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DIVISION OF CODES AND STANDARDS**

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April 25, 2008

Information Bulletin 2008-10 (MP)

**TO: Local Government Planning Agencies
 Local Building Officials
 Mobilehome Park Operators and Residents
 Mobilehome Park Interested Parties
 Division Staff**

**SUBJECT: VALIDITY OF LOCAL ORDINANCES RELATING TO INSTALLATION OF NEW
 MANUFACTURED HOMES AND/OR SALE OR CONVERSION OF
 MOBILEHOME PARKS**

A number of local governments are enacting or enforcing ordinances relative to the physical operation and condition of mobilehome parks and recreational vehicle parks that are in conflict with the preemptive nature of the Mobilehome Parks Act ("MPA"), found in Health & Safety Code [H&SC] sections 18200, et seq., and the Special Occupancy Parks Act ("SOPA"), found in H&SC sections 18665, et seq.. Throughout this memorandum, there are references to "manufactured homes", "mobilehome parks" and "the Mobilehome Parks Act"; however, unless otherwise noted, the same issues and rules apply to recreational vehicles or park model trailers, recreational vehicle parks, and the Special Occupancy Parks Act.

This memorandum's purpose is to provide information and clarification for local government officials and those involved with mobilehome parks and manufactured home installations or sales that state law restricts local government authority attempting to regulate the physical structure and operation of mobilehome parks—whether privately-owned, resident-owned, or in the process of conversion. For example, local ordinances which impose inspection, lot standards, or infrastructure requirements within a mobilehome park at the time of home installation, conversion, or sale generally are expressly and/or impliedly preempted by the MPA, and the only valid authority for imposing and enforcing these requirements is the California Department of Housing and Community Development ("HCD") or local enforcement agencies that have assumed jurisdiction to enforce the MPA.

Statutory Provisions Governing Preemption

California courts have established guidelines for when local ordinances are preempted by state law. The general rule is that, if an otherwise valid local ordinance conflicts with preemptive state law, it is invalid. A "conflict" exists if an ordinance "duplicates, contradicts, or enters an area fully occupied by state law, either expressly or by implication". In addition, preemption is implied if the area is so fully covered by state law as to indicate it is exclusively a matter of state concern; it is partially covered by state law but the state coverage indicates that a paramount state concern will not allow additional

local action; or there is partial state coverage but the adverse effect of a local ordinance on state residents outweighs the possible benefit to the locality.

The MPA contains an express preemption, with minimal express authority for local ordinances. In addition, the Legislature's findings support its intent to allow only very restrictive authority for local government action within the boundaries of a mobilehome park. In the MPA, subdivision (a) of H&SC section 18300 provides that "the MPA and HCD regulations apply to all parts of the state and supersede any ordinance enacted by any city, county, or city and county, whether general law or chartered, affecting parks." Subdivision (g) and (h) of section 18300 provide the limited specific exceptions to the general state preemption, stating that the MPA does not preclude local governments, within the reasonable exercise of their police powers, from doing any of the following:

- * Enacting certain zones for mobilehome parks within the jurisdiction, or establishing types of uses and locations such as senior mobilehome parks, mobilehome condominiums, or mobilehome subdivisions within the jurisdiction. [subdivision (g)(1)]

- * Adopting ordinances, rules, regulations or resolutions prescribing park perimeter walls or enclosures on public street frontage, signs, access, and vehicle parking; or prescribing the prohibition of certain uses for mobilehome parks. [subdivision (g)(1), emphasis added]

- * Regulating the construction and use of equipment and facilities located outside of a manufactured home or mobilehome used to supply gas, water, or electricity thereto or to dispose of sewage when the facilities are located outside a park. [subdivision (g)(2), emphasis added].

- * Requiring a permit to use a manufactured home or mobilehome outside a park which permit may be refused or revoked if the use violates the MPA or the Manufactured Housing Act. [subdivision (g)(3), emphasis added.]

- * Requiring a local building permit to construct an accessory structure for a manufactured home or mobilehome when the manufactured home or mobilehome is located outside a mobilehome park. [subdivision (g)(4), emphasis added]

- * Prescribing and enforcing setback and separation requirements governing manufactured home, mobilehome, or mobilehome accessory structure or building installation outside of a mobilehome park. [subdivision (g)(5), emphasis added]

Other provisions directly addressing preemptive authority include H&SC sections 18253, 18400.1, 18605, 18610, and 25 CA Code of Regulations (CCR), section 1000.

Permissible Local Government Regulation and Standards

Local governments do have some authority to regulate certain physical components in a mobilehome park. Also, pursuant to subdivision (b) of H&SC section 18300, they may assume MPA enforcement authority and become a "local enforcement agency" ("LEA"), rather than relying on HCD inspectors.

