STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF HENNEPIN | FOURTH JUDICIAL DISTRICT

Graco, Inc.,

Plaintiff,

v.

City of Minneapolis,

Defendant.

Case Type: Civil Other
Judge Susan N. Burke

ORDER

Court File No. 27-CV-17-17198

This matter came before the Honorable Susan N. Burke on February 8, 2018, for a court trial. Christopher K. Larus, Esq., Katherine Barrett Wiik, Esq., and George Ashenmacher, Esq. represented Plaintiff Graco, Inc. ("Graco"). Minneapolis City Attorney Susan Segal, and Assistant Minneapolis City Attorneys Sarah McLaren and Sara Lathrop represented the City of Minneapolis ("the City"). The parties tried the case on written submissions followed by oral argument.[1]

INTRODUCTION

On June 30, 2017, the Minneapolis City Council passed the Municipal Minimum Wage Ordinance (hereinafter the "Ordinance"), raising the minimum wage for work performed in the City of Minneapolis to $10.00 per hour, starting for large businesses on January 1, 2018. The Ordinance increases the minimum wage for work performed in Minneapolis on July 1 of each year, until it reaches $15.00 per hour for large businesses in 2022, and for small businesses in 2024. Graco brings this lawsuit seeking a declaration that the Ordinance is invalid and to enjoin its enforcement.

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[1] The trial record is set forth in Appendix 1 to the Court's order.

This is an important decision to employers and employees, as well as to the citizens and the City of Minneapolis. The decision is driven by the law, which requires the Court to consider identified factors to determine whether the Ordinance conflicts with or is preempted by state law.

This decision illustrates the difference between the role of courts and the role of the City Council. This decision does not reflect how this judge might have voted as a member of the City Council, nor does it attempt to express an opinion on whether the Minneapolis Minimum Wage Ordinance is a good law or a bad law. Instead, the Court focuses only on the legal issue of whether the Ordinance conflicts with or is preempted by state law.

The Minnesota Legislature has specifically provided for local minimum wage ordinances in its prior legislation. It has incorporated language providing for local minimum wage ordinances from federal law, which also recognizes the ability of municipalities to set higher minimum wage rates. Moreover, a recent bill in the Minnesota Legislature specifically designed to preempt local minimum wage ordinances failed. *See infra*, at 8-9.

The Minnesota Fair Labor Standards Act, the state minimum wage law, sets a floor for minimum wages, leaving room for municipalities to pass local minimum wage ordinances to meet the needs of their communities. For these reasons, the Court finds that the Minneapolis Minimum Wage Ordinance is not in conflict with or preempted by state law.

BACKGROUND

The Minneapolis City Council passed the Municipal Minimum Wage Ordinance after finding that the City of Minneapolis had, by far, the most residents in the State with incomes below the federal poverty level. Minn. Code § 40.320(e). There were over 84,000 people in Minneapolis with incomes below the federal poverty level, 20,000 more people than any other city in the State. Minn. Code § 40.320(e). The cost of living in Minneapolis was among the

highest in the State. Minn. Code § 40.320(e). Forty-eight percent (48%) of workers in Minneapolis, or approximately 150,000 people, earned less than a living wage. Minn. Code § 40.320(e). Income inequality, particularly between white and non-white workers, was one of the most pressing economic and social issues facing the City. Minn. Code § 40.320(j).

As a home rule charter city, the City of Minneapolis exercised its police powers to enact regulations to further the public health, safety, and general welfare of people who work within the City's borders. Minn. Code § 40.320(a)-(b). The Minneapolis City Council enacted a minimum wage for work performed in the City of Minneapolis that exceeded the floor set by the state minimum wage law. Minn. Code § 40.320(c).

The Ordinance differentiates between large and small businesses. Large businesses include "all employers that employ more than one hundred (100) employees" and small businesses include "all employers that employ one hundred (100) or fewer employees." Minn. Code § 40.330.

Beginning on January 1, 2018, large businesses are required to pay their employees a wage of no less than $10.00 per hour. Minn. Code § 40.390(b)(1). On July 1, 2018, large businesses will be required to pay their employees at least $11.25 per hour, and small businesses will be required to pay their employees at least $10.25 per hour. Minn. Code §§ 40.390(b)(2), (c)(1). The minimum wage will continue to increase on July 1 of each year until the minimum wage reaches $15.00 per hour for large businesses in 2022, and for small businesses in 2024. Minn. Code §§ 40.390(b)(1)-(c)(7).

