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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

PAUL LAWSON,

Petitioner,

vs.

CITY OF PASCO, a municipal corporation,

Respondent.

PETITION FOR REVIEW

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TABLE OF CONTENTS

	<u>Page</u>
Table of Authorities	ii-iv
A. IDENTITY OF PETITIONER.....	1
B. COURT OF APPEALS.....	1
C. ISSUES PRESENTED FOR REVIEW	1
D. STATEMENT OF THE CASE.....	2
E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED.....	3
(1) <u>Article XI, § 11 of the Washington Constitution and Pasco’s Ordinance</u>	6
(2) <u>The MHLTA Occupies the Field of Mobile Home Landlord-Tenant Relations, Preempting Pasco’s Ban on Tenants Living Permanently in Recreational Vehicles under Article XI, § 11</u>	7
(3) <u>Pasco’s Ban on Tenants Living Permanently in Recreational Vehicles Conflicts with the MHLTA’s Specific Authorization of Park Models, Violating Article XI, § 11 of the Washington Constitution</u>	12
F. CONCLUSION.....	17
Appendix	

TABLE OF AUTHORITIES

	<u>Page</u>
<u>Table of Cases</u>	
<u>Washington Cases</u>	
<i>Biggers v. City of Bainbridge Island</i> , 162 Wn.2d 683, 169 P.3d 14 (2007).....	15
<i>Brown v. City of Yakima</i> , 116 Wn.2d 556, 807 P.2d 353 (1991).....	7
<i>City of Bellingham v. Schampera</i> , 57 Wn.2d 106, 356 P.2d 292 (1960).....	8, 14
<i>City of Tacoma v. Luvene</i> , 118 Wn.2d 826, 827 P.2d 1374 (1992).....	7, 14
<i>Duckworth v. City of Bonney Lake</i> , 91 Wn.2d 19, 586 P.2d 860 (1978).....	17
<i>Edmonds Shopping Ctr. Assocs. v. City of Edmonds</i> , 117 Wn. App. 344, 71 P.3d 233 (2003).....	16
<i>Guimont v. City of Seattle</i> , 77 Wn. App. 74, 896 P.2d 70, review denied, 127 Wn.2d 1023 (1995).....	7
<i>Hartson P’ship v. Martinez</i> , 123 Wn. App. 36, 196 P.3d 449, review denied, 154 Wn.2d 1010 (2004).....	18
<i>HJS Dev., Inc. v. Pierce County</i> , 148 Wn.2d 451, 61 P.3d 1141 (2003).....	8
<i>Holiday Resort Cmty. Ass’n v. Echo Lake Assocs. LLC</i> , 134 Wn. App. 210, 135 P.3d 499 (2006), review denied, 160 Wn.2d 1019 (2007).....	12
<i>Housing Authority of the City of Pasco & Franklin County v. City of Pasco</i> , 120 Wn. App. 839, 86 P.3d 1217 (2004).....	16
<i>Lenci v. City of Seattle</i> , 63 Wn.2d 664, 388 P.2d 926 (1964).....	8
<i>McGahuey v. Hwang</i> , 104 Wn. App. 176, 15 P.3d 672, review denied, 144 Wn.2d 1004 (2001).....	18
<i>Parkland Light & Water Co. v. Tacoma-Pierce County Bd. of Health</i> , 151 Wn.2d 428, 90 P.3d 37 (2004).....	15
<i>Snohomish County v. Thompson</i> , 19 Wn. App. 768, 577 P.2d 627 (1977), review denied, 91 Wn.2d 1006 (1978).....	9

<i>Weden v. San Juan County</i> , 135 Wn.2d 678, 958 P.2d 273 (1998).....	14
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Constitution

United States Const., art. I, §10	4
Wash. Const., art. I, § 23.....	4
Wash. Const., art. XI, § 11.....	<i>passim</i>

Statutes and Ordinances

Laws of 2008, ch. 116, § 1(1).....	6, 9
RCW 35.21.684	9, 17
RCW 35A.21.312.....	9, 17
RCW 36.01.225	9, 17
RCW 43.22.340	9
RCW 43.22.410	9
RCW 57.08.012	15
RCW 59.12	10
RCW 59.20	1
RCW 59.20.030(5).....	13
RCW 59.20.030(9).....	11, 13
RCW 59.20.040	7, 10, 11, 13
RCW 59.20.050	10, 12
RCW 59.20.070	10
RCW 59.20.070(7).....	14
RCW 59.20.080	<i>passim</i>
RCW 59.20.080(1).....	10
RCW 59.20.080(1)(d).....	10
RCW 59.20.090	10, 12
RCW 59.20.110	18
RCW 59.20.130	11
RCW 59.20.130(1).....	10
RCW 59.22.050	9
RCW 59.30	10
RCW 59.30.050	9
RCW 59.30.060	9
PMC § 25.40.060.....	13

Rules and Regulations

RAP 13.4(b)3
RAP 13.4(b)(1-3)4, 17, 18
RAP 13.4(b)(4)6, 17

Other Authorities

J. Royce Fichtner, *The Iowa Mobile Home Park
Landlord-Tenant Relationship: Present Eviction
Procedures and Needed Reforms,*
53 Drake L. Rev. 181 (2004)17

A. IDENTITY OF PETITIONER

Paul Lawson, the plaintiff in the trial court and the appellant in the Court of Appeals, asks this Court to review the decision of the Court of Appeals identified in Part B of this petition.

B. COURT OF APPEALS

The decision of the Court of Appeals, Division III, terminating review herein, was filed on April 24, 2008. A copy of the opinion is in the Appendix at pages A-1 through A-13.

C. ISSUES PRESENTED FOR REVIEW

1. Has the Mobile/Manufactured Home Landlord Tenant Act, RCW 59.20 (MHLTA), as well as other state laws on mobile homes, so occupied the field of mobile home landlord-tenant relations as to preempt under article XI, § 11 of the Washington Constitution the enactment by the City of Pasco of an ordinance banning persons residing permanently in recreational vehicles in mobile home parks?