As stated above, subdivision (g) of H&SC section 18300 provides express authority for local governments, within the reasonable exercise of police powers, to adopt zoning ordinances to

allow or prohibit parks and certain park uses, and for park perimeter walls or enclosures on public street frontage, signs, access, and vehicle parking. Also, subdivision (h) of that section allows local governments, within specified parameters, to establish new park density, to require recreational facilities, and to require setback and separation requirements for manufactured housing outside of parks, but no greater than those permitted by applicable ordinances for other affordable housing forms.

H&SC section 18691, subdivision (b), permits a local government that is the MPA enforcement agency to enforce within parks its own fire code that imposes standards equal to or greater than the restrictions in the California Building Standards Code ("CBSC") and other state requirements. In addition, a local government which is not a local enforcement agency may assume fire prevention authority and impose certain portions of its fire code within a park.

Subdivision (e) of H&SC section 18501 and Title 25 CCR, section 1032, permit a local government to approve or deny approval for any construction permit to build or increase the size of a park or to add multifamily manufactured housing based on "compliance with all valid local planning health, utility and fire requirements". (H&SC §18501, emphasis added). The use of the word "valid" implicitly excludes requirements preempted by the MPA, allowing, for example, flood plain ordinance compliance, the minimum size of a park's land parcel, whether a septic system sewer hook-up is required, where and whether off-site drainage is permitted, and/or the number and spacing of fire hydrants.

Local Ordinance Provisions Which Are Preempted

General Background

In implementing the Legislature's comprehensive statewide program to establish and enforce park standards for construction, maintenance, repairs, and occupancy, the Department's statutory and regulatory standards impose standards for virtually every aspect of a park's or a manufactured home's physical conditions, except for those expressly left to local government action in subdivision (h) of H&SC section 18300.

With respect to construction of a new or expanded park, or installation of multifamily manufactured housing, HCD regulations require evidence of local approvals from the local planning agency; the health, fire, and public works departments; the agency responsible for flood control; the serving utilities; and any other state or federal agency or special district that has jurisdiction and would be impacted by the proposed construction. (25 CCR §§1020.6, 1032). Similarly, HCD or the LEA may require local approvals for construction of a permanent building under the ownership or control of the park within a park if that installation may impact local services. Most other types of construction, replacements, installations, and alterations require an MPA enforcement agency permit and inspections (25 CCR § 1018), but no local approvals.

HCD regulations govern both park construction and manufactured home installation standards and procedures. Generally, the regulations require that a home and other structures on a park lot use not more than 75% of the lot space (25 CCR §1110) and that the home and structures have specified set-backs and separations from lot lines and structures

(25 CCR §1330). In addition, a "manufactured home" is a specific preemptive definition in H&SC section 18007 and a recreational vehicle (including a park model) is a specifically defined term in H&SC section 18010. As a result, a local government cannot impose restrictions on the minimum or maximum size of a manufactured home to be installed on a mobilehome park lot (ordinance precluding two-story manufactured homes found invalid in *County of Santa Cruz v. Waterhouse* (2005) 127 Cal.App.4th, 1483, 26 Cal.Rptr 3d 543) or whether a park model or recreational vehicle can be installed on a recreational vehicle lot.

Examples of Preempted Ordinance Provisions

The following italicized sentences are examples of local ordinances that have been brought to HCD's attention and that area preempted by state laws and regulations.

"If there has been no Title 25 inspection within 3 years, one must be obtained". H&SC sections 18605 and 18610 provide that HCD's rules govern park maintenance and operation. No express or implied exception exists in H&SC section 18300 permitting local governments to impose inspection requirements related to park maintenance.

"The Park owner shall provide a list of all Title 25 deficiencies found on inspection and evidence that all deficiencies have been corrected." Pursuant to H&SC sections 18605 and 18610, HCD's rules govern park maintenance and operation. Pursuant to the preemptive restrictions in H&SC section 18300, no express or implied exception exists permitting local governments to impose enforcement requirements related to park maintenance. In addition, the MPA does not require correction of all deficiencies:

* The MPA expressly permits extended periods for repairs to achieve correction of deficiencies. H&SC section 18420, subdivision (c)(4), permits the enforcement agency to defer repair requirements as long as there is a "valid reason why a violation has not been corrected, including, but not limited to, weather conditions, illness, availability of repair persons, or availability of financial resources...."

* The MPA permits an inspector to not cite a violation of the MPA if it is not an imminent hazard. (subdivision (d) of H&SC section 18420)

"Written documentation from HCD shall be obtained demonstrating that the park complies with all applicable Title 25 requirements." The MPA governs performance of inspections and issuance of reports of violations or corrections and does not require HCD or an LEA to perform inspections to ensure compliance with "all applicable" Title 25 requirements. A "complaint inspection" involves resolution of a specific complaint. A "park maintenance inspection" involves identification and resolution of only hazards which are either an immediate risk to life, health, and safety, requiring immediate correction; or those constituting unreasonable risks to life, health or safety, requiring correction with 60 days (H&SC §18400.3). No other violations of Title 25 are recorded.

