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| OPINION | : | No. 14-304 |
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| of | : | April 14, 2016 |
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THE HONORABLE CONNIE M. LEYVA, MEMBER OF THE STATE SENATE, has requested an opinion on the following questions:

1. Under Vehicle Code section 22507, may local authorities limit the issuance of long-term preferential parking permits to residents only?
2. In issuing long-term residential parking permits, may local authorities distinguish among residents based on the type of dwelling in which they live—for example, by only making permits available to those who reside in single-family dwellings or small (two-to-four-unit) multifamily dwellings, and excluding those who reside in larger multifamily dwelling units such as apartment buildings?

CONCLUSIONS

1. Under Vehicle Code section 22507, local authorities may limit the issuance of long-term preferential parking permits to residents only.
2. In issuing long-term residential parking permits, local authorities may not distinguish among residents based on the type of dwelling in which they live.

ANALYSIS

In accordance with Vehicle Code section 22507, many California cities have adopted measures that restrict parking on designated public streets, but exempt residents of the affected blocks from the restrictions.¹ Such exemptions are typically granted by issuing parking permits, usually valid for one or two years, to those residents who apply for them. We are told that some local parking programs² limit residential parking permits to people living in single-family or small (two-to-four-unit) multifamily dwellings. Under such programs, residents living in larger multifamily dwellings, such as apartment buildings, are not eligible for parking permits.

Given these circumstances, we have been asked to determine (1) whether a local permit parking program may be limited to only residents in the affected area, and (2) whether a parking program may be further limited to only those residents who live in single-family or small multifamily units. For the reasons that follow, we conclude that local authorities³ may generally establish resident-only parking programs, but may not distinguish among residents based on the type of dwelling in which they live.

¹ In relevant part, Vehicle Code section 22507 provides:

(a) Local authorities may . . . prohibit or restrict the . . . parking . . . of vehicles . . . on certain streets or highways, or portions thereof, during all or certain hours of the day [and] may include a designation of certain streets upon which preferential parking privileges are given to residents and merchants adjacent to the streets for their use . . . under which the residents and merchants may be issued a permit or permits that exempt them from the prohibition or restriction

² Local parking programs refer to areas, or zones, where public parking is restricted and permit parking is allowed, and are variously referred to in this opinion as “preferential parking programs,” “permit parking programs,” or “residential parking programs.”

³ A “local authority” means “the legislative body of every county or municipality having authority to adopt police regulations.” (Veh. Code, § 385.) In this opinion, we

State policy regarding traffic control by cities on public streets was described by the California Supreme Court in 1920: “The streets of a city belong to the people of the state, and every citizen of the state has a right to the use thereof, subject to legislative control. The right of control over street traffic is an exercise of part of the sovereign power of the state. Local ordinances regulating traffic which are inconsistent with general state laws are invalid. [¶] While it is true that the regulation of traffic upon a public street is of special interest to the people of a municipality, it does not follow that such regulation is a municipal affair, and if there is a doubt as to whether or not such regulation is a municipal affair, that doubt must be resolved in favor of the legislative authority of the state.”⁴

Upon enactment of the Vehicle Code in 1935, and then again upon its recodification in 1959, the state Legislature asserted its plenary power over traffic control, and preempted local regulation over the entire field—including parking on public streets. Vehicle Code section 21 states: “Except as otherwise expressly provided, the provisions of this code are applicable and uniform throughout the State and in all counties and municipalities therein, and no local authority shall enact or enforce any ordinance on the matters covered by this code unless expressly authorized herein.”⁵ Thus, in analyzing the questions presented, we must follow the principle that the state’s delegation of power to local authorities is strictly construed, meaning that delegations must be express rather than implied.⁶

In our analysis, we also apply settled principles of statutory construction. “[The] first task in construing a statute is to ascertain the intent of the Legislature so as to effectuate the purpose of the law. In determining such intent, [we] look first to the words of the statute themselves, giving to the language its usual, ordinary import and according significance, if possible, to every word, phrase and sentence in pursuance of the

use the terms “local authority” and “local government” interchangeably.

⁴ *Ex Parte Daniels* (1920) 183 Cal. 636, 639, citations omitted; see also *Rumford v. City of Berkeley* (1982) 31 Cal.3d 545, 550, fn. 3 (*Rumford*) (regulating traffic use on streets is outside the “municipal affairs” constitutional grant of authority to charter cities); *City of Lafayette v. County of Contra Costa* (1979) 91 Cal.App.3d 749, 753-755 (*City of Lafayette*).