2. Does Pasco's ordinance banning persons residing permanently in recreational vehicles in mobile home parks conflict with the MHLTA that permits persons to reside permanently in recreational vehicles in such parks, and is thereby preempted by article XI, § 11 of the Washington Constitution?

D. STATEMENT OF THE CASE

The Court of Appeals opinion addresses the facts in this case, but several facts bear emphasis. Paul Lawson operates a mobile home park within the City of Pasco (Pasco) a park that has had mobile homes since the 1980s. CP 50-51. One tenant, Tye Gimmell, resided permanently in the park in his recreational vehicle which was affixed to a lot in the park. CP 56.

On January 23, 2006, Pasco issued a "correction notice" to Lawson. CP 98. The notice stated that Lawson violated the Pasco Municipal Code by allowing tenants to occupy recreational vehicles as primary residences within his park. CP 98. The notice directed Lawson to remove the recreational vehicles from his park. CP 98.

After the issuance of the notice, Lawson advised Pasco that state law did not allow him to discriminate against persons residing permanently in his park in recreational vehicles. CP 105-06. Lawson contended that state law superseded the Pasco Municipal Code, and thus, the Pasco Municipal Code could not be applied to prevent a tenant from occupying a recreational vehicle as a primary residence in the park. CP 105-06.

On May 4, 2006, Pasco's code enforcement board conducted a hearing on the correction notice issued to Lawson. CP 43. During the

hearing, Gimmell testified that his recreational vehicle was his permanent residence. CP 56. He had a written lease agreement with Lawson which would run for one year, but was renewable unless Lawson had good cause under RCW 59.20.080 to terminate the lease. CP 54. Nevertheless, the board upheld the correction notice and directed Lawson to immediately evict any tenants occupying recreational vehicles as primary residences from his park.¹

Lawson filed a LUPA appeal to the Franklin County Superior Court. The case was assigned to the Honorable Cameron Mitchell, who ruled that Pasco's ordinance banning tenants' occupation of recreational vehicles as primary residences in mobile home parks was unconstitutional under article XI, § 11 of the Washington Constitution because it conflicted with the MHLTA. *See Appendix.*

In a published opinion, the Court of Appeals, Division III, reversed the trial court's decision and reinstated Pasco's code enforcement board's ruling on the correction notice against Lawson.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

As this Court well knows, whether to grant review of decisions of the Court of Appeals is governed by the criteria set forth in RAP 13.4(b).

¹ To the extent Pasco's ordinance requires the immediate eviction of persons with valid leases, Pasco's action constitutes an impairment of a valid, enforceable lease

While the Court of Appeals generally discussed the authorities arising under article XI, § 11 of the Washington Constitution on both field preemption and conflict preemption, the court's published opinion omits analysis of a key legislative provision evidencing the Legislature's intent by the enactment of the MHLTA to occupy the field of mobile home landlord-tenant relations. The court's opinion did not address other statutes indicating a legislative intent to occupy the field of mobile home regulation. The court also failed to reference some of this Court's and the Court of Appeals' recent decisions on preemption under article XI, § 11. Review is merited under RAP 13.4(b)(1-3).

Additionally, the *preservation* of mobile home tenancies is an issue of substantial public importance as the Legislature found in its 2008 session:

(a) Manufactured/mobile home communities provide a significant source of homeownership opportunities for Washington residents. However, the increasing closure and conversion of manufactured/mobile home communities to other uses, combined with increasing mobile home lot rents, low vacancy rates in existing manufactured/mobile home communities, and the extremely high cost of moving homes when manufactured/mobile home communities close, increasingly make manufactured/mobile home community living insecure for manufactured/mobile home tenants.

contracts under article I, § 10 of the United States Constitution and article I, § 23 of the Washington Constitution.

(b) Many tenants who reside in manufactured/mobile home communities are low-income households and senior citizens and are, therefore, those residents most in need of reasonable security in the siting of their manufactured/mobile homes because of the adverse impacts on the health, safety, and welfare of tenants forced to move due to closure, change of use, or discontinuance of manufactured/mobile home communities.

(c) The preservation of manufactured/mobile home communities:

(i) Is a more economical alternative than providing new replacement housing units for tenants who are displaced from closing manufactured/mobile home communities;

(ii) Is a strategy by which all local governments can meet the affordable housing needs of their residents;

(iii) Is a strategy by which local governments planning under RCW 36.70A.040 may meet the housing element of their comprehensive plans as it relates to the provision of housing affordable to all economic sectors; and

(iv) Should be a goal of all housing authorities and local governments.

(d) The loss of manufactured/mobile home communities should not result in a net loss of affordable housing, thus compromising the ability of local governments to meet the affordable housing needs of its residents and the ability of these local governments planning under RCW 36.70A.040 to meet affordable housing goals under chapter 36.70A RCW.

(e) The closure of manufactured/mobile home communities has serious environmental, safety, and financial impacts, including:

(i) Homes that cannot be moved to other locations add to Washington's landfills;

(ii) Homes that are abandoned might attract crime; and

(iii) Vacant homes that will not be reoccupied need to be tested for asbestos and lead, and these toxic materials need to be removed prior to demolition.

(f) The self-governance aspect of tenants owning manufactured/mobile home communities results in a lesser usage of police resources as tenants experience fewer societal conflicts when they own the real estate as well as their homes.

(g) Housing authorities, by their creation and purpose, are the public body corporate and politic of the city or county responsible for addressing the availability of safe and sanitary dwelling accommodations available to persons of low income, senior citizens, and others.

Laws of 2008, ch. 116, § 1(1).

