of the 1970 Constitution.

REVIEW OF PAST CENSUS IMPACTS ON HOME RULE

A municipality that gained their home rule powers via exceeding the 25,000-individual threshold in a previous census, could be at risk of losing those powers in a future census. If a municipality’s population drops below the more-than-25,000-individual threshold after a census, the municipality must put the question of maintaining its home rule powers on the ballot for its voters in order to retain home rule authority. Since the ratification of the Illinois Constitution of 1970, there have been four federally mandated censuses that

could have impacted municipalities' home rule powers through population loss: the censuses of 1980, 1990, 2000, and 2010. The 2020 Census will be the fifth.

The population dropped below the more-than-25,000-individual threshold in seven municipalities following the 1980 Census: Dolton, Elmwood Park, Evergreen Park, Morton Grove, Rantoul, South Holland, and Villa Park. Evergreen Park and Rantoul's ballot questions were stated in affirmative language, such as "Shall X municipality continue to remain a home rule unit?" In the March 16, 1982, election in Evergreen Park, the vote totals were 3,647 for and 382 against home rule retention (Hardy, 1982). In Rantoul's November 2, 1982, election, the vote totals were 2,069 for and 397 against retention (Champaign County Clerk, 1982). Both retained home rule powers.

Dolton and South Holland voted to maintain home rule authority as well, but the ballot language was stated in the negative, such as, "Shall X municipality cease to remain a home rule unit?" South Holland voted 555 for and 4,628 against rescinding home rule on November 3, 1981 ("Suburban Voters Reject," 1981). Dolton residents voted to retain home rule powers ("Surprise OK Voted," 1981), but specific vote totals were not available from the Cook County Clerk's Office or the Village of Dolton.

The situations in Elmwood Park, Morton Grove, and Villa Park require a bit more discussion. In the late 1970s, citizen groups, such as National Taxpayers United of Illinois (NTUI), advocated heavily against increased taxes and specifically targeted home rule municipalities' taxation powers. In their advocacy efforts, they labeled home rule powers as "home ruin" and energized many citizens to lead initiatives to place questions of whether municipalities should cease to retain home rule powers on the local ballots (Gorman, 1979).

Partially as a result, in Elmwood Park and Morton Grove, the ballot question appeared in the election on March 18, 1980, *prior* to the release of the official 1980 Census figures. Elmwood Park was successful in retaining home rule powers by a vote of 4,976 to 1,947. Morton Grove was also successful by a vote of 5,863 to 2,031 ("Elmwood Pk., Morton Grove," 1980). When the numbers from the 1980 Census became available, both municipalities had indeed dropped below the more-than-25,000-person threshold. Anticipating this, Illinois State Representatives Elmer Conti, a Republican who represented Elmwood Park, and Aaron Jaffe, a Democrat who represented Skokie and Morton Grove, sponsored legislation in the Illinois General Assembly creating a clause that if

a municipality had held a referendum on the question of the retention of home rule powers within two calendar years of the determination of its population to be 25,000 or less, it could continue to have home rule powers without a subsequent referendum at that time (65 ILCS 5/1-1-9). Thus, Elmwood Park and Morton Grove were able to maintain home rule authority without having to go back to the public to ask the question again after the 1980 Census.

In Villa Park, the NTUI and citizens groups attempted to get the question of home rule retention on the ballot for the November 1980 election but did not deliver the petition in time to the village clerk. The group was successful in getting the referendum scheduled for the election in April 1981. Prior to this election, the census numbers indicated that Villa Park's population had fallen below 25,000. Voters were successful in abolishing home rule powers during that April election, although specific vote totals could not be obtained from the DuPage County Clerk's Office or the Village of Villa Park (Northern Illinois University, 2001).

With the release of the 1990 Census results, only one municipality, Park Forest, dropped below the population threshold. Park Forest successfully retained home rule powers in the March 17, 1992, referendum, with 3,671 voting in favor and 1,046 voting against ("Referendums," 1992). As a result of the 2000 Census, no additional Illinois municipalities dropped below the threshold.

On the other hand, with the release of the 2010 Census results, six municipalities dropped below the population threshold: Dolton, Edwardsville, Elmwood Park, Homer Glen, Maywood, and Westmont. Dolton and Elmwood Park were not required to hold a subsequent referendums, as both municipalities had held referendums in 1980 in which a majority voted in favor of maintaining home rule powers. Edwardsville and Homer Glen asked the referendum question in affirmative language, such as "Shall X municipality continue to be a home rule unit?" Edwardsville voted 9,362 in favor and 1,353 against on November 6, 2012. In Homer Glen, 8,368 voted in favor and 2,885 against in the election on November 6, 2012 (Jenco, 2012). Both municipalities easily retained home rule powers as well.