In addition to the increased minimum wages, employers are required to conspicuously post notices in their workplaces which inform employees of their rights under the Ordinance and the current minimum wage rates. Minn. Code §§ 40.420(a)-(b). Employers are also required to

create and maintain records which document the hours worked by each employee within the City of Minneapolis and the wages paid to such employees. Minn. Code § 40.430(a). These records are to be retained for a period of at least three years. Minn. Code § 40.430(a).

The Ordinance applies to all time worked by an employee, of at least two hours per week, within the geographic boundaries of Minneapolis. Minn. Code §§ 40.370(a), (b). However, the Ordinance does not cover "[t]ime spent in the city solely for the purpose of travelling through the city from a point of origin outside the city to a destination outside the city, with no employment-related or commercial stops in the city, except for refueling or the employee's personal meals or errands." Minn. Code § 40.370(c).

ANALYSIS

I. Graco Has Standing to Challenge the Ordinance

To establish standing to bring a claim, a party must show it has suffered an injury-in-fact. *Riehm v. Comm'r of Pub. Safety*, 745 N.W.2d 869, 873 (Minn. App. 2008). To demonstrate an injury-in-fact, the plaintiff must show "a concrete and particularized invasion of a legally protected interest." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). An injury-in-fact exists when harm is (1) personal, actual, or imminent; (2) fairly traceable to the defendant's challenged actions; and (3) likely to be remedied by this court. *Lujan*, 504 U.S. at 560–61; *Riehm*, 745 N.W.2d at 873. Moreover, when challenging the validity of a statute, the party must show that the statute will be applied to his disadvantage. *All. for Metro. Stability v. Metro. Council*, 671 N.W.2d 905, 913 (Minn. App. 2003).

Graco has suffered increased vendor costs fairly traceable to the Ordinance for custodial services. *See* Exs. 5-6, 40-41, 44, 46-48. Graco must also pay increased wages to its employees as well as expenses for record-keeping and payroll systems to comply with the Ordinance in the

near future. *See* Exs. 5, 41, 43-45, 47. Thus, Graco has demonstrated an injury-in-fact which confers standing to challenge the Ordinance.

II. The Ordinance Does Not Conflict with State Law

Ordinances passed by a municipality in the exercise of its police power will generally be upheld if they are not inconsistent with the state law. *Mangold Midwest Co. v. Village of Richfield*, 143 N.W.2d 813, 815 (Minn. 1966). The fact that there is a state law on the same subject as that covered by a municipal ordinance does not render the ordinance invalid. *Id.* Ordinances must not be repugnant to, but in harmony with, state law. *Id.* at 816 (citing *Power v. Nordstrom,* 184 N.W. 967, 969 (Minn. 1921)). The ordinance and the statute can be very much alike, and the ordinance can be made in apparent recognition of the statute. *Id.*

An ordinance will be held invalid only if the ordinance and the statute contain express or implied terms that are irreconcilable with each other. *Id.* A state law is in conflict with a federal law when it is impossible for a private party to comply with both state and federal requirements. *Sanchez v. Dahlke Trailer Sales, Inc.*, 897 N.W.2d 267, 276 (Minn. 2017); *see Minnesota Chamber of Commerce v. City of Minneapolis*, No. A17-0131, 2017 WL 4105201, at *3 (Minn. App. 2017) (finding no conflict where private party can comply with state law and local ordinance).

A conflict exists where an ordinance permits what the statute forbids or where the ordinance forbids what the statute expressly permits. *Mangold*, 143 N.W.2d at 816. However, a conflict does not exist where an ordinance simply forbids an act that would be permitted under the statute, but is not expressly permitted by the statute. *Id.* at 816-17. The *Mangold* court cited *Power v. Nordstrom,* stating:

> A part of the holding of [the *Power*] case was that an ordinance requiring the closing of movie theaters on Sunday was not inconsistent with the state Sunday closing

> statute since the latter, while not specifically forbidding theaters to open, did not expressly permit them to either.

Id. (citing *Power*, 184 N.W. at 969); *see also State v. Crabtree*, 15 N.W.2d 98, 100 (Minn. 1944) (no conflict where state statute prohibits sales of cigarettes to minors and local ordinance requires licenses for all cigarette retailers); *see Markley v. City of St. Paul*, 172 N.W.2d 215, 216 (Minn. 1919) (no conflict between state worker's compensation law and local laws governing fund for injured firefighters); *see State v. City of Duluth*, 159 N.W. 792, 793 (Minn. 1916) (no conflict where state law set minimum liquor distribution standards and local ordinance set stricter standard banning the sale completely).