The Court of Appeals' decision will have a profound effect on mobile home tenancies and will encourage municipalities across Washington to enact ordinances like Pasco's effectively evicting hundreds of low income tenants from mobile home parks, *contrary* to the Legislature's express policy from the 2008 session. This is an issue of substantial public interest that should be determined by this Court. RAP 13.4(b)(4).

(1) Article XI, § 11 of the Washington Constitution and Pasco's Ordinance

Washington's Constitution authorizes local governments to exercise their police power unless the local enactment intrudes upon an

area that is exclusively within the state's responsibility or the local ordinance conflicts with state statutes. *Brown v. City of Yakima*, 116 Wn.2d 556, 559, 807 P.2d 353 (1991); *City of Tacoma v. Luvene*, 118 Wn.2d 826, 833, 827 P.2d 1374 (1992). Article XI, § 11 states:

Any county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws.

The Pasco ordinance at issue in this case fails under either aspect of the test for article XI, § 11 – field preemption or conflict preemption.²

(2) The MHLTA Occupies the Field of Mobile Home Landlord-Tenant Relations, Preempting Pasco's Ban on Tenants Living Permanently in Recreational Vehicles under Article XI, § 11

The Court of Appeals analyzed field preemption in its decision, and concluded that the MHLTA did not preempt the field of mobile home landlord-tenant relations because the MHLTA contemplated some concurrent local action on mobile homes. Op. at 5-8. The court's analysis is too narrow and omits analysis of a key statute, RCW 59.20.040, that evidences a contrary intent.

² Lawson anticipates that Pasco will argue that *Guimont v. City of Seattle*, 77 Wn. App. 74, 896 P.2d 70, review denied, 127 Wn.2d 1023 (1995) upheld an ordinance excluding recreational vehicles from the definition of mobile homes, and barring such vehicles in mobile home parks. The parties in *Guimont* principally focused on takings and substantive due process arguments. Preemption was not argued there. Moreover, Seattle "grandfathered" the leases of existing tenants. *Id.* at 78. See n.1 *supra*.

A local ordinance fails under article XI, § 11 if it attempts to establish policy in an area where the State by necessary implication or expressly has indicated its intent to preempt the field. The Legislature may preempt the field by expressly stating its intent to do so. Thus, as early as *City of Bellingham v. Schampera*, 57 Wn.2d 106, 356 P.2d 292 (1960), this Court held that while a city could enact an ordinance prohibiting and punishing the same acts as were punishable under state statute, *id.* at 108-12, a city could not provide for suspension of motor vehicle operators' licenses as a penalty because the state expressly preempted the field as to the issuance of motor vehicle licenses. *Id.* at 112-16.

Even in the absence of express preemption, however, field preemption occurs when the Legislature's intent to preempt the field may be gleaned from the purpose of the statute and the facts and circumstances upon which the Legislature intended its statutes to operate. *Lenci v. City of Seattle*, 63 Wn.2d 664, 669-70, 388 P.2d 926 (1964) (regulation of wrecking yards); *HJS Dev., Inc. v. Pierce County*, 148 Wn.2d 451, 477, 61 P.3d 1141 (2003).

In the present case, the Court of Appeals focused solely on the MHLTA provisions and did not consider the entire range of state activity in connection with mobile homes. For example, the State maintains an

office of manufactured housing, RCW 59.22.050, and mandates that mobile home parks in Washington register with the State. RCW 59.30.050. The State maintains a database of all mobile home parks. RCW 59.30.060. It provides some funding for the relocation of mobile home tenants upon sale of mobile home parks. Laws of 2008, ch. 116.

The State has specifically preempted the field of construction standards for mobile homes, recreational vehicles, and park trailers. RCW 43.22.410. *Snohomish County v. Thompson*, 19 Wn. App. 768, 577 P.2d 627 (1977), *review denied*, 91 Wn.2d 1006 (1978). Only the Department of Labor and Industries may prescribe such standards. RCW 43.22.340. In *Snohomish County*, the County attempted to establish more stringent mobile home standards and then only allowed such county-approved homes to be sited according to its zoning code. The Court of Appeals held such efforts were preempted.

The State has also preempted the field on local zoning ordinances designed to discriminate against mobile and manufactured homes. No municipality may enact zoning ordinances that discriminate against manufactured/mobile homes. RCW 35.21.684; RCW 35A.21.312; RCW 36.01.225. This policy was reinforced in the 2008 legislative session when the Legislature banned local ordinances forbidding the siting of mobile and manufactured homes of a certain age or size in mobile home

parks. This prevented local jurisdictions from banning single-wide trailers in mobile home parks. Senate Bill Report at 2. *See Appendix.*

The State further regulates the nature of mobile home tenancies. State law governs as to the length of a lease, RCW 59.20.050; RCW 59.20.090, prohibited acts by a landlord, RCW 59.20.070, and the grounds for just cause termination or nonrenewal of a tenant's lease. RCW 59.20.080. State law on unlawful detainer procedures, RCW 59.12, controls in the mobile home setting. RCW 59.20.040. If there are disputes over tenancies, the State provides dispute resolution. RCW 59.30. In sum, the State's interest generally in mobile homes is plain. By necessary implication, given the breadth of State involvement in mobile home matters, it has occupied the field.

Narrowly focusing on the MHLTA itself, the Court of Appeals concluded that certain provisions of the Act contemplate concurrent jurisdiction by local governments over aspects of the landlord-tenant relationship, citing RCW 59.20.080(1)(d) and RCW 59.20.130(1). Those statutes, however, contemplate concurrent local jurisdiction over matters of tenant misconduct justifying termination of lease such as for nonpayment of rent, criminal misconduct, maintenance of nuisances, health and safety violations (RCW 59.20.080(1)), and landlord compliance with local ordinances regarding public health and repair/maintenance

mandates (RCW 59.20.130). *None* of the provisions of RCW 59.20.080 or RCW 59.20.130 permit a local jurisdiction to discriminate against recreational vehicles permanently occupied as residences. These statutes do not confer concurrent jurisdiction over mobile home *tenancies*, as RCW 59.20.040 plainly states. Only State law controls mobile home tenancies.

