

No. 141085, Fourth Dist., Div. Three, May 28, 1991.

ASTORSON BRESNA, Plaintiff and Appellant v.  
CITY OF SANTA ANA, Defendant and Respondent

**SUMMARY**

The trial court, in an action by an apartment resident against a city for derogatory and injurious relief, determined that a city ordinance increasing the minimum size of required space in dwelling units over that established by Health & Saf. Code, § 17922, subd. (a)(1) (Uniform Housing Code, § 504, subd. (b)), was void (Superior Court of Orange County, No. 659206, Royal H. Schenk, Jr., Judge).

The Court on Appeal reversed. The court held that although cities may enact occupancy standards different from those set forth in the Uniform Housing Code, the city did not comply with the specific statutory procedures in enacting such local legislation. The Legislature expressed its intent in the adoption of the Uniform Housing Code to occupy the field of occupancy standards, and also implicitly preemppted most local regulation by prescribing the manner in which local authorities can adopt ordinances which vary from the uniform code. The court held that it would make little sense to preclude a narrow set of circumstances in which local entities can override state law. It thus affirmed the trial court's judgment that the ordinance was void (opinion by Sills, P.J., with McInnis and Wallin, JJ., concurring).

**HEADNOTES**

Classified for automatic filing of official reports.

- (1) **Health and Sanitation § 2. Regulations and Ordinances.—Housing.—Space Requirements.—State Preemption: Municipality's Space Requirements.—Conflict With Statutes.—Housing.—City: The trial court erred in ruling that a city ordinance increasing a minimum size of required space in dwelling units over that established by Health & Saf. Code, § 17922, subd. (a)(1) (Uniform Housing Code, § 504, subd. (b)), was valid. Although cities may enact occupancy**

standards different from those set forth in the code, the city did not comply with the specific statutory procedures to accomplish such local legislation. The Legislature expressed its intent in the adoption of the Uniform Housing Code to occupy the field of occupancy standards and also implicitly preemppted most local regulation by prescribing the manner in which local authorities can adopt ordinances which vary from the uniform code. It would make little sense to preclude a narrow set of circumstances in which local entities can override state law if those entities were already free to override state law with impunity.

(See *Cal. Bar Bd., Building Regulations, § 2, 4 WICKEN, Summary of Cal. Law 1983 ed. 1983*) Real Property, § 54.

- (2) **Constitutional Law § 20.—Constitutionality of Legislation.—Partially Unconstitutional Statutes.—Severability: Invalid Provisions of a statute should be severed whenever possible to preserve the validity of the remainder of the statute. The test of severability is whether the invalid parts of the statute can be severed from the otherwise valid parts without destroying the statutory scheme, or the utility of the remaining provisions. A relevant consideration in severability analysis is whether the statute would have been adopted had the legislative body known the invalidity of one provision.**

**CITATIONS:**

Richard L. Sips for Plaintiff and Appellant

Kenneth Kobrin, Ronald S. Javor, David T. Quetzala and Robt. Brian Rank as Amici Curiae on behalf of Plaintiff and Appellant

Edward J. Cooper, City Attorney, and Robert J. Wheeler, Assistant City Attorney, for Defendant and Respondent

**CITATIONS:**

SHILS, P. J.—Under the Uniform Housing Code, adopted pursuant to Health and Safety Code section 17922, subdivision (a)(1), every dwelling unit in this state is required to have at least 1 room with a minimum of 120 square feet of floor area; other habitable rooms are required to have an area of at least 70 square feet; and in any room used for sleeping purposes, the

required, these areas shall be increased at the rate of 50 square feet for each occupant in excess of two; (4) minimum housing code, § 504, subd. (b) (hereinafter referred to as section 504); Section 503(a).

Respondent City of Santa Ana (the City), however, thinks these dimensions are too small and tend to overcrowding. It therefore passed an ordinance (No. 65-2126) increasing the minimum size of the largest room to 150 square feet or less. It increased, and requires, 100 square feet for each additional occupant (in sleep or in use); for apartment Association House, the new ordinance spelled disaster. Under the Uniform Housing Code, the Hirschen family of five could legally dwell in the one-bedroom apartment where they have long resided, under the City's new ordinance, either one family member would have to leave or the whole family would have to move.

There is no question that the City (or any other municipality in this state) has the power to enact occupancy standards which differ from those set forth in the Uniform Housing Code. The applicable statute, however, set up a specific procedure to accomplish such local legislation, and the City simply did not comply with those provisions. For the reasons that follow, we hold the City's ordinance invalid, and reverse the judgment.

FACTS

These parties have visited us before. In 1967, the City issued a notice of violation to Hirschen concerning the same apartment as is set out here. The City claimed the Hirschen family was in violation of section 519, the same provision quoted above. The City interpreted the catch term "habitable room" to include only bedrooms, not living rooms; under that interpretation, Hirschen could have only three people living in his apartment, not five. City's interpretation of the Uniform Housing Code and its enforcement of the Code is interpreted in the Uniform Housing Code and was affirmed (*Hirschen v. City of Santa Ana* (Dec. 21, 1969) 6007157 (appellate opn.)). We observed that the City appeared "to have little support for its attempt to curtail a permanent tenancy was issued (reversing the City from further jurisdiction under its interpretation of the Uniform Housing Code).