A conflict does not exist where the ordinance is merely additional and complementary to or in aid and furtherance of the statute. *Mangold*, 143 N.W.2d at 817. The *Mangold* court used *State v. Clarke Plumbing & Heating, Inc.*, 56 N.W.2d 667, 672-73 (Minn. 1952), to illustrate this rule. In *Clarke Plumbing & Heating*, the state statute required plans prepared by a registered professional engineer for the installation of heating equipment where the cost involved exceeded $10,000.00. *Id.* at 668-73. The City of Minneapolis' ordinance provided stricter regulation, requiring plans prepared by a registered professional engineer for the installation of heating equipment where the area involved exceeded 100,000 cubic feet. *Id.* The *Mangold* court observed:

> The [*Clarke Plumbing & Heating*] court held the ordinance valid despite the existence of a similar statute that did not have as broad coverage as the ordinance, saying that the city could well have determined that greater restriction was necessary in a community of its size. This was consistent with the statute.

Mangold, 143 N.W.2d at 817. Thus, no conflict exists where local regulations impose additional restrictions above the state restrictions, as long as the State has not indicated that local governments should not regulate in that area. *Id.*

The Minnesota Fair Labor Standards Act ("MFLSA") sets a floor, not a ceiling, for minimum wage regulation. The Minneapolis Minimum Wage Ordinance is not repugnant to, but in harmony with, the MFLSA. They are both minimum wage laws aimed at protecting the health and well-being of workers. The stated purpose of the MFLSA is:

> 177.22. Statement of purpose
>
> The purpose of the Minnesota Fair Labor Standards Act is (1) to establish minimum wage and overtime compensation standards that maintain workers' health, efficiency, and general well-being; (2) to safeguard existing minimum wage and overtime compensation standards that maintain workers' health, efficiency, and general well-being against the unfair competition of wage and hour standards that do not; and (3) to sustain purchasing power and increase employment opportunities.

Minn. Stat. § 177.22.

Similarly, the stated purpose of the Minneapolis Minimum Wage Ordinance is:

> 40.320. - Findings and purpose.
>
> (a) As a home rule charter city, Minneapolis has broad authority through its police powers to enact regulation to further the public health, safety, and general welfare.
>
> (b) Increasing the minimum wage directly promotes the health, safety, and welfare of those who work within the city's borders.
>
> (c) Enacting a minimum wage for workers in Minneapolis that exceeds the floor established in the state minimum wage law advances the stated purpose therein to "maintain workers' health, efficiency, and general well-being" and to "sustain purchasing power."

Minn. Stat. § 40.320. Thus, the Ordinance is in harmony with the MFLSA and is complementary to and in aid and furtherance of the statute.[2]

Moreover, the MFLSA does not expressly permit employers to pay no more than the state minimum wage, nor does it give employers the right to be free from local minimum wage

[2] The reference to "increased employment opportunities" in full context clearly refers to providing more jobs that provide a livable wage for workers. The fact that the Commissioner will consider seasonally adjusted unemployment rates among other economic factors when considering whether to order an increase in the state minimum wage not take effect does not change the overriding purpose of the MFLSA to protect the minimum wage and the well-being of workers.

regulation. Nothing in the MFSLA preempts local officials from imposing a higher minimum wage. No provision establishes a uniform wage above which employers cannot be required to pay. The MFSLA does not expressly or impliedly provide that employers cannot be required to pay a minimum wage higher than the state minimum wage.

In fact, the Minnesota Legislature recently tried to pass a law that would have provided a uniform minimum wage and would have preempted local officials from requiring employers to pay anything more than the state minimum wage. On May 25, 2017, the Minnesota Legislature passed a bill that would "*provide[] uniformity for employment mandates on private employers.*" S.F. 3, 90th Leg., 1st Spec. Sess. (Minn. 2017) (emphasis added). Specifically, the bill *expressly preempted* any "*ordinance, local resolution, or local policy requiring an employer to pay an employee a wage higher than the applicable state minimum wage rate provided in section 177.24.*" S.F. 3, Ch. 2, Art. 22, § 1, subd. 2 (vetoed) (emphasis added). On May 30, 2017, Governor Mark Dayton vetoed Chapter 2, Senate File 3, stating:

> I have vetoed and am returning Chapter 2, Senate File 3, a bill relating to labor standards that would preempt local governments' ability to set wage and benefit levels higher than state law.
>
> *The role of state government is to set minimum standards for workplace protections, wages, and benefits, not maximums. Should local officials, who were elected by their constituents in their communities, approve higher wage and benefit levels to meet the needs of their residents, they ought to retain the right to do so.*
>
> *Local governments can be more adept at responding to local needs with ordinances that reflect local values and the unique needs of their communities. State government does not always know what works best for every community, and may lag behind when improvements are needed.*
>
> . . . this legislation interferes with local control, harms workers, and takes away the power of citizens to make positive changes in their communities.