RCW 59.20.040 carries preemptive effect in stating:

This chapter shall regulate and determine legal rights, remedies, and obligations arising from *any* rental agreement between a landlord and a tenant regarding a mobile home lot and including specified amenities within the mobile home park, mobile home park cooperative, or mobile home park subdivision, where the tenant has no ownership interest in the property or in the association which owns the property, whose uses are referred to as a part of the rent structure paid by the tenant. *All such rental agreements shall be unenforceable to the extent of any conflict with any provision of this chapter.*

(emphasis added). The Court of Appeals noted this statutory provision, as well as the definition of a “park model” in RCW 59.20.030(9), but did not analyze their scope. *Op.* at 6-7. Plainly, if a landlord were to exclude all park models in its lease agreement, RCW 59.20.040 would bar such a lease. Similarly, a municipality cannot by ordinance override what the MHLTA permits.

RCW 59.20.040 forecloses a local government from enacting an ordinance providing for landlord-tenant relationships different than the

relationships envisioned by the MHLTA. For example, such requirements as a one year duration to a lease (RCW 59.20.050), one year automatic lease renewals (RCW 59.20.090), or “just cause” before eviction (RCW 59.20.080) apply to *any* mobile home landlord-tenant agreement. *See generally, Holiday Resort Cmty. Ass’n v. Echo Lake Assocs. LLC*, 134 Wn. App. 210, 135 P.3d 499 (2006), *review denied*, 160 Wn.2d 1019 (2007). The Legislature occupied the field in enacting RCW 59.20. Pasco cannot adopt an ordinance purporting to independently define an “acceptable” mobile home tenancy.

(3) Pasco’s Ban on Tenants Living Permanently in Recreational Vehicles Conflicts with the MHLTA’s Specific Authorization of Park Models, Violating Article XI, § 11 of the Washington Constitution

The Court of Appeals considered the question of conflict preemption and concluded that Pasco’s ordinance banning tenants from occupying recreational vehicles as permanent residences does not irreconcilably conflict with the MHLTA, which authorizes such tenancies because “the Act does not, in the first instance, require a landlord to rent a mobile home park lot for placement of a recreational vehicle (park model) in any (or every) particular place in the state.” *Op.* at 11. The court’s analysis misses the point of park models under the MHLTA and does not address recent cases decided by this Court on conflict preemption.

The MHLTA *authorizes* tenancies involving “park models.” For purposes of the MHLTA, a park model is defined as “a recreational vehicle intended for permanent or semi-permanent installation and . . . used as a primary residence.” RCW 59.20.030(9). A mobile home lot is a portion of a mobile home park “designated as the location of one . . . park model and its accessory buildings, and intended for the exclusive use as a primary residence by the occupants of that . . . park model.” RCW 59.20.030(5). RCW 59.20.040 provides that the MHLTA determines the rights and duties arising out of any rental agreement involving a mobile home lot. Thus, it is plain that state law contemplates and allows park models on mobile home lots; the MHLTA regulates their lease.

By contrast, Pasco’s ordinance, PMC § 25.40.060, simply bans recreational vehicles in mobile home parks:

No recreational vehicle sites for occupancy purposes shall be permitted within any residential (mobile home) park.

Pasco forbids what state law allows by redefining what constitutes an “acceptable” tenancy in a mobile home park in Pasco.

Moreover, the upshot of Pasco’s ordinance is that tenants like Tye Gimmell will be evicted by operation of Pasco’s ordinance. Such an eviction is plainly contrary to RCW 59.20.080 which specifies the

circumstances under which eviction of a tenant may occur. RCW 59.20.070(7).

The essence of conflict preemption has been defined in Washington cases as “whether the ordinance permits or licenses that which the statute prohibits, and vice versa.” *Schampera*, 57 Wn.2d at 111. The conflict must be direct and irreconcilable, not subject to being harmonized. *Luvne*, 118 Wn.2d at 835.

The Court of Appeals does not cite a number of recent appellate decisions giving content to the constitutional test for conflict preemption under article XI, § 11. In *Weden v. San Juan County*, 135 Wn.2d 678, 958 P.2d 273 (1998), this Court upheld an ordinance banning motorized personal watercraft like jet skis as against a conflict preemption challenge. The Court held that the local ban on personal motorized watercraft in some waters was not in conflict with state law. The statutes cited by the challengers to the ordinance included a state vessel registration statute designed to raise revenue, the Shorelines Management Act, and the public trust doctrine. However, this Court noted the Legislature did not expressly address the question of *where* motorized craft could be operated in the state anywhere in those general statutory enactments. “There being no express statement nor words from which it could be fairly inferred that

motor boats are permitted on all waters of the state, no conflict exists and the ordinance is valid.” *Id.* at 694.

In *Parkland Light & Water Co. v. Tacoma-Pierce County Board of Health*, 151 Wn.2d 428, 90 P.3d 37 (2004), this Court addressed RCW 57.08.012, a statute giving water districts the power to control their water systems. The Tacoma-Pierce County Board of Health adopted a resolution mandating that all water providers in the County fluoridate their water. This Court held that the resolution was invalid under article XI, § 11 as the statute and the resolution irreconcilably conflict:

Essentially, the Board’s resolution is a local regulation that prohibits what state law permits: the ability of water districts to regulate the content and supply of their water systems expressly granted to them by statute. The resolution ordering fluoridation takes away any decision-making power from water districts with respect to the content of their water systems, and the express statutory authority granted to water districts pursuant to RCW 57.08.012 would be rendered meaningless. The purpose of the statute is to give water districts, not the Board, the authority over water fluoridation.

Id. at 433-34.

