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OPINION	:	No. 04-704
of	:	October 20, 2004
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THE HONORABLE BILL MORROW, MEMBER OF THE STATE SENATE, has requested an opinion on the following question:

In light of the prohibition against discrimination based upon age contained in the Planning and Zoning Law, may a city adopt a zoning ordinance or issue a conditional use permit that limits a specified parcel of land to use as a mobilehome park for senior citizens?

CONCLUSION

Notwithstanding the prohibition against discrimination based upon age contained in the Planning and Zoning Law, a city may adopt a zoning ordinance or issue a conditional use permit that limits a specified parcel of land to use as a mobilehome park for senior citizens.

ANALYSIS

The question presented for resolution concerns the authority of a city to promote the establishment of senior[1] mobilehome parks[2] through the adoption of zoning ordinances or the issuance of conditional use permits. We are advised that the particular city, located along the coast in Southern California, proposes to take such actions in response to rapidly escalating housing costs and land values that threaten the city's ability to preserve affordable housing for seniors. We conclude that the city may take such actions.

The general authority of cities and counties to adopt local ordinances and regulations is set forth in section 7 of article XI of the Constitution:

> "A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws."

The exercise of this constitutional authority, often referred to as the "police power," is subject only to the limitations that it be confined to the city's or county's territorial boundaries and be subordinate to state law. Apart from these limitations, a city's or county's police power is as broad as the police power exercisable by the Legislature itself. (*Candid Enterprises, Inc. v. Grossmont Union High School District* (1985) 29 Cal.3d 878, 885; *Birkenfeld v. City of Berkeley* (1976) 17 Cal.3d 129, 140; 85 Ops.Cal.Atty.Gen. 21, 21-22 (2002); 73 Ops.Cal.Atty.Gen. 28, 29-30 (1990).) The regulation of land development is a traditional subject for the exercise of the police power by a city or county. (See *Griffin Development Company v. City of Oxnard* (1985) 39 Cal.3d 256, 261-264; *Santa Monica Pines, Ltd. v. Rent Control Board* (1984) 35 Cal.3d 858, 868-869.) It is now well settled that a city or county has broad authority to adopt zoning ordinances to protect the public health and general welfare of its residents. (86 Ops.Cal.Atty.Gen. 30, 31 (2003).)

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[1] For purposes of this opinion, persons 55 years of age or older will be regarded as seniors. (See 42 U.S.C. § 3607(b)(2)(C).)

[2] The term "mobilehome" generally means a structure that is transportable in one or more sections and is built on a permanent chassis designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities. (See Civ. Code, § 798.3, subd. (a); Health & Saf. Code, §§ 18007, 18008, 18211; Cal. Code Regs., tit. 25, §§ 1000-2850.) Mobilehomes also include manufactured homes. (Civil Code, § 798.3; Health & Saf. Code, § 18008.) A "mobilehome park" may be defined as 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, to accommodate manufactured homes, mobilehomes, or recreational vehicles used for human habitation. (Health & Saf. Code, § 18214.)

Would the proposed zoning ordinances or conditional use permits[3] be "in conflict with general laws" for purposes of section 7 of article XI of the Constitution? Here, the particular "law" that poses a possible conflict is the Planning and Zoning Law (Gov. Code, §§ 65000-66499.58). Government Code section 65008 states in part:

> "(a) Any action pursuant to this title by any city, county, city and county, or other local governmental agency in this state is null and void if it denies to any individual or group of individuals the enjoyment of residence, landownership, tenancy, or any other land use in this state because of any of the following reasons:
>
> "(1) The race, sex, color, religion, ethnicity, national origin, ancestry, lawful occupation, familial status, disability, or age of the individual or group of individuals. . . .
>
> " . . . . . "[4]

The adoption of a zoning ordinance or the issuance of a conditional use permit to limit an area of a city to a senior mobilehome park would ostensibly fall within this statutory prohibition: it would constitute an "action" taken under the Planning and Zoning Law by the city that denies to a "group of individuals" (i.e., those who are under 55 years of age) "the enjoyment of residence" in the specified area on account of "age of the individual or group of individuals."

In *Gibson By Gibson v. County of Riverside* (9th Cir. 1997) 132 F.3d 1311, the court reviewed the applicability of Government Code section 65008 to zoning ordinances adopted by the County of Riverside that limited certain residential areas of the county to senior citizens only. The court stated:

> ". . . The district court properly held that the plain language of § 65008(a) rendered the County's age-based zoning restrictions 'null and void.' Section 65008(a) is clear on its face and requires no assistance from any other source in interpreting its meaning. The County's argument that the section does not mean what it says is unpersuasive. . . ." (*Id.* at p. 1313.)

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[3] A conditional use permit grants administrative permission for uses not allowed as a matter of right in a district. (See Cal. Zoning Practice (Cont. Ed. Bar. 1969) § 7.64, p. 299.) Any person may file an application with the governing body of any city for a conditional use permit for a mobilehome or mobilehome park. (Health & Saf. Code, § 18300.1)

[4] "[P]ursuant to this title" refers to the Planning and Zoning Law.

The Court of Appeals noted that in response to the district court's ruling, the Legislature amended Government Code section 65008, adding subdivision (e)(1) as follows:

> "(e) Notwithstanding subdivisions (a) to (d), inclusive, nothing in this section or this title shall be construed to prohibit either of the following:
>
> "(1) The County of Riverside from enacting and enforcing zoning to provide housing for older persons, in accordance with state or federal law, if that zoning was enacted prior to January 1, 1995."

