

Summary Judgment. After a hearing on these motions on September 9, 2005, and after consideration of the evidence, citations of authority, and the entire record, the Court hereby finds and enters this Order as follows:

FINDINGS OF FACT

On May 12, 2004, the City of Marietta adopted Ordinance No. 6664, known as the Rental License Ordinance ("Ordinance"). The purpose of the Ordinance was "to protect the public health, safety and general welfare of the people of the city with regard to non-owner occupied rental property[.]"

The Ordinance was passed to address "the substantial decline in the integrity, value and safety of a substantial number of rental dwelling units within the City of Marietta and the negative impact such decline has on the citizens of Marietta and the stability of residential communities." William B. Dunaway, Mayor of the City of Marietta, stated in an affidavit that the Ordinance was passed in response to reports on the physical condition of rental units in the City of Marietta, and the Mayor's own first-hand observations of the sub-standard and unfit condition of many rental units.

Under the terms of the Ordinance, "No operator shall allow any person to occupy any rental property as a tenant or lessee," unless such rental property "has been issued a valid rental license by the city." The Ordinance requires operators to obtain a separate rental license for every rental property.

A rental license is valid for two years under the Ordinance. To obtain a rental license, an operator must first submit an application for each rental property. Such application must include the following information: "(1) the street address and a general description of the premises for which the certificate is sought; (2) the name, address and

telephone number of the owner, operator and local agent of the rental property; (3) the name, address and telephone number of the applicant; and (4) the number of rental units in each rental dwelling and number of occupants.”¹

Each separate rental property and individual dwelling unit must pass an inspection by a city-approved inspector for a rental license to be issued.² The inspection is conducted at the operator’s expense. The purpose of the inspection is to ensure compliance “with all of the provisions of the Codes and Ordinances of the City of Marietta, and certify the stove, heating, ventilation, air conditioning and refrigeration systems are functioning properly and safely if any.” If the property does not pass the inspection, the operator must take remedial measures so that the property complies with applicable codes and ordinances.

To obtain a rental license, the applicant must also pay a license fee “to defray costs incident to the administration of this Ordinance.”

Under the Ordinance, a rental license must be renewed upon its expiration every two years. For an operator’s license to be renewed, the property must pass another inspection by a city-approved inspector. The re-inspection is conducted at the operator’s expense. Additionally, the operator must pay a license renewal fee.

Under the Ordinance, the city manager may seek a search warrant from a municipal judge, when there is probable cause to believe that a rental property does not comply with the city codes and ordinances pertaining to the rental license. Upon

¹ The Ordinance originally required the applicant to include the names of all lessees on the application. On March 9, 2005, the Ordinance was amended, and all requirements that the applicant divulge the name or contact information of any tenant or lessee were removed.

² If a rental property contains more than twenty dwelling units, it is not necessary for all dwelling units to be inspected; rather, a random sampling of thirty percent of representative dwelling units may be inspected, upon the request of the operator.

obtaining a warrant, the city manager or his agent may search the rental property for code and ordinance violations.

If a rental property is in violation of the Ordinance, the operator may be fined, and his license may be suspended. Ultimately, the city manager "may, after thirty days' notice and an opportunity for a hearing to the tenants and the operator, require that the premises be vacated, and not be reoccupied until all of the requirements of the provisions of the rental licenses code have been satisfied[.]"

Shortly after the passage of the Ordinance, Plaintiffs in the three pending civil actions separately filed suit, seeking a declaratory judgment that the Ordinance is invalid. On June 10, 2004, a temporary injunction was entered in civil action file number 04-1-4482 by the Honorable Watson L. White, Senior Judge of the Cobb Judicial Circuit. This temporary injunction prevents the City from enforcing the Ordinance pending further Order from this Court.

Plaintiffs have each filed Motions for Summary Judgment. Defendants have filed Cross-Motions for Summary Judgment. This Court heard oral argument on these Motions on September 9, 2005.

CONCLUSIONS OF LAW

1.

In each of the pending civil actions, Defendants filed a Motion for Consolidation pursuant to O.C.G.A. § 9-11-42. No Plaintiff objected to Defendants' Motions for Consolidation. Each civil action challenges the Ordinance. The cases have been consolidated before this Court. Therefore, this Court will collectively address each motion by this one Order.

2.

“The standard for granting summary judgment is that the moving party must demonstrate that there is no genuine issue of material fact and that undisputed facts, viewed in the light most favorable to the nonmoving party, warrant judgment as a matter of law.” Martin v. North American Van Lines, 226 Ga.App. 187, 188, 485 S.E.2d 815 (1997) (quoting Howell v. Styles, 221 Ga.App. 781, 784, 472 S.E.2d 548 (1996)); O.C.G.A. § 9-11-56(c).

3.

“In cases of actual controversy, the respective superior courts of this state shall have power, upon petition or other appropriate pleading, to declare rights and other legal relations of any interested party petitioning for such declaration, whether or not further relief is or could be prayed[.]” O.C.G.A. § 9-4-2(a).

4.

An action for declaratory judgment is a proper vehicle to determine the validity of a municipal ordinance. *See, e.g. City of Columbus v. Atlanta Cigar Co.*, 111 Ga.App. 774, 143 S.E.2d 416 (1965).