Most recently, in *Biggers v. City of Bainbridge Island*, 162 Wn.2d 683, 169 P.3d 14 (2007), this Court held that a city’s moratoria on private development in shoreline areas was in conflict with the state’s constitutional authority over shorelines, the public trust doctrine, and the state Shoreline Management Act. This Court concluded that the City’s

moratoria on processing applications irreconcilably conflicted with state law that required the processing of such applications; the City's ordinances prohibited what state law permits. *Id.* at 698.

The Court of Appeals has also addressed conflict resolution in other cases, arriving at a result different from that of the court below. *See, e.g., Edmonds Shopping Ctr. Assocs. v. City of Edmonds*, 117 Wn. App. 344, 71 P.3d 233 (2003) (ordinance providing for phasing out of existing cardrooms conflicted with statute allowing municipalities to ban cardrooms, but prohibiting any local change of scope of cardroom licenses); *Housing Authority of the City of Pasco & Franklin County v. City of Pasco*, 120 Wn. App. 839, 86 P.3d 1217 (2004) (city dissolved housing authority and created new housing authority jointly with county; ordinance conflicted with statute providing for deactivation of housing authorities).

The Court of Appeals decision here conflicts with the decisions of this Court and the Court of Appeals on conflict preemption. At its most basic, state law in the MHLTA *authorizes* tenancies for park models and regulates them under that Act; under the MHLTA, Mr. Lawson can choose to lease a space in his park to a park model tenant like Mr. Gimmell; under the MHLTA, an owner of a recreational vehicle like Mr. Gimmell can choose to live permanently in such a residence on a mobile home lot.

Under Pasco's ordinance, however, such a park model tenancy is prohibited. This is an irreconcilable conflict that cannot be harmonized. Pasco's ordinance must fail. Review is merited. RAP 13.4(b)(1-3).

F. CONCLUSION

This case presents an important issue for this Court to resolve. RAP 13.4(b)(4). The Court of Appeals published decision will prompt local governments, with a history of antipathy toward mobile and manufactured housing,³ to adopt similar ordinances in derogation of the MHLTA. Local governments will now pass ordinances like Pasco's displacing tenants permanently residing in recreational vehicles and travel trailers from their homes in mobile home parks, regardless of the fact that the MHLTA authorizes such tenancies. It will not matter how long the tenant has occupied the lot. The end result will be displaced tenants who must move to an RV park, which may have maximum occupancy time limits imposed by the local governments, and will be more expensive in many instances since RV parks charge daily and weekly rates for largely temporary residents.

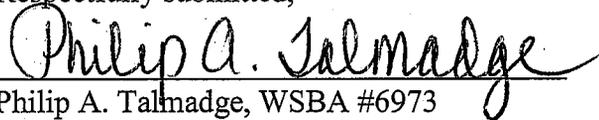
³ See, e.g., *Duckworth v. City of Bonney Lake*, 91 Wn.2d 19, 29, 586 P.2d 860 (1978) (city prohibited mobile homes in area zoned for single family residential; this Court observed that mobile homes in traditional neighborhoods could depress property values and were better confined to a "mobile home zone."). *Duckworth* is no longer good law in light of RCW 35.21.684, RCW 35A.21.312, and RCW 36.01.225. See generally, J. Royce Fichtner, *The Iowa Mobile Home Park Landlord-Tenant Relationship: Present Eviction Procedures and Needed Reforms*, 53 Drake L. Rev. 181, 191 (2004) (many local governments pass zoning ordinances severely restricting creation of mobile home parks).

Review is merited because the Court of Appeals' decision on the application of article XI, § 11 conflicts with decisions of this Court and the Court of Appeals. RAP 13.4(b)(1-3). Pasco's ordinance violates article XI, § 11 of the Washington Constitution, as the Legislature has occupied the field. Moreover, the irreconcilably ordinance conflicts with the MHLTA, which specifically allows park models.

This Court should reverse the Court of Appeals and reinstate the trial court's decision. Costs on appeal, including reasonable attorney fees,⁴ should be awarded to Lawson.

DATED this 21st day of May, 2008.

Respectfully submitted,



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⁴ RCW 59.20.110 authorizes the recovery of attorney fees in "any action arising out of [the MHLTA]." Landlords may recover fees *McGahuey v. Hwang*, 104 Wn. App. 176, 15 P.3d 672, *review denied*, 144 Wn.2d 1004 (2001); *Hartson P'ship v. Martinez*, 123 Wn. App. 36, 196 P.3d 449, *review denied*, 154 Wn.2d 1010 (2004).

APPENDIX

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

PAUL LAWSON,)	No. 25967-6-III
)	
Respondent,)	
)	
v.)	Division Three
)	
CITY OF PASCO,)	
)	
Appellant.)	PUBLISHED OPINION

Stephens, J.* — The City of Pasco appeals a Franklin County Superior Court order reversing a Code Enforcement Board determination that Paul Lawson violated a valid city ordinance by allowing placement of recreational vehicles in his residential mobile home park. The City contends the court erred in holding that the Manufactured/Mobile Home Landlord-Tenant Act, ch. 59.20 RCW, preempts the city ordinance and thus renders it invalid. We agree with the City and reverse the superior court's order.

The facts are undisputed. Pasco Municipal Code (PMC) § 25.40.060

* Justice Debra L. Stephens was a member of the Court of Appeals when this matter was heard. She is now serving as a judge pro tempore of the Court of Appeals pursuant to RCW 2.06.150.

No. 25967-6-III
Lawson v. City of Pasco

states, "No recreational vehicle sites for occupancy purposes shall be permitted within any residential park." Paul Lawson owns a residential park, i.e., a mobile home park, in Pasco in which at least one tenant (Tye Gimmell) lives in a recreational vehicle as his permanent residence. On January 23, 2006, the City issued Mr. Lawson a correction notice stating he was in violation of PMC § 25.40.060 by allowing recreational vehicles used as permanent residences to be placed within a residential park. The notice directed him to remove all recreational vehicles from the park.