Ex. 37 (emphasis added).

Moreover, as recently as 2015, the Minnesota Legislature specifically provided for "local minimum wage law" in the statutory chapter related to vocational rehabilitation programs. Minn. Stat. § 268A.01, subd. 15. The applicable section of that subdivision provides:

> "Noncompetitive employment" means paid work: (1) that is performed on a full-time or part-time basis, including self-employment, for which the person is compensated at a rate that is less than the higher rate specified in the Fair Labor Standards Act . . . or the rate specified in the applicable state *or local minimum wage law.*

Id. (emphasis added).

Graco claims that the "local minimum wage" language in the state vocational rehabilitation statute incorporated language from the federal Workforce Innovation and Opportunity Act of 2015, which changed the rules for persons in noncompetitive employment. Pl.'s Reply Br. at 3-4. The federal statute defined "competitive integrated employment" as work for which a person is compensated at the higher of the rate specified in the Fair Labor Standards Act ("FLSA") or the rate specified in the applicable state or *local minimum wage law.*" 29 U.S.C. § 705(5) (emphasis added). Graco claims that the federal workforce innovation law recognizes "local minimum wage law," because the federal minimum wage statute, the FLSA, provides for local minimum wage law. *See* 29 U.S.C. § 218(a) (providing for a "municipal ordinance establishing a minimum wage higher than the minimum wage established under this chapter. . . ").[3] Thus, the Minnesota Legislature specifically knew that federal law recognized that municipalities could pass ordinances establishing a higher minimum wage <u>and</u> included that language recognizing local minimum wage law into the Minnesota state definition of "non-competitive employment." Minn. Stat. § 268A.01, subd. 15.

[3] The FLSA specifically provides: "No provision of this chapter or any order thereunder shall excuse noncompliance with any Federal or State law *or municipal ordinance establishing a minimum wage higher than the minimum wage established under this chapter. . . .*" 29 U.S.C. § 218(a) (emphasis added).

Additionally, there are not irreconcilable terms in the MFLSA and the Ordinance. The MFLSA permits employees to be paid higher wages than those provided for in the statute. *See* Minn. Stat. § 177.24, subd. 1 (providing that an employer must pay *at least* the amount prescribed by statute). Private parties can comply with both laws. *Minnesota Chamber of Commerce*, 2017 WL 4105201, at *3. The MSFLA sets a floor, not a ceiling, for minimum wages rates.

It is true that the Ordinance and the MFLSA define small and large businesses differently, and that the MFLSA sets a lower state minimum wage for certain groups of younger employees. *See* Minn. Stat. § 177.24, subd. 1(a) (defining large and small employers by annual volume of sales); *id.* subds. 1(c)-(e). Other state statutes also refer to the state minimum wage or set a lower state minimum wage. *See* Minn. Stat. § 375.552, subd. 4 (uses state minimum wage for county emergency jobs programs); Minn. Stat. § 116L.561 (uses state minimum wage for Minnesota Youth Program); Minn. Stat § 204B.19, subd. 6 (sets a lower state minimum wage for high school student trainee election judges). However, the Ordinance would only conflict with these provisions if the MFLSA set a ceiling for minimum wage rates. Because, MFLSA does not set an upper limit on minimum wage rates, there is no conflict between the Ordinance and these provisions of state law.

The Ordinance is merely complementary to and in aid and furtherance of the statute. As was the case in *Clarke Plumbing & Heating,* the City of Minneapolis determined that additional regulation was necessary to meet the needs of its community. The Minneapolis City Council found the City had 84,000 people with incomes below the federal poverty level. The cost of living in Minneapolis was among the highest in the State. Minn. Code § 40.320 (e). Forty-eight percent (48%) of workers in Minneapolis, or approximately 150,000 people, earned less than a

living wage. Minn. Code § 40.320 (e). Income inequality, particularly between white and non-white workers, was one of the most pressing economic and social issues facing the City. Minn. Code § 40.320 (j).

In summary, the Ordinance is in harmony with the MFLSA. The Ordinance and the MFLSA do not contain irreconcilable terns. The Ordinance does not permit what the MFLSA forbids, nor does it forbid what the MFLSA expressly permits. The Ordinance is merely complementary to and in aid and furtherance of the MFLSA. For these reasons, the Court finds the Ordinance does not conflict with state law.

