

COURT OF APPEALS OF OREGON

State ex rel Amarok, LLC v. City of Gresham

State ex rel. Amarok, LLC v. City of Gresham, 347 Or. App. 245 (2026) · No. A184150 · Decided February 19, 2026

SUMMARY

The Oregon Court of Appeals held that ORS 195.870(3) does not preempt Gresham Revised Code 7.15.040(7)(d), which prohibits battery-charged fences outside industrial land use districts. The court interpreted property “zoned for residential use” to include zones where any residential use is permitted, rather than only zones primarily intended for residential use. The court vacated the judgment and remanded for entry of a declaratory judgment stating the parties’ rights, rather than dismissal of the declaratory judgment claim.

CASE DETAILS

COURT	Court of Appeals of Oregon
WRITING FOR THE COURT	Joyce, J.; Ortega, Presiding Judge; Joyce, Judge; Hellman, Judge
JURISDICTION	Oregon Court of Appeals
DECIDED	February 19, 2026
DOCKET	A184150
DISPOSITION	vacated
PROCEDURAL POSTURE	Plaintiff appealed from a limited judgment entered after cross-motions for summary judgment in a declaratory judgment action challenging the City's enforcement of its battery-charged-fence ordinance.
STANDARD OF REVIEW	When there are no genuine issues of material fact, the court reviews cross-motions for summary judgment to determine whether either party is entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	Published Oregon Court of Appeals opinion
PARTIES	State ex rel Amarok, LLC v. City of Gresham, Gresham City Manager Nina Vetter, in official capacity, Gresham Mayor Travis Stovall, in official capacity, Gresham City Councilor Dina Dinucci, in official capacity, Gresham City Councilor Eddy Morales, in official capacity, Gresham City Councilor Vincent Jones-Dixon, in official capacity, Gresham City Councilor Jerry Hinton, in official capacity, Gresham

TOPICS

municipal law home rule statutory interpretation declaratory judgment appellate procedure

PRACTICE AREAS

municipal law land use statutory interpretation declaratory judgments appellate procedure

QUESTIONS PRESENTED

1. Whether ORS 195.870(3) preempts Gresham Revised Code 7.15.040(7)(d).
2. Whether the phrase "zoned ... for residential use" refers to zones permitting any residential use or only zones whose primary purpose is residential use.
3. Whether dismissal, rather than entry of a declaration of the parties' rights, was the proper disposition of Amarok's declaratory judgment claim.

HOLDINGS

1. ORS 195.870(3) does not preempt Gresham Revised Code 7.15.040(7)(d) because the ordinance prohibits battery-charged fences only in areas that are zoned for some residential use, while ORS 195.870(3) prohibits local governments from banning such fences on property not zoned or used for residential use.
2. Gresham's home-rule authority permits local regulation in an area also regulated by state law unless the local law is incompatible with state law; the City's ordinance was not incompatible with ORS 195.870(3).
3. The trial court erred by dismissing the declaratory judgment claim; the proper disposition was to enter a judgment declaring the parties' rights.

KEY QUOTATIONS

*"Thus, we understand the plain meaning of the phrase "zoned * * * for residential use," to refer to a zone where residential use is a permitted purpose—not a zone where the primary purpose is residential use." (252)*

"However, the proper disposition for a declaratory judgment claim like plaintiff's is issuance of a declaration of the parties' rights, not, as the trial court did here, dismissal of plaintiff's declaratory judgment claim." (255)

FACTUAL BACKGROUND

Oregon enacted ORS 195.870(3), restricting local governments from prohibiting battery-charged fences on property not zoned or used for residential use. Gresham's ordinance prohibited battery-charged fences except in industrial land use districts. Amarok contracted to install battery-charged security fences at two automobile

repair shops in zones permitting some residential uses; after initially issuing permits, the City refused to inspect the installations because they did not comply with the ordinance.

PROCEDURAL HISTORY

Amarok sought a declaration that Gresham Revised Code 7.15.040(7)(d) was preempted by ORS 195.870(3), and asserted alternative statutory and constitutional claims. The Multnomah County Circuit Court denied Amarok's motion, granted the City's motion on the declaratory-relief and ORS 195.870(3) claims, and dismissed those claims. The Court of Appeals agreed that the ordinance was not preempted but held that dismissal was improper because a declaratory judgment action required a declaration of the parties' rights.

DISPOSITION

vacated

REMAND INSTRUCTIONS

Vacate the judgment on the declaratory judgment claim and remand for entry of a judgment declaring the parties' rights.

CASES CITED

- 21+ Tobacco and Vapor Retail Assn. v. Multnomah County, 339 Or. App. 554, 565, 570 P.3d 287 (2025)
- Jones v. General Motors Corp., 325 Or. 404, 408, 939 P.2d 608 (1997)
- Owen v. City of Portland, 368 Or. 661, 666-68, 497 P.3d 1216 (2021)
- Rogue Valley Sewer Services v. City of Phoenix, 357 Or. 437, 450-51, 353 P.3d 581 (2015)
- AT&T Communications v. City of Eugene, 177 Or. App. 379, 395, 35 P.3d 1029 (2001), rev. den., 334 Or. 491 (2002)
- State v. Bailey, 346 Or. 551, 562, 213 P.3d 1240 (2009)
- State v. Gaines, 346 Or. 160, 172, 206 P.3d 1042 (2009)
- Owen v. City of Portland, 305 Or. App. 267, 286-87, 470 P.3d 390 (2020), aff'd, 368 Or. 661, 497 P.3d 1216 (2021)