Mr. Lawson admitted to being in violation of PMC § 25.40.060, but maintained to the City that state law—the Manufactured/Mobile Home Landlord-Tenant Act, ch. 59.20 RCW (the Act)—preempts the ordinance because it authorizes, if not requires, recreational vehicles used as a primary residence to be allowed in mobile home parks.

The matter proceeded to a hearing before the Code Enforcement Board on May 4, 2006. Mr. Lawson appeared only through counsel. Mr. Gimmell testified that his recreational vehicle (a 35-foot fifth wheel) situated in Mr. Lawson's mobile home park is his permanent residence. He said he has a one-year written lease agreement that is renewable unless Mr. Lawson has good cause to terminate it.

The Code Enforcement Board upheld the notice of violation and issued a

No. 25967-6-III
Lawson v. City of Pasco

written order directing Mr. Lawson to remove any recreational vehicles used as permanent residences from his mobile home park within 90 days, or face monetary penalties. Mr. Lawson then timely filed a Land Use Petition Act (LUPA) appeal to the superior court.

On February 23, 2007, the court entered an order reversing the Code Enforcement Board's order and vacating the notice of violation. The court reasoned:

The City of Pasco may not, by ordinance, preclude the use of a mobile home park space by a recreational vehicle, as long as the recreational vehicle is used as the permanent residence of the occupant. RCW 59.20 preempts any ordinance that bars the placement of a recreational vehicle on a mobile home park, as long as the recreational vehicle is used as the permanent residence of the occupant.

Clerk's Papers at 8-9. The City appeals.

REVIEW STANDARDS

Judicial relief from a land use decision may be granted when one of the following standards set forth in LUPA are met:

(b) The land use decision is an erroneous interpretation of the law, after allowing for such deference as is due the construction of a law by a local jurisdiction with expertise;

.....
(d) The land use decision is a clearly erroneous application of the law to the facts;

.....
(f) The land use decision violates the constitutional rights of the

No. 25967-6-III
Lawson v. City of Pasco

party seeking relief.

RCW 36.70C.130(1).

When reviewing a superior court's decision in a LUPA appeal, we stand in the same position as the superior court. See *HJS Dev., Inc. v. Pierce County*, 148 Wn.2d 451, 468, 61 P.3d 1141 (2003). We review administrative decisions on the record before the tribunal—here the Code Enforcement Board. *Id.* Questions of law are reviewed de novo to determine whether the Board's decision was supported by fact and law. *Id.*

The sole issue in this appeal is a legal one—whether chapter 59.20 RCW preempts the ordinance so as to render it an invalid exercise of local police power.¹

ANALYSIS

Article XI, section 11 of the state constitution provides that “[a]ny . . . city . . . may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws.” A municipality may thus enact an ordinance concerning the same subject matter as a state law provided that the state enactment is not intended to be exclusive and the ordinance does not conflict with the general law of the state. *King County v. Taxpayers*, 133

¹ The Code Enforcement Board decision did not involve construction of PMC § 25.40.060.

No. 25967-6-III
Lawson v. City of Pasco

Wn.2d 584, 611, 949 P.2d 1260 (1997), *cert. denied*, 523 U.S. 1076 (1998); *City of Tacoma v. Luvane*, 118 Wn.2d 826, 833, 827 P.2d 1374 (1992). An ordinance is unconstitutional only if the statute on the same subject preempts the field, leaving no room for concurrent jurisdiction; or, if a conflict exists between the two that cannot be harmonized. *Taxpayers*, 133 Wn.2d at 612; *Brown v. City of Yakima*, 116 Wn.2d 556, 559, 807 P.2d 353 (1991). Municipal ordinances are presumed constitutional and a challenger bears a heavy burden of showing otherwise. *Brown*, 116 Wn.2d at 559; *Hous. Auth. v. City of Pasco*, 120 Wn. App. 839, 86 P.3d 1217 (2004).

"Field" Preemption

Here, the superior court's ruling does not differentiate between "field" preemption and a "conflict" between the ordinance and the Act. Nor do the parties explicitly draw that distinction. In any case, preemption may be found when there is express legislative intent to preempt the field or such intent appears by necessary implication. *Brown*, 116 Wn.2d at 560. A statute will not be construed as taking away a municipality's power to legislate unless that intent is clearly and expressly stated. *State ex rel. Schillberg v. Everett Dist. Justice Court*, 92 Wn.2d 106, 108, 594 P.2d 448 (1979).

Examining the scheme of chapter 59.20 RCW, it is clear that, while the

legislature intends to act in the field of regulating mobile home park landlord-tenant relationships, it has not wholly preempted local action in this field.

First, RCW 59.20.040 provides:

This chapter shall regulate and determine legal rights, remedies, and obligations *arising from any rental agreement between a landlord and a tenant regarding a mobile home lot*. . . . All such rental agreements shall be unenforceable to the extent of any conflict with any provision of this chapter.

(Emphasis added). And RCW 59.20.080(3) states that the chapter “govern[s] the eviction of . . . recreational vehicles used as a primary residence from a mobile home park.”