The court upheld this statutory amendment as a specific, legislative validation of the county ordinances in question. (*Ibid.*)

No similar exception has been provided by the Legislature in the Planning and Zoning Law for a city to discriminate in favor of senior mobilehome parks. However, a possible exception to Government Code section 65008 may be found in the Mobilehome Parks Act (Health & Saf. Code, §§ 18200-18700), which regulates the construction, operation, and maintenance of mobilehome parks throughout the state.[5] Health and Safety Code section 18300, subdivision (g), states:

> "This part shall not prevent local authorities of any city, county, or city and county, within the reasonable exercise of their police powers, from doing any of the following:
>
> "(1) From establishing, subject to the requirements of Sections 65852.3 and 65852.7 of the Government Code, certain zones for manufactured homes, mobilehomes, and mobilehome parks within the city, county, or city and county, or establishing types of uses and locations, including family mobilehome parks, *senior mobilehome parks*, mobilehome condominiums, mobilehome subdivisions, or mobilehome planned unit developments within the city, county, or city and county, as defined in the zoning ordinance, or from adopting rules and regulations by ordinance or resolution prescribing park perimeter walls or enclosures on public street frontage, signs, access, and vehicle parking or from prescribing the prohibition of certain uses for

[5] Looking at other statutory schemes, we note that the Mobilehome Residency Act (Civ. Code, §§ 798-799.9) allows a *private owner* of a mobilehome park to limit "residency based on age requirements for housing for older persons" under certain conditions (Civ. Code, § 798.76), but does not authorize cities or government entities to discriminate on the basis of age. As for the state's anti-discrimination statutes (Civ. Code, §§ 51-51.12), they do not authorize what Government Code section 65008 directly prohibits. (See *Colony Cove Associates v. Brown* (1950) 220 Cal.App.3d 195, 199-200.)

mobilehome parks.

"..... "
(Italics added.)[6]

"This part" refers solely to the Mobilehome Parks Act. While it is evident that this legislative scheme does not "prevent" a city from establishing "senior mobilehome parks" through zoning ordinances and conditional use permits, Government Code section 65008 is not part of the Mobilehome Parks Act, but rather is part of the Planning and Zoning Law.

Nevertheless, we note that in a variety of contexts, the courts have interpreted the phrase "this part shall not prevent local authorities . . . from establishing . . . ," or similar language, as an implied, specific *authorization* to take the particular action. Permission need not be found elsewhere; the phrase itself authorizes the described activity. (See *Yolo v. Modesto Irr. Dist.* (1932) 216 Cal. 274, 278-279; *Lindenbaum v. Barbour* (1931) 213 Cal. 277, 282-285; *Sacramento County Deputy Sheriffs' Assn. v. County of Sacramento* (1996) 51 Cal.App.4th 1468, 1486; *A & B Cattle Co. v. City of Escondido* (1987) 192 Cal.App.3d 1032, 1041; *Cristmat, Inc. v. County of Los Angeles* (1971) 15 Cal.App.3d 590, 597-598; *Dept. of Alcoholic Bev. Control v. Superior Court* (1968) 268 Cal.App.2d 67, 74.) Indeed, Health and Safety Code section 18300, subdivision (g)(1), was cited by the court in *Gibson By Gibson v. County of Riverside, supra,* 132 F.3d 1311, as an example of "California statutes that implicitly allow senior-only zoning." (*Id.* at p. 1314.)

We thus view Health and Safety Code section 18300 as a grant of authority for a city to enact zoning ordinances and issue conditional use permits "establishing . . . senior mobilehome parks." As such, it would be in conflict with the general prohibition against age discrimination contained in Government Code section 65008. We may resolve this statutory conflict by applying the specific statute, Health and Safety Code section 18300 (dealing with senior mobilehome parks), over the general statute, Government Code section 65008 (dealing with any Planning and Zoning Law action that discriminates on the basis of age), to the extent the two statutes are in conflict. It is a well-established rule of statutory interpretation that the specific controls the general. (See Code Civ. Proc., § 1859 ["when a general and particular provision are inconsistent, the latter is paramount to the former"]; *People v. Superior Court (Jimenez)* (2002) 28 Cal.4th 798, 808; *Miller v. Superior Court* (1999) 21 Cal.4th 883, 895; *San Francisco Taxpayers Assn. v. Board of Supervisors* (1992) 2 Cal.4th 571, 577 ["A special act is considered an exception to the general statute"]; *Woods*

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[6] "The requirements of Sections 65852.3 and 6582.7 of the Government Code" generally prohibit a city or county from setting more stringent development standards for manufactured homes than for conventional single-family residential dwellings but allow requiring use permits for mobilehome parks.

v. Young (1991) 53 Cal.3d 315, 325 [" 'specific provision relating to a particular subject will govern a general provision' "].)[7]

Accordingly, we conclude that notwithstanding the prohibition against discrimination based upon age contained in the Planning and Zoning Law, a city may adopt a zoning ordinance or issue a conditional use permit that limits a specified parcel of land to use as a mobilehome park for senior citizens pursuant to the terms of Health and Safety Code section 18300, subdivision (g)(1).

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[7] We note that the Legislature could have provided for Health and Safety Code section 18300 to control over the prohibition of Government Code section 65008 by using the common statutory phrase "notwithstanding any other provision of law" in Health and Safety Code section 18300. (See *McClatchy Newspaper v. Superior Court* (1988) 44 Cal.3d 1162, 1182; *Klajic v. Castaic Lake Water Agency* (2004) 121 Cal.App.4th 5, 13; *Souvannarath v. Hadden* (2002) 95 Cal.App.4th 1115, 1125-1126; *People v. DeLaCruz* (1993) 20 Cal.App.4th 955, 963.) Alternatively, the Legislature could have amended Government Code section 65008 to specifically permit senior mobilehome parks under the Planning and Zoning Law. (*Cf.* G*ibson By Gibson v. County of Riverside, supra,* 132 F.3d at p. 1313.)