5.

A trial court is empowered to enter a declaratory judgment declaring a municipal ordinance invalid, if the case involves an actual controversy between the parties. *See, e.g. City of Columbus, supra; Cf. Mayor, etc. of Savannah v. Bay Realty Co.*, 90 Ga.App. 261, 82 S.E.2d 710 (1954).

6.

The civil actions before this Court are cases of actual controversy. Therefore, this Court is authorized to issue a declaratory judgment regarding the validity of the Ordinance.

7.

The Ordinance was enacted consistent with the City of Marietta's municipal authority and legislative discretion, pursuant to the Constitution of the State of Georgia and the Charter of the City of Marietta. *See Georgia Constitution of 1983, Art. IX, Sec. II, Para. II.*

8.

The Georgia General Assembly is empowered to limit a city's municipal authority, and preempt local ordinances. "The doctrine of state preemption is based on the concept that statutes of the state legislature control over county (or city) ordinances. [S]tate law may preempt local law expressly, by implication, or by conflict." Sturm, Ruger & Co., Inc. v. City of Atlanta, 253 Ga.App. 713, 717-718, 560 S.E.2d 525 (2002) (quoting Franklin County v. Fieldale Farms Corp., 270 Ga. 272, 507 S.E.2d 460 (1998)).

9.

O.C.G.A. § 36-74-30(b) is a statute validly enacted by the General Assembly. The statute is within the legislative discretion of the General Assembly. *See Georgia Constitution of 1983, Art. III, Sec. IV, Para. I.*

10.

O.C.G.A. § 36-74-30(b) became effective on July 1, 2003, and was therefore in effect at the time the City of Marietta enacted the Ordinance.

11.

O.C.G.A. § 36-74-30(b) provides: "No local government is authorized to perform investigations or inspections of residential rental property unless there is probable cause to believe there is or has been a violation or violations of applicable codes..." O.C.G.A. § 36-74-30(b).

12.

The rental licensing scheme created by the Ordinance requires each separate rental property to pass an inspection before a rental license is issued.³ The rental property must be re-inspected for the license to be renewed. The initial inspection and the renewal inspection are mandatory.⁴ The initial inspection and the renewal inspection are conducted without the city manager or any of his agents having to show probable cause of a code violation.

13.

O.C.G.A § 36-74-30(b) directly eliminates the City of Marietta's legislative authority to pass an ordinance permitting inspections of residential rental property without probable cause. In requiring mandatory inspections for licensing and license renewal, the Ordinance permits inspections of residential rental property without probable cause. O.C.G.A. § 36-74-30(b) thus preempts the Ordinance.

³ In rental properties with more than twenty dwelling units, only thirty percent of dwelling units may be required to be inspected. *See* FN 2, *supra*.

⁴ In a very limited exception to the general inspection requirement, a Section 8 housing inspection booklet may be accepted in lieu of an inspection.

14.

O.C.G.A. § 36-74-30(b) further provides: "in no event may a local government require the registration of residential rental property." O.C.G.A. § 36-74-30(b).

15.

The rental licensing scheme created by the Ordinance requires operators to obtain a separate license for each rental property. An operator must apply for each license separately. In so applying, an operator must provide individual details on each rental property. Each property must be separately inspected. The Ordinance thus requires the registration of rental property.

16.

O.C.G.A. § 36-74-30(b) directly eliminates the City of Marietta's legislative authority to pass an ordinance requiring the registration of residential rental property. The Ordinance requires the registration of residential rental property. O.C.G.A. § 36-74-30(b) thus preempts the Ordinance.

17.

The General Assembly passed O.C.G.A. § 36-74-30(b) to address municipal authority in the field of residential rental property registration and residential rental property inspections. "The practical effect of the preemption doctrine is to preclude all other local or special laws on the same subject." Sturm, Ruger & Co., Inc., supra, 253 Ga.App. at 718.

18.

As O.C.G.A. § 36-74-30(b) preempts the Ordinance, the Ordinance is invalid and unenforceable.

As this Court hereby holds that the Ordinance is invalid because it is preempted by a statute enacted by the General Assembly, this Court does not need to reach the question of whether the Ordinance is constitutional under the Constitution of the State of Georgia or the Constitution of the United States of America.

For the above and foregoing reasons, Plaintiffs' Motions for Summary Judgment are hereby **GRANTED**, and Defendants' Motions for Summary Judgment are hereby **DENIED**.

This Court hereby **DECLARES** that the Rental License Ordinance adopted by the City of Marietta is invalid and unenforceable, as O.C.G.A. § 36-74-30(b) preempts the Ordinance.

SO ORDERED, this 21st day of October, 2005.



Judge J. Stephen Schuster
Superior Court of Cobb County
Cobb Judicial Circuit

CERTIFICATE OF SERVICE

I hereby certify that I have this day mailed a copy of the foregoing Order Granting Plaintiffs' Motions for Summary Judgment to the following parties:

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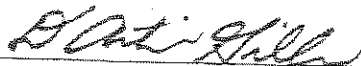
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This 21st day of October, 2005.



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Law Clerk to Judge J. Stephen Schuster
Superior Court of Cobb County