RCW 59.20.030 defines the types of dwellings included under the Act:

For purposes of this chapter:

.....
(3) “Manufactured home” means a single-family dwelling built according to the United States department of housing and urban development manufactured home construction and safety standards act, which is a national preemptive building code. A manufactured home also: (a) Includes plumbing, heating, air conditioning, and electrical systems; (b) is built on a permanent chassis; and (c) can be transported in one or more sections with each section at least eight feet wide and forty feet long when transported, or when installed on the site is three hundred twenty square feet or greater;

(4) “Mobile home” means a factory-built dwelling built prior to June 15, 1976, to standards other than the United States department of housing and urban development code, and acceptable under applicable state codes in effect at the time of construction or introduction of the home into the state. . . .;

(5) “*Mobile home lot*” means a portion of a mobile home park

or manufactured housing community *designated as the location of one mobile home, manufactured home, or park model and its accessory buildings, and intended for the exclusive use as a primary residence by the occupants* of that mobile home, manufactured home, or park model;

.....
(9) "*Park model*" means a recreational vehicle intended for permanent or semi-permanent installation and is used as a primary residence;

(10) "*Recreational vehicle*" means a travel trailer, motor home, truck camper, or camping trailer that is primarily designed and used as temporary living quarters, is either self-propelled or mounted on or drawn by another vehicle, is transient, *is not occupied as a primary residence*, and is not immobilized or permanently affixed to a mobile home lot.

(Emphasis added).

Under these definitions, the parties agree that Mr. Gimmell's recreational vehicle occupied as his primary residence situated on a lot in Mr. Lawson's residential park is at least considered a "park model" for purposes of the Act.

But while occupying the field, the legislature has also conferred certain measures of deference to local authority. RCW 59.20.080 provides:

(1) A landlord shall not terminate or fail to renew a tenancy of a tenant or the occupancy of an occupant, of whatever duration except for one or more of the following reasons:

.....
(d) Failure of the tenant to comply with local ordinances and state laws and regulations relating to mobile homes, manufactured homes, or park models or mobile home, manufactured homes, or park model living within a reasonable time after the tenant's receipt of notice of such noncompliance from the appropriate governmental agency;

.....
(i) Failure of the tenant to comply with obligations imposed upon tenants by applicable provisions of municipal, county, and state codes, statutes, ordinances, and regulations, including this chapter. The landlord shall give the tenant written notice to comply immediately. The notice must state that failure to comply will result in termination of the tenancy and that the tenant shall vacate the premises within fifteen days.

RCW 59.20.080(1)(d),(i). And RCW 59.20.130(1) states:

It shall be the duty of the landlord to:
(1) Comply with codes, statutes, ordinances, and administrative rules applicable to the mobile home park.

Reading the above-quoted sections of RCW 59.20.040, .080 and .130 together, the legislature has expressly conferred concurrent jurisdiction to local municipalities in the field of regulating landlord-tenant compliance with ordinances. The Act therefore does not preempt PMC § 25.40.060.

"Conflict" Between the Ordinance and the Act

The dispositive question in this appeal then is whether there exists an irreconcilable conflict between chapter 59.20 RCW and PMC § 25.40.060.

The City contends there is no conflict because nothing in the Act requires, or even authorizes, a mobile home park landlord (such as Mr. Lawson) to violate PMC § 25.40.060 by renting spaces to recreational vehicles, even if used as primary residences. Instead, RCW 59.20.130(1) expressly requires a landlord to

No. 25967-6-III
Lawson v. City of Pasco

comply with ordinances applicable to the residential park. The City thus contends it may exclude recreational vehicles as a legitimate exercise of its zoning and police powers for regulating land use. *Guimont v. City of Seattle*, 77 Wn. App. 74, 89, 896 P.2d 70, *review denied*, 127 Wn.2d 1023 (1995).

Mr. Lawson, on the other hand, contends the ordinance conflicts with the Act because the ordinance allows, if not demands, a mobile home park owner to evict a recreational vehicle used as a primary residence, yet RCW 59.20.080(1) does not include the mere fact that a dwelling is a recreational vehicle as a cause for eviction. Conversely, state law allows (if not demands) that a recreational vehicle be placed in a mobile home park, whereas the Pasco ordinance precludes a recreational vehicle from resting in a mobile home park. Thus, according to Mr. Lawson, the legislative intent is to prevent mobile home park landlords from discriminating against recreational vehicles used as primary residences. We reject Mr. Lawson's arguments.

An ordinance conflicts with a statute when it permits what state law forbids or prohibits what state law permits. *Parkland Light v. Bd. of Health*, 151 Wn.2d 428, 434, 90 P.3d 37 (2004); *Rabon v. City of Seattle*, 135 Wn.2d 278, 292, 957 P.2d 621 (1998); *City of Bellingham v. Schampera*, 57 Wn.2d 106, 110-11, 356 P.2d 292 (1960). But an ordinance may be more restrictive than a state

No. 25967-6-III
Lawson v. City of Pasco

enactment so long as the statute does not forbid the more restrictive ordinance. *Seattle Newspaper-Web Pressmen's Union v. City of Seattle*, 24 Wn. App. 462, 469, 604 P.2d 170 (1979) (citing *Lenci v. City of Seattle*, 63 Wn.2d 664, 670-71, 388 P.2d 926 (1964); see *Rabon*, 135 Wn.2d at 292. This concept applies when a state enactment does not in any way grant permission to do a particular thing in *any* (every) place. Such is the case here.

For example, in *Schillberg*, 92 Wn.2d at 108, the court held that a state law regulating safe operation of motor boats did not conflict with a local ordinance banning motor boats on a specific lake. The court reasoned, "There being no express statement nor words from which it could be fairly inferred that motor boats are permitted on all waters of the state, no conflict exists and the ordinance is valid." *Id.*

In *Second Amendment Found. v. City of Renton*, 35 Wn. App. 583, 668 P.2d 596 (1983), a state firearms statute (ch. 9.41 RCW) provided for a license to carry a concealed pistol on the person. A Renton city ordinance limited the possession of firearms where alcoholic beverages were dispensed by the drink. The court held that the statute and ordinance were not inconsistent when the statute did not expressly state an unqualified right to be in possession of a firearm at any time or place, and the ordinance did not purport to contradict or restrict any

No. 25967-6-III
Lawson v. City of Pasco

portion of the statute. *Id.* at 588-89.

