CAUSE NO. C-1-CR-17-100025

THE STATE OF TEXAS	§	IN THE COUNTY COURT
	§	
V.	§	AT LAW NUMBER TWO
	§	
ACSO OF TEXAS, LP	§	TRAVIS COUNTY, TEXAS

OPINION AND JUDGMENT

The State appeals an Austin Municipal Court order quashing a criminal complaint. At issue is whether state law preempts the ordinance under which Appellee, ACSO of Texas, LP, was charged. As explained below, this Court reverses the Municipal Court order and remands the case for further proceedings.

I. Background

Appellee, ACSO of Texas, LP (hereinafter "ACSO"), is classified as a Credit Services Organization ("CSO") and a Credit Access Business ("CAB") under the Texas Finance Code. *See* Tex. Fin. Code Ann. § 393.001(3), 393.601(2) (West 2016). By ordinance, the City of Austin requires any extension of credit that a CAB obtains or assists a consumer in obtaining to be payable in no more than four installments, with each installment repaying "at least 25% of the total amount of the transaction, including the principal fees, interest, and any other charges or costs" that the consumer owes to the CAB. *See* Austin City Code § 4-12-22(D).

In June 2016, a customer reported ACSO to the Regulatory Monitor of the City of Austin, which reviewed their transaction and found probable cause to believe it violated the City Code. The following month, ACSO was charged by complaint in the Austin Municipal Court with violating City Code § 4-12-22(D). In December 2016 and January

2017, ACSO moved to quash the complaint on the grounds that state law preempted the field of CAB regulation and that City Code § 4-12-22(D) directly conflicted with Chapter 393 of the Texas Finance Code. After initially denying the motion, the municipal judge issued an order quashing the complaint due to preemption.

This appeal followed, and briefs were filed not only by the State and ACSO but also by various *amici curiae* wishing to endorse the State's position and place Austin's ordinance in the context of payday lending practices and regulations statewide.

II. Standard of Review

When reviewing a trial court order granting a motion to quash that does not concern the credibility or demeanor of a witness, appellate courts apply a *de novo* standard, giving no deference to the ruling below. *State v. Empey*, 502 S.W.3d 186, 189 (Tex. App.—Fort Worth 2016, no pet.). In this case, the parties agree that *de novo* review is appropriate because the motion to quash was decided purely on legal argument.

When the validity of a city ordinance is challenged, reviewing courts presume the ordinance is valid. *City of Brookside Vill. v. Comeau*, 633 S.W.2d 790, 792 (Tex. 1982). Home-rule cities look to the legislature not for grants of power, but for limitations on their power. *City of Carrollton v. Texas Com'n on Envtl. Quality*, 170 S.W.3d 204, 208 (Tex. App.—Austin 2005, no pet.) (citing *Wilson v. Andrews*, 10 S.W.3d 663, 666 (Tex. 1999)). Accordingly, the burden of showing a city ordinance is invalid rests on the party attacking it. *RCI Entm't (San Antonio), Inc. v. City of San Antonio*, 373 S.W.3d 589, 595 (Tex. App.—San Antonio 2012, no pet.). When the legislature decides to limit municipal power through preemption, it must do so with unmistakable clarity. *In re Sanchez*, 81

S.W.3d 794, 796 (Tex. 2002); *Dallas Merch's & Concessionaire's Ass'n v. City of Dallas*, 852 S.W.2d 489, 491 (Tex. 1993).

III. Discussion

a. Application of Field Preemption to Statutes and Ordinances in Texas

Implicated in this case are two different types of preemption: field preemption and direct conflict preemption. In support of the trial court order quashing the complaint, ACSO first claims that Austin City Code § 4-12-22(D) is subject to field preemption. "Texas courts," writes ACSO, "strike down ordinances when they are contrary to general state law, either by entering a broad or narrow field occupied by the State Legislature, or by conflicting with state law on a particular subject." According to ACSO, the former is true of City Code § 4-12-22(D) because the Legislature clearly intended for the Finance Code to occupy the entire field of CAB regulation.

The State responds that field preemption, a doctrine developed in federal case law, does not exist between Texas statutes and ordinances at all. The relationships of city to state and state to federal government are not identical, the State notes. Also, "while Texas courts have scrutinized city ordinances to determine if they *conflict* with state law.... the State can find no instance where either the Texas Supreme Court or the Court of Criminal Appeals has found that a Texas statutory scheme exclusively occupied a field of law." This stance recalls the familiar conundrum of trying to prove a negative. However, evaluating ACSO's argument in light of its burden to prove the ordinance invalid, this Court is inclined to agree with the State.