Maywood asked the question in the negative. On November 6, 2012, 1,046 voted in favor and 3,671 voted against the measure (Cook County Clerk, 2012). Westmont also asked the question in the negative but was unsuccessful in maintaining its home rule powers when on the same day, 4,560 residents voted

in favor of removing home rule powers and 4,314 voted against their removal (DuPage County Election Commission, 2012).

TABLE 1

ILLINOIS MUNICIPALITIES THAT DROPPED BELOW 25,000 PERSONS, 1980–2010

CENSUS YEAR	MUNICIPALITY	REFERENDUM DATE	BALLOT LANGUAGE	VOTES FOR	VOTES AGAINST	HOME RULE RESCINDED
1980	Dolton	11/3/81	N	U	U	
1980	Elmwood Park	3/18/80	U	4,976	1,947	
1980	Evergreen Park	3/16/82	A	3,647	382	
1980	Morton Grove	3/18/80	N	2,031	5,863	
1980	Rantoul	11/2/82	A	2,069	397	
1980	South Holland	11/3/81	N	555	4,628	
1980	Villa Park	April 1981	U	U	U	Y
1990	Park Forest	3/17/92	A	3,671	1,046	
2010	Edwardsville	11/6/12	A	9,362	1,353	
2010	Homer Glen	11/6/12	A	8,368	2,885	
2010	Maywood	11/6/12	N	3,458	5,128	
2010	Westmont	11/6/12	N	4,560	4,314	Y

N=Negative; A=Affirmative; U=Unavailable

As the above 12 unique cases over the past 40 years show, on only two occasions—in Villa Park in 1981 and in Westmont in 2012—did a municipality lose its home rule powers when the census figures dropped below the more-than-25,000 population threshold (Table 1). As previously noted, ballot language could not be confirmed by either the county clerk's office or the municipality itself in two cases, Dolton and Villa Park. In the 10 remaining cases, five municipalities asked the referendum question in the affirmative, and each was successful in retaining their home rule powers. Of the five municipalities that asked the question in the negative, four were successful in maintaining home rule powers, with the exception being Westmont.

2020 CENSUS PROJECTIONS

Over the last several years, there has been much discussion (particularly during the 2018 Illinois gubernatorial race) about Illinois' loss of population, in part, due to the out-migration of residents (Lauterbach, 2018). The population loss has been considerable enough that Illinois may lose one or two congressional seats (Morgan, 2019). This raises an important question: Which municipalities that currently have home rule powers may fall below the more-than-25,000-person threshold in the next census enumeration?

To answer this question, the authors created a conservative projection based on existing U.S. Census Bureau data of population estimates for Illinois municipalities and statewide population estimates through 2018. Based on the statewide population estimates for each year from 2010 through 2018, the authors fit a trend line which projects statewide estimates through 2020. This model projects an annual state population loss of a .097% decrease per annum for 2019 and 2020. The statewide rate of population loss was applied to the 2018 U.S. Census Bureau's population estimates for individual Illinois municipalities to project which municipalities' populations might drop below the threshold or teeter on the bubble should statewide population continue to drop at the projected rate of .097% per year.

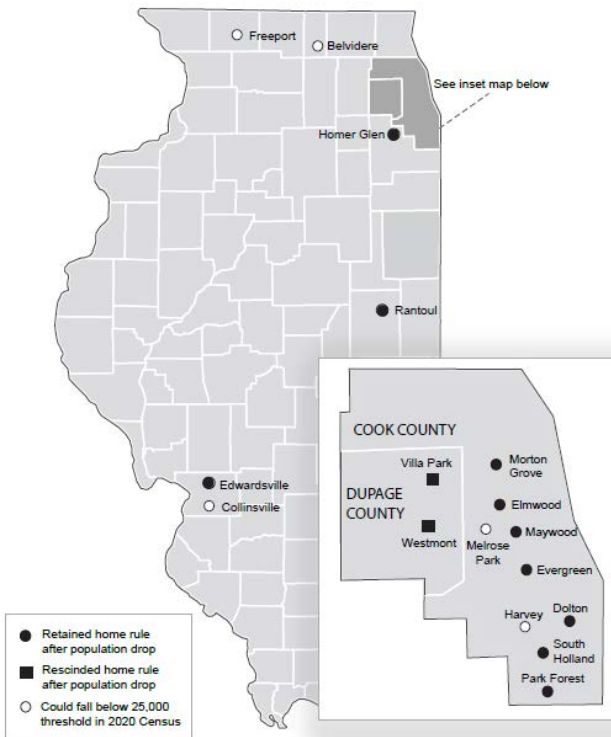
The analysis suggests that the communities of Collinsville, Freeport, Harvey, and Melrose Park may drop below the home rule threshold. Collinsville, which had a population of 25,579 in 2010 and an estimated population of 24,621 in 2018, is projected to have a population of 24,573 in 2020 based on our analysis. Freeport, which had a population of 25,638 in 2010 and an estimated population of 23,920 in 2018, is projected to have a population of 23,873 in 2020. Harvey,