Similarly, chapter 59.20 RCW is regulatory legislation encompassing landlord-tenant relationships arising from rental of lot spaces for recreational vehicles used as primary residences. But the City is correct that the Act does not, in the first instance, require a landlord to rent a mobile home park lot for placement of a recreational vehicle (park model) in any (or every) particular place within the state. And the ordinance in no way attempts to restrict or contradict the provisions of the Act, which expressly defers to municipal authority in RCW 59.20.130(1). In this situation, we conclude there is no irreconcilable conflict between chapter 59.20 RCW and PMC § 25.40.060.

Moreover, the statute and ordinance can each operate distinctly without inconsistency. See *Pressmen's Union*, 24 Wn. App. at 469. Although no federal enactment is at issue here, this concept is consistent with the federal conflict test, i.e., whether it is impossible to comply with both laws. See *English v. General Elec. Co.*, 496 U.S. 72, 78-80, 110 S. Ct. 2270, 110 L. Ed. 2d 65 (1990); *S. Pac. Transp. Co. v. Pub. Util. Comm'n*, 9 F.3d 807, 810, (9th Cir. 1993); see also *City of Seattle v. Burlington N. R.R. Co.*, 145 Wn.2d 661, 667, 41 P.3d 1169 (2002). A residential park landlord could readily comply with both the Act and an ordinance such as Pasco's.

For example, a landlord may own two residential parks—one in which the city allows placement of recreational vehicles as primary residences, and the other in which such dwellings are precluded under city land use regulations. The landlord could thus freely rent spaces for recreational vehicles in the first park, but may simply abide by the ordinance and refuse to do so in the second park. The Act then governs the landlord-tenant relationship in the first park, but refusing to rent in the second park does not violate the Act, which defers to local authority for enforcement of ordinances against landlords. RCW 59.20.130(1).²

Mr. Lawson fails to show that PMC § 25.40.060 is preempted by the Act and therefore unconstitutional. He makes no other challenge to the ordinance. We thus hold that PMC § 25.40.060 is a valid exercise of municipal police power. See *Guimont*, 77 Wn. App. at 89 (exclusion of recreational vehicles from mobile home parks under city ordinance was legitimate exercise of City's zoning and police power for regulating land use).

Accordingly, the superior court's order is reversed and the Code Enforcement Board's determination that Mr. Lawson violated the ordinance is reinstated.

² Any issues under the Act that may exist between Mr. Lawson and any particular tenant are not before this court because Mr. Lawson and the City of Pasco are the only parties to the action.

No. 25967-6-III
Lawson v. City of Pasco

Stephens, J. Pro Tem.

WE CONCUR:

Schultheis, C.J.

Kulik, J.

SENATE BILL REPORT

SB 5524

As Reported By Senate Committee On:
Consumer Protection & Housing, February 20, 2007

Title: An act relating to manufactured home parks or manufactured housing communities.

Brief Description: Regulating manufactured home parks or manufactured housing communities.

Sponsors: Senators Berkey, Schoesler, Fairley and Roach.

Brief History:

Committee Activity: Consumer Protection & Housing: 2/13/07, 2/20/07 [DPS, DNP].

SENATE COMMITTEE ON CONSUMER PROTECTION & HOUSING

Majority Report: That Substitute Senate Bill No. 5524 be substituted therefor, and the substitute bill do pass.

Signed by Senators Weinstein, Chair; Kauffman, Vice Chair; Honeyford, Ranking Minority Member; Haugen, Jacobsen, Kilmer and Tom.

Minority Report: Do not pass.

Signed by Senator Delvin.

Staff: Vanessa Firnhaber-Baker (786-7471)

Background: Under the Manufactured/Mobile Home Landlord-Tenant Act, owners of manufactured and mobile home communities may not prevent a manufactured/mobile home from moving into the park solely because the home has reached a certain age. However, community owners may exclude or expel manufactured or mobile homes that do not comply with any other state or local law, including fire and safety codes. Currently, local jurisdictions are free to pass ordinances that regulate the entry of mobile or manufactured homes into manufactured and mobile home communities. However, local jurisdictions may not enact ordinances that have the effect of discriminating against a consumer's choice as to placement or use of a home that is not equally applicable to all homes. Nevertheless, local jurisdictions are permitted under state law to require that manufactured homes be and comply with all local design standards applicable to all other homes in the neighborhood within which the manufactured home is located.

Summary of Bill: The bill as referred to committee not considered.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

SUMMARY OF BILL (Recommended Substitute): Cities, towns, and counties are prohibited from restricting the location of mobile or manufactured homes that are sited within existing mobile or manufactured housing communities based exclusively on age or the dimensions of the home. Local jurisdictions are still permitted to place age and design criteria on manufactured housing that is sited outside of mobile and manufactured housing communities. The prohibitions apply only to mobile and manufactured housing communities legally in existence at the time the law goes into effect.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Substitute Bill: PRO: This bill ensures that single wide mobile homes can still be sited in existing manufactured housing communities. Single wide mobile homes are an important source of affordable housing. Some municipalities are prohibiting parks from allowing single wide homes to move in; this bill solves this problem.

Persons Testifying: PRO: Senator Berkey, prime sponsor; Ken Spenser, Manufactured Housing Communities of Washington.

DECLARATION OF SERVICE

On this day said forth below, I deposited with the U.S. Postal Service a true and accurate copy of: Petition for Review in Court of Appeals, Division III, Cause No. 25967-6-III to the following parties:

George Fearing
Leavy, Schultz, Davis & Fearing P.S.
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Kennewick, WA 99336

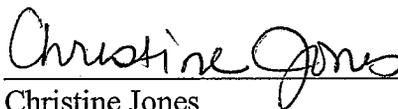
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Original sent by Federal Express for filing with (fee included):
Court of Appeals, Division III
Clerk's Office
500 N. Cedar Street
Spokane, WA 99201

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED: May 21, 2008, at Tukwila, Washington.



Christine Jones
Talmadge/Fitzpatrick