For all its insistence that field preemption is "settled law" and "long-standing precedent in Texas," the bulk of ACSO's argument directly contradicts the cases most

often cited in its own brief. For instance, despite the word "field" appearing one time in the opinion, *City of Beaumont v. Fall*, 291 S.W. 202 (Comm'n App. 1927), was unmistakably a direct conflict preemption case. It concerned an ordinance creating a four-year statute of limitations in suits to collect city taxes despite a Texas statute explicitly prohibiting any delinquent taxpayer from pleading limitations. The Court wrote:

> In a word, as long as the state does not, in its Constitution or by general statute, cover any field of the activity of the cities of this state, any given city is at liberty to act for itself. But, when the state itself steps in and makes a general law and applies such law to all cities of a certain class, then we submit that no city of the same class is authorized, under our Constitution, to enact contrary legislation. If this principle has not already been adopted as the settled law of this state, then it should be so understood from this time forward.
>
> Of course, a general law and a city ordinance will not be held repugnant to each other if any other reasonable construction leaving both in effect can be reached. In other words, both will be enforced if that be possible under any reasonable construction, just as one general statute will not be held repugnant to another unless that is the only reasonable construction.

Id. at 205–06.

Further, the Supreme Court of Texas wrote in *City of Brookside Village*, "The entry of the state into a field of legislation… does not automatically preempt that field from city regulation." *City of Brookside Vill.*, 633 S.W.2d at 796. In that case, the Court upheld a municipal ordinance that added location restrictions not present in the state statutory scheme governing mobile homes. *Id.*

Meanwhile, in *Dallas Merchant's & Concessionaire's Association*, the Court never mentioned field preemption and instead noted that "the mere fact that the legislature has enacted a law addressing a subject does not mean the complete subject matter is completely preempted." *Dallas Merch's & Concessionaire's Ass'n*, 852 S.W.2d at 491. The Court searched for a direct conflict between the specific ordinance and

statutory provisions at issue, and it found preemption because the statute set explicit parameters for municipal control of alcohol sales, which the ordinance contravened. *Id.*at 490–94.

Finally, as the State notes, the case of *BCCA Appeal Group Inc. v. City of Houston*, 496 S.W.3d 1 (Tex. 2016), represents an opportunity to apply the doctrine of field preemption that the Texas Supreme Court declined. Faced with the extraordinary detail and comprehensiveness of the Texas Clean Air Act, the Court might have found that entire field to be occupied by statute, yet it analyzed the statute and ordinance for direct conflict instead. *Id.* at 25.[1]

If there exists "long-standing precedent" for field preemption, ACSO has failed to provide it and this Court has yet to unearth it. Instead, the core of ACSO's argument for field preemption cannot withstand the slightest scrutiny of the actual facts and holdings of the cases ACSO presents. Consequently, ACSO fails to meet its burden of proving that field preemption invalidates City Code § 4-12-22(D).

b. Intent for Finance Code to Occupy Entire Field

Even if field preemption applied, it would be ACSO's burden to prove that the Texas Legislature intended for the Finance Code to occupy the entire field of CAB regulation. *See RCI Entm't (San Antonio), Inc.*, 373 S.W.3d at 595. For the following reasons, ACSO would also fall short in that regard.

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[1] ACSO correctly notes that the majority in *BCCA Appeal Group* disagreed with the dissent's categorical denial that field preemption applies to Texas ordinances based on its reading of an earlier case. This does not change the fact that the opinion ultimately applied conflict preemption analysis despite circumstances that meet the definition of field preemption advocated by ACSO.

i. Finance Commission as "Principal Authority"

ACSO claims that the Legislature's desire for field preemption is embodied in the explicit statutory purpose of the finance commission. That purpose is set forth as follows:

> The finance commission is responsible for overseeing and coordinating the Texas Department of Banking, the Department of Savings and Mortgage Lending, and the Office of Consumer Credit Commissioner and serves as the primary point of accountability for ensuring that state depository and lending institutions function as a system, considering the broad scope of the financial services industry. The finance commission is the policy-making body for those finance agencies and is not a separate state agency. The finance commission shall carry out its functions in a manner that protects consumer interests, maintains a safe and sound banking system, and increases the economic prosperity of the state.