⁵ Veh. Code, § 21; see also *Rumford*, *supra*, 31 Cal.3d at pp. 549-550, 553; *County of Los Angeles v. City of Alhambra* (1980) 27 Cal.3d 184, 189, 192-193; 75 Ops.Cal.Atty.Gen. 239, 244 (1992).

⁶ *Rumford*, *supra*, 31 Cal.3d at p. 550; *O’Connell v. City of Stockton* (2007) 41 Cal.4th 1061, 1073-1074; *City of Lafayette*, *supra*, 91 Cal.App.3d at pp. 755, 756 & fn. 3; 67 Ops.Cal.Atty.Gen. 1, 4 (1984).

legislative purpose. A construction making some words surplusage is to be avoided. The words of the statute must be construed in context, keeping in mind the statutory purpose, and statutes or statutory sections relating to the same subject must be harmonized, both internally and with each other, to the extent possible.”⁷ If the statutory language is clear, we “follow its plain meaning unless a literal interpretation would result in absurd consequences the Legislature did not intend.”⁸ In addition, where helpful, “[b]oth the legislative history of the statute and the wider historical circumstances of its enactment may be considered in ascertaining the legislative intent.”⁹ With these principles in mind, we now turn to the questions presented.

Question 1

We first consider whether local authorities may, under Vehicle Code section 22507, issue long-term preferential parking permits to residents only. We conclude that they may do so. The pertinent statutory language provides as follows:

(a) Local authorities may, by ordinance or resolution, prohibit or restrict the . . . parking . . . of vehicles . . . on certain streets or highways,^[10] or portions thereof, during all or certain hours of the day. The ordinance or resolution may include a designation of certain streets upon which preferential parking privileges are given to residents^[11] and merchants adjacent to the streets for their use and the use of their guests, under which the residents and merchants may be issued a permit or permits that exempt

⁷ *Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1386-1387 (*Dyna-Med, Inc.*), citations omitted.

⁸ *Los Angeles Unified School Dist. v. Garcia* (2013) 58 Cal.4th 175, 186, internal quotation marks and citations omitted.

⁹ *Dyna-Med, Inc., supra*, 43 Cal.3d at p. 1387.

¹⁰ “Street” is defined as “a way or place of whatever nature, publicly maintained and open to the use of the public for purposes of vehicular travel” and “includes highway.” (Veh. Code, §590.) “Highway” is similarly defined and “includes street.” (Veh. Code, § 360.)

¹¹ “Resident” is defined as “any person who manifests an intent to live or be located in this state on more than a temporary or transient basis. Presence in the state for six months or more in any 12-month period gives rise to a rebuttable presumption of residency.” (Veh. Code, § 516.) As used in Vehicle Code section 22507, “residents” are those persons living adjacent to a street or streets on which parking is restricted and parking permits are granted. (See *Boccatto v. City of Hermosa Beach* (1984) 158 Cal.App.3d 804, 810-811.)

them from the prohibition or restriction of the ordinance or resolution. . . . A local ordinance or resolution adopted pursuant to this section may contain provisions that are reasonable and necessary to ensure the effectiveness of a preferential parking program.¹²

The first sentence of this statute gives local authorities broad power to restrict parking on public streets, and the second sentence gives local authorities specific power to adopt preferential parking programs that exempt residents, merchants, and their guests from those restrictions.

The use of the conjunctive phrase “residents and merchants” in the statute’s second sentence has given rise to the question whether local authorities may create *resident-only* parking programs to the exclusion of merchants. The Court of Appeal resolved that question in *Friedman v. City of Beverly Hills*,¹³ concluding that too strict a reading of the statute—i.e., one which requires permits to be issued to both residents *and* merchants, or not at all—would thwart the legislative intent to provide flexibility to local authorities in addressing local parking problems.¹⁴ The court cited precedent holding that

¹² Veh. Code, § 22507, subd. (a). Another, related section of the Vehicle Code—section 22507.5—addresses the potential implementation of permit parking under more limited circumstances and provides, in relevant part:

(a) Notwithstanding Section 22507, local authorities may, by ordinance or resolution, prohibit or restrict the parking or standing of vehicles on certain streets or highways, or portions thereof, between the hours of 2 a.m. and 6 a.m. . . . The ordinance or resolution relating to parking between the hours of 2 a.m. and 6 a.m. may provide for a system of permits for the purpose of exempting from the prohibition or restriction of the ordinance or resolution, disabled persons, residents, and guests of residents of residential areas, including, but not limited to, high-density and multiple-family dwelling areas, lacking adequate offstreet parking facilities.

