Dexter A. Johnson
LEGISLATIVE COUNSEL

900 COURT ST NE S101
SALEM, OREGON 97301-4065
(503) 986-1243
FAX: (503) 373-1043
www.oregonlegislature.gov/lc

STATE OF OREGON
LEGISLATIVE COUNSEL COMMITTEE

July 7, 2016

Representative Tina Kotek
Speaker of the House
900 Court Street NE Rm269
Salem OR 97301

Re: Local authority to require landlord to pay relocation expenses to tenant when landlord terminates tenant's month-to-month tenancy without cause

Dear Speaker Kotek:

You asked whether state law preempts a local ordinance that would require landlords subject to ORS chapter 90 to pay relocation expenses to tenants when the landlord terminates the tenant's month-to-month tenancy without cause. We conclude that state law would not preempt the described local ordinance.

Statutory Obligations of Landlords When Terminating Month-to-Month Tenancies

ORS 90.427 permits a landlord to terminate a month-to-month tenancy without cause, provided that the landlord gives the tenant notice in writing not less than a specified number of days prior to the date designated in the notice for the termination of the tenancy. For example, during the first year of occupancy, a landlord may terminate a month-to-month tenancy upon giving the tenant "notice in writing not less than 30 days prior to the date designated in the notice for the termination of the tenancy."[1] To terminate the tenancy, in most cases, after the first year of occupancy, a landlord is required to provide the tenant "notice in writing not less than 60 days prior to the date designated in the notice for the termination of the tenancy."[2] The provisions of ORS 90.427 are the only special statutory obligations that a landlord must fulfill to terminate a month-to-month tenancy without cause.

Preemption of City or County Ordinance by State Law

A city or county can exercise legislative authority over matters of city or county concern if the electors of the city or county adopt a home rule charter or if the electors or governing body of a county exercises statutorily granted legislative power.[3] Article XI, section 2, and Article VI, section 10, of the Oregon Constitution, respectively grant the voters of a city or county the power to adopt a home rule charter for the city or county. By adopting a charter, city or county voters grant home rule authority to the city or county. Home rule authority permits the governing body of a city or county to enact ordinances that are consistent with the city or county charter

[1] ORS 90.427 (3)(b).
[2] ORS 90.427 (3)(c).
[3] Article XI, section 2, Oregon Constitution; Article VI, section 10, Oregon Constitution; ORS 203.035 (1).

without the need for further statutory authorization from the Legislative Assembly.[4] All Oregon cities and nine of Oregon's counties have adopted home rule charters. The remaining 27 counties are general law counties, which derive their legislative power from specific statutory grants and from the broad general statutory grant in ORS 203.035. Home rule cities and counties and general law counties have the same legislative authority unless that authority is limited by state preemption or a limiting charter provision.[5]

Whether adopted under home rule or general law authority, a city or county enactment usually cannot be modified by the Legislative Assembly if the enactment involves the structure and procedures of the city or county.[6] However, in certain circumstances a city or county enactment may be preempted by state law. The Oregon courts have articulated the standards for limitation of home rule powers by statutory preemption in a series of cases.[7] In *City of La Grande/City of Astoria v. Public Employees Retirement Board*, the Supreme Court declared:

> [A] general law addressed primarily to substantive social, economic, or other regulatory objectives of the state prevails over contrary policies preferred by some local governments if it is clearly intended to do so, unless the law is shown to be irreconcilable with the local community's freedom to choose its own political form. In that case, such a state law must yield in those particulars necessary to preserve that freedom of local organization.[8]

Therefore, the validity of any proposed city or county ordinance must be determined on a case-by-case basis and will depend on whether or not the ordinance is inconsistent with or expressly preempted by state law.

Courts engage in a two-step process to determine whether state law preempts a local ordinance. The first step of inquiry is determining whether the legislature meant its law to be exclusive.[9] A legislative intention to preempt local regulation "is apparent if it is expressly or otherwise clearly manifested in the language of the statute."[10]

If a court finds no evidence of express preemption, the second step of inquiry is examining the city or county ordinance to determine whether the ordinance conflicts with state law.[11] An ordinance conflicts with a state law if it "prohibits what the state legislation permits or permits what the state legislation prohibits."[12] In determining whether a conflict exists, a court will not assume that, because state law is silent on a particular subject, the Legislative Assembly intended to permit the conduct that a city or county ordinance prohibits or otherwise

---

[4] *City of La Grande/City of Astoria v. Public Employees Retirement Board*, 281 Or. 137, 142 (1978).
[5] *GTE Northwest Inc. v. Oregon Pub. Util. Comm'n*, 179 Or. App. 46, 51-52 (2002), *citing Allison v. Washington County*, 24 Or. App. 571, 581 (1976).
[6] *La Grande/Astoria*, 281 Or. at 156.
[7] *See*, *e.g.*, *La Grande/Astoria*; *State ex rel. Haley v. City of Troutdale*, 281 Or. 203 (1978); *City of Roseburg v. Roseburg City Firefighters, Local No. 1489*, 292 Or. 266 (1981); *Multnomah Kennel Club v. Dept. of Revenue*, 295 Or. 279 (1983); *Pacific Northwest Bell v. Multnomah County*, 68 Or. App. 375 (1984); *City of Portland v. Lodi*, 308 Or. 468 (1989); *City of Portland v. Jackson*, 316 Or. 143 (1993); *Ashland Drilling, Inc. v. Jackson County*, 168 Or. App. 624 (2000); *Oregon Restaurant Assn. v. City of Corvallis*, 166 Or. App. 506 (2000).
[8] *La Grande/Astoria*, 281 Or. at 156.
[9] *Id.* at 148.
[10] *Ashland Drilling*, 168 Or. App. at 634.
[11] *La Grande/Astoria*, 281 Or. at 148.
[12] *Ashland Drilling*, 168 Or. App. at 635.