"Proof of remediation of any Title 25 violations shall be confirmed in writing by the California Department of Housing and Community Development." In addition to the obvious issue that a local government cannot require HCD to perform any duties related to parks, HCD does not have enforcement responsibility for many of the state's parks and therefore has no information regarding any identified violations or proposed or completed remedies in those parks subject to LEA enforcement.

"Prior to installation of a new home on an existing lot, there shall be two covered and paved parking spaces on the lot." Subdivision (f) of Title 25 CCR section 1106 expressly and fully regulates paving for driveways and roadways, stating that paving generally is not required; therefore, local governments may not impose paving requirements. Title 25 CCR sections 1110, 1116, and 1118 regulate lot standards, precluding local government lot standards such as covered parking or a specific number of on-lot spaces. [While H&SC §18300(g)(1) provides local governments with authority to regulate "vehicle parking", that authority is narrowly interpreted and harmonized with the preemptive nature of the MPA by allowing local government ordinances to reasonably require a specified number of parking spaces within the boundaries of the park (to avoid public street parking), but without imposing their own specific location.]

"No manufactured home may be installed on a lot of less than 4000 square feet, with a minimum depth of 75 feet and a minimum width of 50 feet, at least a fifteen-foot setback from any other home, and at least a ten-foot separation between all structures on the lot other than an attached cabana or covered patio." The MPA implicitly preempts local authority to establish lot sizes by virtue of the standards in 25 CCR sections 1110 and 1118; see also, 25 CCR section 1106(e); in addition, subdivision (g) of H&SC section 18300 allows local governments to establish "density", not lot sizes or locations. The set-back and separation requirements are expressly established by 25 CCR section 1330; in addition, by implication, local action is precluded with respect to setbacks and separations because, in subdivision (h)(3) of H&SC section 18300, the Legislature authorized local action in this area only for manufactured homes sited outside of mobilehome parks.

"The sides of the park facing a public street and the sides facing residential construction shall have walls high enough to block sight access of the roofs of the mobilehomes with ivy or other permanent foliage coverage, and no mobilehome shall be closer than 15 feet from the wall or fence." The locality is authorized, by subdivision (h) of H&SC section 18300, to regulate only the wall or enclosure on the public street frontage, not other sides of the park. The locality is authorized to establish a set-back for the wall or enclosure on the public street frontage, but all other set-back and separation requirements (within the boundaries of the park) are preemptively established by the MPA regulations.

"Every lot in a mobilehome park shall have no more than one mobilehome and one storage shed, and foliage shall be consistent with the surrounding area." This ordinance establishes "lot standards". When H&SC section 18300 was amended in 1981, the express authority for local governments to regulate "landscaping" and establish standards for lots, yards, and park area in mobilehome parks was deleted by the Legislature, depriving local authority for this regulation under the MPA.

"All on-site utilities shall be installed underground." Utility construction requirements are preempted either by the PUC for utility-owned utilities, and/or by Title 25, CCR, which permits overhead utilities. New parks built after 1997 must have gas and electric services owned, operated, and maintained by the serving utility. See, Public Utilities Code section. 2791, Title 25 CCR, section 1180(g).

"Prior to final approval of a park conversion, all lots shall be surveyed to be equal in size, clearly demarcated by landscaping, and lot lines approved by the Planning Department shall be recorded with the County Recorder." A mobilehome park remains a mobilehome park before, during, and after conversion; see, H&SC section 18214, subdivision (a), which provides, *"Mobilehome park" is any area or tract of land where two or more lots are rented or leased, held out for rent or lease, or were formerly held out for rent or lease and later converted to a subdivision, cooperative, condominium, or other form of resident ownership...* (emphasis added) Thus, the preemptive provisions which applied to a park prior to, during, and after conversion. The establishment, marking, and movement of lot lines are governed by Title 25, CCR, sections 1104, 1105, 1330, and 1428. Landscaping is not a proper form of lot marking, and lot lines must either be those in existence or moved and approved pursuant to CCR section 1105. A local government may require that the final approved lot lines be those consistent with the requirements of Title 25, since the local government has the authority to approve final lot lines as part of a subdivision approval; however, their location and marking must be consistent with Title 25.

Conclusion

The State Legislature, in its enactment and subsequent amendments to the Mobilehome Parks Act and the Special Occupancy Parks Act, has established clear preemptive authority with regard to state regulation of the physical construction and operational standards for mobilehome parks and recreational vehicle parks. Conversely, both expressly and impliedly, the Legislature has narrowly limited local government authority to legislatively mandate any activity or requirements with regard to the physical standards, physical operation, or physical status of a park. A number of local ordinances addressing park standards for construction, maintenance, operations, or conversions to subdivisions or other forms of resident ownership likely are invalid because the two state Acts preempt them.

If you have any questions regarding this memorandum, please feel free to contact our office at the address above.

Sincerely,



Kim Strange
Deputy Director