The City amended ordinance, on May 6, 1969, its city council adopted ordinance No. 69-2176, Section 1, subdivision (c) of the ordinance provides: "No dwelling unit shall be inhabited in such a manner that it exceeds the maximum occupancy of the dwelling unit." (1) Maximum occupancy shall be determined as follows: (A) For the first two (2) occupants, 160 or any

dwelling unit, there shall be at least one hundred fifty (150) square feet of floor space; There shall be at least one hundred (100) square feet of net floor space for every additional occupant thereafter; (2) The City made no findings regarding local, historical, practical, or topographical conditions, the ordinance thereby stated in general terms that overcrowding, excessive noise pollution, traffic congestion, unsanitary conditions, and the like (No. 65-2126, § 1, subd. (a)).

The parties agree that, under the City's ordinance, no more than four people would be permitted to live in the Hirschen apartment. At the city council hearing prior to the adoption of the ordinance, evidence was presented that the average occupancy for one-bedroom apartments in Britain's neighborhood is two to six people, the average occupancy for two-bedroom units is eight to nine people. Evidence was also presented that at least half the families living in the general area would be subject to eviction.

Less than one month after the ordinance became effective, Hirschen filed a complaint for abatement and equitable relief. He claimed the ordinance was invalid for a variety of reasons. By the time the case proceeded to trial, however, the sole issue was whether state law precluded local ordinances regarding occupancy standards. The trial court found there was no such preclusion, and the trial judgment is not entirely clear, it appears the court found section 503 unconstitutional by virtue of our Supreme Court's decision in *City of Santa Barbara v. Anderson* (1980) 77 Cal.3d 733, 136d Cal.Rptr. 579, 610 P.2d 426, 12 A.L.R.3d 2191. In light of this finding of unconstitutionality, the trial court agreed with the City that local codes are free or legislative, their own occupancy standards. Hirschen argued, we granted his petition for writ of supersedeas to stay enforcement of the ordinance during the pendency of this appeal (*Hirschen v. Superior Court* (Nov. 15, 1991) 60118663).

DISCUSSION

1

(1) The Uniform Housing Code was adopted into state law pursuant to Health and Safety Code section 17927. We must first decide whether the Legislature has expressed its intent, through the adoption of the Uniform Housing Code, to occupy the field of occupancy standards, i.e., does the "the plan be 'local' legislative, or legislative conditions," emanate from Health and Safety Code section 17926's, subdivision (b), the applicability of the statute will be discussed here in this opinion. (Where otherwise indicated, all statutory references are to the Health and Safety Code.)





and pressure the Legislature to amend the benefits of the state-wide standard of adoption of the various to include cases such as *Sella*. And, here, state law clearly prevails over local ordinance. The judgment is reversed.

*Reveré, J., and Wehler, J., concur.*

Respondent's petition for review by the Supreme Court was denied August 27, 1992.

*THE HERBERT POWER GROUP, INC.*  
vs. *THE HERBERT POWER GROUP, INC.*

1987

186, 601 P.2d 1109, 1110 (Wyo. 1987)

*ROBERT REIN, et al., Plaintiffs and Respondents,*  
*vs. THE HERBERT POWER GROUP, INC., et al., Defendants and Appellants.*

58 WYOM.

Plaintiffs sued a corporation for breach of contract, and also named as defendants two spouses who were the only shareholders, alleging that they were alter egos of the corporation. After being denied access to the business and the residence of one of the couples by a paid guard, plaintiffs obtained a substituted service on the corporation and the couple by securing the marital residence. The defendants did not respond to the action, and the trial court entered a default judgment, granting the relief sought in the complaint. (Supreme Court of Wyoming, by *Waldman, David F. Waldman, J., concurring.*)

The Court of Appeal affirmed. The court held that, although defendants did not seek relief in the trial court, they had not waived their right to appeal, since they were challenging the jurisdiction of the trial court. However, the court held that the trial court had proper jurisdiction over defendant. The court held that service on the sole guard satisfied the substituted service requirements of Code Civ. Proc. § 415-20. The court held that the guard qualified as both a person apparently in charge of the office as well as a competent member of the household, since the guard's relationship with defendants made it more likely than not that the second delivery process to defendants (Opinion by *Schwartz, J., with Sells, P. J., and Wehler, J., concurring.*)

**HEADNOTES**

Classified in 411 as a Digest of Official Reports

11) **Appellate Review—§ 6—Who May Appeal—Loss or Waiver of Right—Failure to Seek Trial Court Relief—Challenge to Jurisdiction.** Defendants did not waive their right to appeal from a default judgment by failing to seek relief in the trial court, since by asserting that service on the summons and complaint was ineffective, defendants challenged the trial court's jurisdiction.

12a-2c) **Process, Notices, and Papers § 7—Mode of Service—Substitution of Service—Sufficiency—Service on Your Guard.** The trial court