regulates.[13] Instead, the court will determine the conduct the ordinance prohibits and look to see whether state law permits the conduct and, if so, whether the conduct is permitted by an express legislative decision, by a decision apparent in the legislative history or otherwise.[14]

State Law Does Not Preempt the Hypothetical Ordinance

In considering the first step of the preemption analysis described above, we did not find any language in ORS chapter 90, or in any other statutes that apply to landlords governed by ORS chapter 90, that expressly preempts, or otherwise clearly manifests a legislative intention to preempt, local regulation of month-to-month tenancies.[15] In fact, Oregon law only expressly prohibits local governments from requiring a property owner to pay a replacement fee or other fee for tenant relocation from a property that is the subject of a contract between the property owner and the United States Department of Housing and Urban Development for participation in a federal housing program.[16] ORS chapter 90 does not contain any provisions establishing, claiming exclusivity over or prohibiting adoption of local rules regarding payment of relocation expenses to tenants upon termination of a month-to-month tenancy without cause. Therefore, we do not believe the Legislative Assembly clearly intended to preempt a local ordinance that would require landlords to pay relocation expenses to tenants when the landlord terminates the tenant's month-to-month tenancy without cause.[17]

In the second step of the preemption analysis, we conclude that the hypothetical local ordinance you describe would not conflict with state law. A local ordinance requiring landlords to pay relocation expenses to tenants when the landlord terminates the tenant's month-to-month tenancy without cause would impose an additional or stricter requirement on landlords than is required by state law. Oregon courts have consistently held that a civil regulation of a chartered city will not be displaced "merely because state law regulates less extensively in the same area."[18] For example, in *Oregon Restaurant Assn. v. City of Corvallis*,[19] the Court of Appeals upheld a city prohibition on smoking in all enclosed public places, notwithstanding the less extensive regulations of the Oregon Indoor Clean Air Act.[20] The court was "reluctant to assume that the legislature, in adopting statewide standards, intended to prohibit a locality from requiring more stringent limitations within its particular jurisdiction."[21]

Similarly, in *Thunderbird Mobile Club LLC v. City of Wilsonville,*[22] the Court of Appeals considered the legality of a city ordinance that required a mobile home park owner intending to close the mobile home park to obtain a closure permit from the city and to compensate displaced tenants, in addition to meeting statutory mobile home park closure requirements. The court held that "a local law is preempted only to the extent that it 'cannot operate concurrently' with state law, i.e., the operation of local law makes it impossible to comply with a state statute."[23] For this reason, the court held that the local ordinance was not preempted by state

[13] *Id*.
[14] *Portland v. Jackson*, 316 Or. at 151.
[15] *See La Grande/Astoria*, 281 Or. at 148-149.
[16] ORS 456.265 (1).
[17] *Thunderbird Mobile Club, LLC v. City of Wilsonville*, 234 Or. App. 457, 473-474 (2010); *see also La Grande/Astoria*, 281 Or. at 148-149.
[18] *Thunderbird Mobile Club*, 234 Or. App. at 473-474; *see also State ex rel Haley v. City of Troutdale*, 281 Or. at 210-211.
[19] 166 Or. App. at 508-509.
[20] ORS 433.835 to 433.875.
[21] *Oregon Restaurant Assn.*, 166 Or. App. at 511.
[22] 234 Or. App. at 460-462.
[23] *Thunderbird Mobile Club*, 234 Or. App. at 474 (citation omitted).

law, even though the local ordinance imposed requirements on mobile home park owners in addition to those mandated by statute.[24]

Thus, in both *Oregon Restaurant Assn.* and *Thunderbird Mobile Club*, the court held that state law does not preempt a stricter local ordinance if it is possible to meet both state and local standards.[25] Because the hypothetical local ordinance could operate concurrently with state law, we conclude that state law would not preempt a local ordinance requiring landlords to pay relocation expenses to tenants when the landlord terminates the tenant's month-to-month tenancy without cause.

Please note that, because your question is based on the hypothetical local rule of an unidentified city or county in this state, we did not have the opportunity to examine the city or county charter or ordinance in the course of preparing this analysis. Rather, this opinion provides an analysis of the interaction of the broader legal principles relevant to your question.

The opinions written by the Legislative Counsel and the staff of the Legislative Counsel's office are prepared solely for the purpose of assisting members of the Legislative Assembly in the development and consideration of legislative matters. In performing their duties, the Legislative Counsel and the members of the staff of the Legislative Counsel's office have no authority to provide legal advice to any other person, group or entity. For this reason, this opinion should not be considered or used as legal advice by any person other than legislators in the conduct of legislative business. Public bodies and their officers and employees should seek and rely upon the advice and opinion of the Attorney General, district attorney, county counsel, city attorney or other retained counsel. Constituents and other private persons and entities should seek and rely upon the advice and opinion of private counsel.

Very truly yours,

DEXTER A. JOHNSON
Legislative Counsel

By
Emily M. Maass
Deputy Legislative Counsel

[24] *Id.* at 478-479.
[25] *Oregon Restaurant Assn.*, 166 Or. App. at 511; *Thunderbird Mobile Club*, 234 Or. App. at 473-474.