Tex. Fin. Code Ann. § 11.002(a) (West). It is worth noting how the full text of this provision differs from the careful paraphrasing offered in ACSO's brief. For instance, ACSO describes the finance commission as "the 'primary point of accountability' for ensuring that the financial services industry functions as a system and protecting consumer interests," when in fact the statute mentions consumer interests in a later sentence apart from the "primary point of accountability" designation. In light of the presumption that a challenged ordinance is valid, this Court must consider actual statutory text and not a reworded version that risks exaggerating a state agency's purview.

ACSO stresses that the Texas Supreme Court has construed a designation of "principal authority" as granting an agency exclusive control of a field. *See State v. Associated Metals & Minerals Corp.*, 635 S.W.2d 407 (Tex. 1982). However, apart from general appeals to uniformity that could be invoked against almost any municipal regulation, ACSO has not specified how Austin City Code § 4-12-22(D) invades the province of "ensuring that state depository and lending institutions function as a system, considering the broad scope of the financial services industry." What's more, in

Associated Metals & Minerals Corp., the Court struck down not an ordinance but a district court order that subjected a business to emissions standards different from those imposed by statute. *Id.* at 409. This court cannot transpose that holding onto a different agency and a home-rule city, especially given the presumption in favor of a challenged ordinance. *See Wilson*, 10 S.W.3d at 666; *City of Brookside Vill.*, 633 S.W.2d at 792.

ii. Finance Commission Resolution Supporting Uniformity of Laws

ACSO also urges this Court to "give serious consideration to the Finance Commission's construction of the statute is it charged with administering," as reflected in its 2012 Resolution Supporting Uniformity of Laws Governing Credit Access Businesses. That Resolution makes a public policy argument against municipal ordinances governing credit access businesses. It warns of complicating businesses' compliance efforts, creating confusion, and causing "potential conflict with state law," but does not name any conflict in particular. It therefore does not advance ACSO's argument that Austin City Code § 4-12-22(D) is actually preempted. Moreover, if the finance commission believed that its enabling statute unmistakably preempted an entire field of ordinances, it could presumably say so, rather than list various policy disadvantages of such ordinances.

iii. Comprehensiveness of Finance Code

In addition to the above, ACSO asserts that "the Texas Legislature's comprehensive delineation of the conditions under which CABs may operate implies its preemptive intent with unmistakable clarity."

For this proposition, ACSO again cites cases that lend little if any support: *Massachusetts Bonding & Ins. Co. v. McKay*, 10 S.W.2d 770, 771 (Tex. Civ. App.—Austin 1928, writ ref'd) and *BCCA Appeal Grp., Inc.*, 496 S.W.3d at 19–20. The former

is an 89-year-old case finding preemption of a municipality's bond requirement for plumbers. ACSO quotes the holding, "The Legislature having so regulated the matter by prescribing fully the manner in which plumbers should be licensed, the city of Dallas had no authority to impose additional burdens and requirements in the premises," neglecting to mention that a framework *for municipalities to use in their own licensure of plumbers* was the legislative prescription at issue. *See City of Houston v. Richter*, 157 S.W. 189, 192 (Tex. Civ. App.—Galveston 1913, no writ). If this case can be analogized to a statute that does not issue any explicit directions to municipalities, ACSO does not explain how.

Likewise, by citing *BCCA Appeal Group*, ACSO continues to disregard that the Court in that case did not apply field preemption given the opportunity, instead evaluating the statute and ordinance for direct conflict—the opposite approach from what ACSO is advocating. *BCCA Appeal Grp., Inc.*, 496 S.W.3d at 19.[2]

ACSO lists numerous requirements applied to CABs by statute, *see* Tex. Fin. Code §§ 14.101, 393.601–.628 (West 2016), enforcement mechanisms of the Office of Consumer Credit Commissioner, *see* Tex. Fin. Code §§ 14.251–.252, 393.501 (West 2016), and rules promulgated by the finance commission, *see* 7 Tex. Admin. Code §§ 83.3001–.3012, 83.4001–.4007, 83.5001–.5004, 83.6001–.6008. Yet its contention that this level of comprehensiveness is sufficient to create field preemption is conclusory and lacks meaningful citations to authority. In fact, the scope of CAB regulation appears modest in comparison with the Texas Clean Air Act provisions at issue in *BCCA Appeal*

[2] These citations might be characterized as merely "distinguishable" or "off point," were it not for ACSO's pervasive habit of citing as direct authority any case that contains a few favorable-sounding phrases, even if the ultimate holding is directly opposite what ACSO claims. Multiple examples appear before and after this one in ACSO's brief. Cumulatively, they far surpass "distinguishable" and instead manifest a lack of candor toward the court. See Tex. R. Disciplinary P. 3.03.