We do not analyze this statute separately in connection with our consideration of Question 1, but note that it provides local authorities with another means of regulating parking and of granting preferential parking privileges to residents and other specified classes of drivers.

¹³ *Friedman v. City of Beverly Hills* (1996) 47 Cal.App.4th 436 (*Friedman*).

¹⁴ *Id.* at p. 444. In reaching this conclusion, the court reasoned that the grant of power to restrict parking in the first sentence of Vehicle Code section 22507, subdivision (a), was broad, and that subsequent amendments to the statute to allow preferential parking further expanded the powers of local authorities to ensure that “parking space is readily available to those most affected in a local area.” (*Id.* at p. 443.) The court noted that the

the word “and” may be construed to mean “or” when necessary to effectuate the intent of a statute, and concluded that “[t]he Legislature intended to allow the City to restrict parking to residents or merchants or both, as warranted by the circumstances.”¹⁵

We thus conclude that, under Vehicle Code section 22507,¹⁶ local authorities may limit the issuance of long-term preferential parking permits to residents only.¹⁷

Question 2

Having concluded that Vehicle Code section 22507 allows local authorities to limit preferential parking to residents only, we next consider whether, in issuing residential parking permits, local authorities may further distinguish among residents based on the type of dwelling in which they live—for example, by making permits available only to those residents who occupy single-family dwellings or small (two-to-four-unit) multifamily dwellings. We conclude that local authorities may not do so.

Section 22507 allows local authorities to “prohibit or restrict the . . . parking . . . of vehicles . . . on *certain* streets . . . during all or *certain* hours of the day,” and to grant “preferential parking privileges . . . to residents . . . under which the residents . . . may be

statute’s last sentence is designed to “give localities substantial power to tailor preferential parking programs to meet local circumstances.” (*Ibid.*)

¹⁵ *Id.* at p. 444.

¹⁶ Local authorities’ power to restrict parking to residents is, however, constrained by other state laws exempting certain drivers from parking restrictions generally, such as Vehicle Code section 22511.5, subdivision (a)(1)(A), which allows people with disabilities who have special license plates or distinguishing placards to park for unlimited periods of time in a permit parking zone established under section 22507.

¹⁷ Because residential parking programs discriminate against nonresidents, each program must bear a reasonable relationship to its objectives in order to withstand a facial challenge on equal protection grounds. (*Arlington County Board v. Richards* (1977) 434 U.S. 5.) In 1977, the United States Supreme Court held that a residential parking ordinance enacted by Arlington County, Virginia, did not on its face violate the equal protection guarantee of the federal Constitution because it bore a reasonable relationship to its objectives, which included (1) enhancing the quality of life for residents by reducing air pollution, noise, traffic hazards, and litter resulting from nonresident and commuter traffic in residential areas; (2) encouraging reliance by commuters on car pools and mass transit; and (3) assuring convenient parking for residents. (*Id.* at p. 7; accord, *People v. Housman* (1984) 163 Cal.App.3d Supp. 43, 54 [California residential parking ordinance with similar objectives did not violate federal or state Constitutions].)

issued . . . permits that exempt them from the [public parking] prohibition or restriction”¹⁸ We emphasize here that the adjective “certain” modifies the terms “streets” and “hours,” but does not modify the term “residents.” A common definition of “certain” is “particular.”¹⁹ Applying the rule of statutory construction that we are to give import to every word of a statute, if possible, and to avoid making some words surplusage,²⁰ we can infer from the unmodified use of the term “residents” in section 22507 that the Legislature did not intend to give local authorities discretion to treat certain, or particular, residents differently from other residents in this context.²¹

While we believe that section 22507’s terms are sufficiently clear, we nonetheless observe that the statute’s legislative history provides further support for our interpretation of those terms.²² A legislative analysis prepared for the Senate Committee on Local

¹⁸ Veh. Code, § 22507, subd. (a), emphasis added.

¹⁹ See Webster’s 3d New Internat. Dict. (2002) p. 367 (“2a: PARTICULAR: of a character difficult or unwise to specify—used to distinguish a person or thing not otherwise distinguished or not distinguishable in more precise terms.”); see generally *Smith v. Selma Community Hospital* (2010) 188 Cal.App.4th 1, 30 (“In scrutinizing the words of a statute, courts generally give them their usual, ordinary meaning, which in turn may be obtained by referring to a dictionary”).