which had a population of 25,282 in 2010 and an estimated population of 24,641 in 2018, is projected to have a population of 24,593 in 2020. Melrose Park, which had a population of 25,411 in 2010 and an estimated population of 24,925 in 2018, is projected to have a population of 24,876 in 2020. These were the only four municipalities identified as being at risk (Table 2).

Two other municipalities were predicted to be on the bubble by having populations just *above* 25,000—this pair, as well as all other municipalities potentially affected by the more-than-25,000 population threshold for home rule are shown in Figure 1. Belvidere, which had a population of 25,585 in 2010 and 25,194 in 2018, is projected to have a population of 25,145 in 2020. Carbondale, which had a population of 25,902 in 2010 and 25,376 in 2018, is projected to have 25,326 people in 2020. Even a small increase in the outflow of residents could put these communities at risk of falling below the threshold.

FIGURE 1

MUNICIPALITIES IN ILLINOIS AFFECTED OR POTENTIALLY AFFECTED BY THE MORE-THAN-25,000-PERSON POPULATION THRESHOLD FOR HOME RULE



Some argue that Illinois’ population loss has accelerated in the past few years. A less conservative projection looked at the statewide population loss from 2016 to 2018, which provided an average statewide loss of 0.335%, then projected this data on municipalities for 2019 and 2020. This less conservative projection placed one additional municipality “on the bubble.” Kankakee, which had a population of 27,537 in 2010 and an estimated population of 26,052 in 2018, is projected to drop to 25,877 in 2020 under this calculation.

TABLE 2

MUNICIPALITIES “ON THE BUBBLE” AFTER 2020 CENSUS

MUNICIPALITY	2010 CENSUS POPULATION	2018 CENSUS POPULATION ESTIMATE	2020 CENSUS PROJECTION
Belvidere	25,585	25,194	25,145
Carbondale	25,902	25,376	25,326
Collinsville	25,579	24,621	24,573
Freeport	25,638	23,920	23,873
Harvey	25,282	24,641	24,593
Kankakee	27,537	26,052*	25,206*
Melrose Park	25,411	24,925	24,876

**Uses less conservative projection calculation*

If Illinois does not reverse its trend of population loss, it could place additional communities at risk in the 2030 Census. Using the 2016–2018 average state population loss of 0.335% and projecting that trend out to 2030, three communities could be at risk. Alton, which had an estimated population of 26,528 in 2018, is projected to have a population of 25,481 in 2030. East St. Louis, which had an estimated population of 26,346 in 2018, is projected to have a population of 25,306 in 2030. Finally, West Chicago, which had an estimated population of 27,045 in 2018, is projected to have a population of 25,977 in 2030.

The news is not negative for all communities, as some have bucked the trend of population loss and actually grown their populations in recent years. Woodstock, which had a population of 24,770 in 2010 and an estimated population of 25,268 in 2018, has seen yearly growth of an average of 0.27% between 2016 and 2018. Woodstock gained home rule powers in 2016 by conducting a special census. Lockport, which had a population of 24,839 in 2010 and an estimated population of 25,508 in 2018, has seen growth at an average of 0.65% between 2016 and 2018. Lockport gained home rule powers through a special census conducted in 2017. The good news for these communities is that, even using the conservative statewide loss projections for 2020, both communities are projected to stay above the home rule population threshold and not be subject to the required referendum.

Although four municipalities are predicted to drop below the constitutional population threshold, the loss of home rule authority, of course, is not guaranteed. Rather, if this occurs, the issue will be left to the will of the voters through referendum. It may give some comfort to municipal leaders to know that since the ratification of the Constitution of 1970 in Illinois, which originally granted home rule powers to municipalities, there have only been 12 instances over four census counts in which municipal populations dropped below the constitutional threshold. Moreover, in only two cases—Villa Park and Westmont—has an Illinois municipality subsequently lost its home rule authority in the wake of a population drop.

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