Group, rightly described as "staggering" in the State's brief, and yet not subjected to field preemption review. *See BCCA Appeal Grp., Inc.*, 496 S.W.3d at 19.

In sum, even if it had demonstrated that field preemption is possible, ACSO has failed to establish the requisite "unmistakable clarity" for such preemption to apply between the particular statute and ordinance in this case.

c. Direct Conflict Between Statute and Ordinance

Finally, ACSO argues that Austin City Code § 4-12-22(D) directly conflicts with statute. ACSO first discusses what qualifies as a conflict between statute and ordinance, then moves on to the substance of the conflict alleged here. Proceeding in the same order, this Court finds that a spurious definition of "conflict" prevents ACSO from overcoming the presumption that this ordinance is valid.

i. Definition of "Inconsistent" or "Conflicting"

According to ACSO, "Texas courts define as 'inconsistent' or 'conflicting'—and therefore preempted—any local enactment that attempts to regulate, in a more or less restrictive way, the same activity a statute already directly regulates."[3] This is a misstatement of Texas jurisprudence.

Home-rule cities have broad discretionary powers, provided that no ordinance "shall contain any provision inconsistent with the Constitution of the State, or of the general laws enacted by the Legislature of this State." TEX. CONST. art. XI, § 5. When

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[3] Apparent again is ACSO's fondness for summarizing case law in general terms that favor its position but are not actually supported by the cited cases. For instance, here ACSO cites as direct authority *City of Santa Fe v. Young*, 949 S.W.2d 559, 561 (Tex. App.—Houston [14th Dist.] 1997, no writ).; *City of Brookside Vill. v. Comeau*, 633 S.W.2d 790, 792 (Tex. 1982); *City of Wichita Falls v. Abell*, 566 S.W.2d 336, 338–39 (Tex. Civ App.—Fort Worth 1978, writ ref'd n.r.e.); *City of Fort Worth v. McDonald*, 293 S.W.2d 256, 258 (Tex. Civ. App.—Fort Worth 1956, , writ ref'd n.r.e.); and *Prescott v. City of Borger*, 158 S.W.2d 578, 581 (Tex. Civ. App.—Amarillo 1942, writ ref'd). Literally none of these cases offer any support for the proposition that an ordinance conflicts with statute when it is "more or less restrictive."

municipalities pass ordinances in areas where the State has also legislated, "local regulation, ancillary to and in harmony with the general scope of the purpose of the State enactment is acceptable." *City of Brookside Vill.*, 633 S.W.2d at 796. Thus, "a general law and a city ordinance will not be held repugnant to each other if any other reasonable construction leaving both in effect can be reached. In other words, both will be enforced if that be possible under any reasonable construction." *City of Beaumont v. Jones*, 560 S.W.2d 710, 711 (Tex. Civ. App.—Beaumont 1977, writ ref'd n.r.e.) (quoting *City of Beaumont*, 291 S.W. at 206).

Ordinances that supplement a state statute are not inconsistent with the statute unless the state has explicitly provided that localities cannot further regulate a given area. *RCI Entm't (San Antonio), Inc.*, 373 S.W.3d at 597. Therefore, the State reasons, "state law is considered a floor upon which the city can build, as long as the city's ordinances do not unmistakably conflict with state law." That interpretation is borne out in cases like *City of Santa Fe v. Young*, 949 S.W.2d 559, 560–61 (Tex. App.—Houston [14th Dist.] 1997, no writ), where a statute forbidding sand pits within 25 feet of roadways and requiring safety equipment for sand pits within 200 feet of roadways was held not to preempt municipal regulation of sand pits in other locations.

Similarly, in *City of Brookside Village*, the Court upheld a municipal zoning restriction on mobile homes that added location restrictions to the existing construction, safety, and installation standards set by state and federal statute. *City of Brookside Vill.*, 633 S.W.2d at 796. And in *Xydias Amusement Co. v. City of Houston*, 185 S.W. 415 (Tex. Civ. App.—Galveston 1916, writ ref'd), the Court held that Houston's ordinance creating a board of censors and permitting scheme for movie theaters was not preempted by state statutes taxing those theaters and outlawing obscenity. *Id.* at 417. None of these

cases support ACSO's reading that any "more or less restrictive" ordinance is inconsistent with state law.