²⁰ *City of Long Beach v. California Citizens for Neighborhood Empowerment* (2003) 111 Cal.App.4th 302, 305; see Civ. Code, § 1858.

²¹ Cf. *Capulungo v. Bondi* (1986) 179 Cal.App.3d 346, 350 (section 22507’s modification of “streets” and “hours” with the term “certain” indicates that “the designation of particular parking restrictions is a matter left to local needs and the intent of local authorities”).

We are aware that, despite the fact that the term “vehicles” in section 22507, subdivision (a), is not modified by the adjective “certain,” two appellate courts have held that local authorities may prohibit the parking of certain types of vehicles without also restricting all other vehicles. (*Homes on Wheels v. City of Santa Barbara* (2004) 119 Cal.App.4th 1173, 1178 [upholding ordinance prohibiting street parking of recreational vehicles]; *People v. Garth* (1991) 234 Cal.App.3d 1797, 1800 [upholding ordinance prohibiting street parking of unhooked boat trailer].) We believe these cases are distinguishable because the authority to grant parking privileges to residents is distinct from the authority to restrict the parking of different types of vehicles, and therefore requires a separate analysis. (See *City of Lafayette, supra*, 91 Cal.App.3d at pp. 752-753, 756, fn. 2, 757 [distinguishing between regulating classes of vehicles and excluding classes of persons from using city streets].)

²² *Dyna-Med, Inc., supra*, 43 Cal.3d at p. 1387 (“Both the legislative history of the statute and the wider historical circumstances of its enactment may be considered in

Government addressed section 22507's provision that allows local authorities to grant parking permits to "residents and merchants," noting two Legislative Counsel opinions and an opinion of the San Francisco City Attorney, which discussed the constitutionality or unconstitutionality of a residential-nonresidential distinction. Importantly for our purposes, neither the legislative analysis nor the opinions it cited discussed possible distinctions between *different types of residents*. To us, this silence indicates that the Legislature did not perceive the legislation as presenting a prospect of discrimination among types of residents.

Moreover, in a separate, comparable parking statute, the Legislature has demonstrated concern about parking problems in areas of high-density, multiple-family dwellings. Vehicle Code section 22507.5 authorizes local governments to restrict parking between the hours of 2 a.m. and 6 a.m., and to issue permits exempting certain classes of drivers, namely "disabled persons, residents, and guests of residents of residential areas, including, but not limited to, *high-density and multiple-family dwelling areas, lacking adequate offstreet parking facilities.*"²³ Bearing in mind that we are to harmonize, to the extent possible, statutes that relate to the same subject matter,²⁴ we believe it would be inappropriate to interpret section 22507 as allowing authorities to withhold preferential onstreet parking permits from the very types of residents that the Legislature has recognized, in section 22507.5, may require onstreet parking.

Our conclusion is not undercut by the *Friedman* case, discussed above, which held that section 22507 gives local governments the authority to enact a preferential parking program for either residents *or* merchants (despite the statute's use of the conjunctive phrasing "residents *and* merchants)."²⁵ As noted in *Friedman*, the convention of interpreting a statute's use of the conjunctive word "and" as the disjunctive word "or" in appropriate cases is well established, and was reasonably invoked in that instance in light of section 22507's "reasonable and necessary" provision, whose purpose was to "give localities substantial power to tailor preferential parking programs to meet local circumstances."²⁶ But no maxim of statutory construction would support reading this same provision as expressly granting localities the authority to independently characterize and single out discrete classes of residents—nowhere mentioned in the statute—as ineligible for residential parking permits.²⁷ Especially here, where the state has occupied

ascertaining the legislative intent.").

²³ Veh. Code, § 22507.5, subd. (a), emphasis added.

²⁴ *Dyna-Med, Inc.*, *supra*, 43 Cal.3d at p. 1387.

²⁵ *Friedman*, *supra*, 47 Cal.App.3d at pp. 443-444.

²⁶ *Ibid.*

²⁷ *Rumford*, *supra*, 31 Cal.3d at p. 550 ("[U]nless 'expressly provided' by the

the field of traffic control, we are not free to imply powers that are not expressly granted.²⁸

We conclude that Vehicle Code section 22507 does not authorize local authorities, in issuing long-term residential parking permits, to distinguish among residents based on the type of dwelling in which they live.

Legislature, a city has no authority over vehicular traffic control”).)

²⁸ *City of Lafayette, supra*, 91 Cal.App.3d at p. 756.