Neither, it seems, do many cases in which preemption has actually been found. *See, e.g., City of Carrollton*, 170 S.W.3d at 214 (concerning city that participated in optional water utility regulatory scheme, then attempted to cease participation by different procedure than statute dictated); *Dallas Merch's & Concessionaire's Ass'n*, 852 S.W.2d at 491 (concerning ordinance that diverged from state statute's explicit parameters for municipal control of alcohol sales); *City of Beaumont*, 291 S.W. at 206 (concerning city's creation of a limitations defense in tax collection suits, while Texas statute prohibited any delinquent taxpayer from pleading limitations); *Berry v. City of Fort Worth*, 124 S.W.2d 842, 846 (Tex. 1939) (concerning city's creation of its own remedy and service of process rules in usury cases, differing from those in usury statute and risking disruption of state civil court jurisdiction).

Also instructive is a series of cases concerning milk pasteurization and grading. *See City of Weslaco v. Melton*, 308 S.W.2d 18, 19 (Tex. 1957); *Jere Dairy, Inc. v. City of Mt. Pleasant*, 417 S.W.2d 872, 874 (Tex. Civ. App.—Texarkana 1967, writ ref'd n.r.e.); *Prescott v. City of Borger*, 158 S.W.2d 578, 581 (Tex. Civ. App.—Amarillo 1942, writ ref'd). Unlike the Finance Code, the statute discussed in these cases provided, "Any city adopting any specifications and regulations for any grade of milk shall be governed by the specifications and regulations promulgated by the State Health Officer as authorized by this Act." The Supreme Court of Texas wrote of that provision, "We take this to mean that the City may not by ordinance vary the specifications or regulations or prescribe different standards from those established by the Act, otherwise confusion would prevail throughout the State as to quality and food value." *City of Weslaco*, 308 S.W.2d at 19.

Nevertheless, that Court found no preemption of a municipal ban on the lowest grade milk established by statute, writing, "we find nothing in the statute that creates a conflict with the Weslaco Ordinance." *Id.* at 19–20. Circuit courts did find preemption of ordinances requiring pasteurization to occur locally, *Prescott*, 158 S.W.2d at 581, and ordering milk destroyed sooner than required by statute, *Jere Dairy, Inc.*, 417 S.W.2d at 874, but this is hardly surprising given the distinctive statutory language involved.

The final of the myriad shortcomings of ACSO's conception of conflict is that at least two Texas statutes explicitly forbid more restrictive municipal ordinances. *See* Tex. Alco. Bev. Code Ann. § 109.57(b) (West 2016) ("It is the intent of the legislature that this code shall exclusively govern the regulation of alcoholic beverages in this state"); Tex. Health & Safety Code § 382.113(b) (West 2016) ("An ordinance enacted by a municipality... may not make unlawful a condition or act approved or authorized under this chapter or the commission's rules or orders."). If municipal ordinances "more or less restrictive" than statute were the very definition of inconsistency, such statutory provisions would be pointless and redundant.

For the above reasons, this Court concludes that ACSO bases its conflict preemption argument on an unsound definition that misreads the holdings of Texas courts. The State, meanwhile, advances a conception of conflict that squares with both the facts and analysis behind holdings such as, "Ordinances that supplement... a state statute are not inconsistent with the statute unless the state has explicitly provided that localities cannot further regulate a given area." *RCI Entm't (San Antonio), Inc.*, 373 S.W.3d at 597.

ii. Possibility of Harmonizing Ordinance and Statute

ACSO insists that there is no reasonable construction by which City Code § 4-12-22(D) and Finance Code Chapter 393 can both be left in effect. *See City of Beaumont*, 291 S.W. at 206. The text of the ordinance states:

> An extension of consumer credit that a credit access business obtains for a consumer or that the credit access business assists a consumer in obtaining and that provides for repayment in installments may not be payable in more than four installments. Proceeds from each installment must be used to repay at least 25% of the total amount of the transaction, including the principal, fees, interest, and any other charges or costs that the consumer owes the credit access business. An extension of consumer credit that provides for repayment in installments of the principal, fees, interest, and any other charges or costs that the consumer owes the credit access business may not be refinanced or renewed.

Austin City Code § 4-12-22(D). Meanwhile, in relevant part, the text of the Finance Code states:

> A credit access business may assess fees for its services as agreed to between the parties. A credit access business fee may be calculated daily, biweekly, monthly, or on another periodic basis. A credit access business is permitted to charge amounts allowed by other laws, as applicable. A fee may not be charged unless it is disclosed.

Tex. Fin. Code Ann. § 393.602(b) (West 2016). There are also provisions creating and limiting the finance commission's rulemaking authority under the statute. *Id.* § 393.622.[4]

The State contends that these laws are easily harmonized by recognizing that "assessing" or "calculating" fees is a different activity than "collecting" fees. To comply with both statute and ordinance, the State suggests, "a CAB could assess a fee of $30.00

[4] The parties dispute the significance of Finance Code § 393.622, which states in part, "Nothing in Section 383.201(c) or Sections 393.601–628 grants authority to the finance commission or the Office of Consumer Credit Commissioner to establish a limit on the fees charged by credit access businesses." The State views this provision as proof that the Legislature knew how to place explicit limits on a government entity's power and thus, if it wished, could have done so with respect to municipalities. ACSO views it as proof of the exclusivity of the state agencies' power. Both points are compelling and reflect valid principles of statutory construction, but would not be dispositive of this Court's preemption analysis; accordingly, this Opinion will not wade into the debate.

per day for the entirety of a two year loan as long as those payments were only *due* once every six months." ACSO rejects this reasoning as "nonsensical" and "unsupported."

According to ACSO, "If the Court were to accept the City's argument, then CABs could theoretically charge fees agreed to by the consumer as permissible under the Finance Code, but would be barred from collecting those fees under the Ordinance." It is more accurate to say that the CAB would be restricted to making those fees payable on a schedule that comports with the ordinance. Such a restriction might create conflict under the definition ACSO urges, but that definition is invalid.[5]

ACSO moves on to a policy argument against the State's proposed harmonization, warning that "a CAB could charge a customer almost $22,000 in fees without violating the Ordinance" and "CAB fees would likely increase with payments spread farther apart." These points are no evidence of actual preemption. If anything, they demonstrate the ability of CABs to operate profitably even with both statute and ordinance in place. ACSO claims that they reveal the State's reading to be unreasonable, since it permits behavior contrary to the consumer-protection aims of both ordinance and statute, but ACSO cites no authority to support that proposition.

In conclusion, ACSO cannot show a conflict between statute and ordinance by arguing that they satisfy its own improvised definition of conflict. Where "a city ordinance is presumed to be valid," *City of Brookside Vill.*, 633 S.W.2d at 792, and "a general law and a city ordinance will not be held repugnant to each other if any other

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[5] ACSO writes, "The City's interpretation... would allow it to enact more restrictive ordinances, which are inconsistent with State statute governing the assessment of CAB fees. Texas courts have routinely found that such local enactments are preempted." For this proposition, ACSO cites two cases where ordinances were *not* held to be preempted. *See City of Santa Fe*, 949 S.W.2d at 61 ("the Act does not apply to appellee's sandpit, and the city ordinance controls"); *City of Brookside Vill.*, 633 S.W.2d at 792 ("We find nothing in the statutes, however, that creates a conflict with the Brookside Village ordinances regulating the location of mobile homes.").

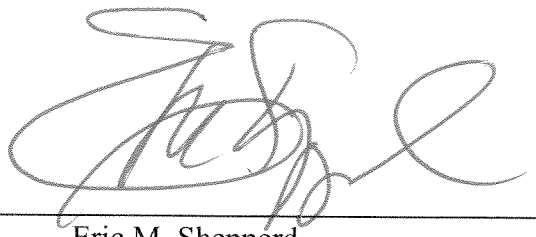
reasonable construction leaving both in effect can be reached," *City of Beaumont*, 291 S.W. at 206, this Court cannot invalidate an ordinance based on the conflict analysis presented to this Court.

IV. Conclusion

In passing this ordinance, the City of Austin has undoubtedly regulated in close proximity to the same territory already occupied by Texas statute. However, "the entry of the state into a field of legislation… does not automatically preempt that field from city regulation," *City of Brookside Vill.*, 633 S.W.2d at 796, and "ordinances that supplement… a state statute are not inconsistent with the statute." *RCI Entm't (San Antonio), Inc.*, 373 S.W.3d at 597. For many reasons, not least that it proceeds from an unsound conception of what qualifies as conflict between city ordinance and state law, ACSO has failed to overcome the presumption that this ordinance is valid by meeting its burden to prove otherwise. *See Wilson*, 10 S.W.3d at 666; *City of Brookside Vill.*, 633 S.W.2d at 792.

It is therefore ORDERED, ADJUDGED, AND DECREED that the judgment of the Austin Municipal Court is REVERSED and this cause is REMANDED for further proceedings consistent with this Opinion.

Signed this 21st day of September, 2017.



Eric M. Shepperd
Presiding Judge