A careful reading of the cases relied upon by Graco further shows that the MFLSA did not expressly permit employers to pay no more than the state minimum wage or in any way forbid local minimum wage regulation. In *State v. Apple Valley Redi-Mix, Inc.*, 379 N.W.2d 136 (Minn. App. 1985), the Minnesota Pollution Control Act stated:

> No local government unit shall set standards of air quality which are more stringent than those set by the [state] pollution control agency.

Id. at 138. The court held that St. Louis Park's air pollution and nuisances ordinances conflicted with state law because the municipality could set a more stringent air quality standard than the MPCA. *Id.* at 136-39.

In *Northern States Power Co. v. Granite Falls,* 463 N.W.2d 541 (Minn. App. 1990), the Minnesota Pollution Control Act provided:

> No local government unit shall set standards of hazardous waste control which are in conflict or inconsistent with those set by the [state] pollution control agency.

Id. at 544. The Minnesota Pollution Control Agency had a comprehensive site-specific permitting process for large electric power facilities, including environmental impact studies, public hearings, information meetings, appointment of a site evaluation committee and criteria

for site evaluation, among other things. *Id.* at 545-46. After NSP went through the MPCA's comprehensive permitting process, the MPCA approved a permit for NSP's power plant. *Id.* at 541. Although the MPCA specifically permitted NSP to open the power plant, the City of Granite Falls passed an ordinance that forbid NSP from opening the power plant. *Id.* The court held:

> The [ordinance] is inconsistent and conflicts with the MPCA permit. The statute forbids a local government from enacting rules that conflict with the MPCA standards for hazardous waste control.

Id. at 545.

In *Board of Supervisors v. ValAdCo*, 504 N.W.2d 267 (Minn. App. 1993), ValAdCo applied for and received permits to construct hog feedlots from the MPCA, which again, had an extremely detailed, project-specific permitting process.[4] *Id.* at 269. Notwithstanding the MPCA's comprehensive permitting process, Crooks Township passed an ordinance with different pollution control requirements for animal feedlots, and required ValAdCo to get a township permit. *Id.* at 270. The court held:

> The ordinance conflicts with state law because its setback requirements would prohibit construction of the ValAdCo facilities, which the MPCA and county have already approved. *The ordinance's setback requirements run contrary to the*

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[4] The MPCA permit application required ValAdCo to:

> Provide information on the number and type of animals to be confined; the location of the feedlot; soil and hydrogeological conditions; a map or aerial photograph of all wells, buildings, lake and watercourses within 1,000 feet of the proposed feedlot; a manure management plan, including handling and application techniques, acreage available for manure application and plans for any manure storage structure; and any additional site-specific or project-specific information requested by the MPCA.

ValAdCo, 504 N.W.2d at 269 (citations omitted). Next, the MPCA completed an Environmental Assessment Worksheet and solicited public comment. *Id.* at 270. The MPCA received letters from 37 local residents, the Department of Natural Resources, the Minnesota Historical Society, and the Minnesota Department of Health. *Id.* The MPCA specifically responded to concerns in its findings of fact and conclusions. *Id.* The DNR conducted pumping tests. *Id.* The MPCA approved a detailed manure management plan with MPCA guidelines and an odor management plan. *Id.* The MPCA stated: "*The nature of the project has been fully examined and all significant environmental effects have been identified and evaluated.*" *Id.* (emphasis added).

> *MPCA's focus on site- and project-specific determinations of what are appropriate pollution control measures.*

Id. at 272 (emphasis added) (citations to *Apple Valley Ready-Mix* and *Northern States Power* omitted).

In *Northwest Residence, Inc. v. City of Brooklyn Center,* 352 N.W.2d 764, 772 (Minn. App. 1984), Northwest Residence had also complied with a comprehensive licensing process for residential facilities for the mentally ill under state law.[5] The purpose of the Public Welfare Licensing Act was to assure proper care and services for mentally ill adults through the licensure of residential facilities. *Id.* The Legislature sought to facilitate the acceptance of group homes for mentally ill people in residential communities. *Id.* at 773.

The Licensing Act precluded municipal regulation of residential facilities for the mentally ill by statutorily granting "exclusive" authority to the Commissioner of Public Health to set license standards, inspect all facilities, and enforce the rules and standards. *Northwest Residence,* 352 N.W.2d at 773; Minn. Stat. § 144.653, subds. 1, 3. Pursuant to the Licensing Act, the Commissioner of Public Welfare promulgated extensive and comprehensive regulations

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[5] Pursuant to the Public Welfare Licensing Act, Minn. Stat. § 245.781 to 245.812 (1982 and Supp. 1983), the proposed facility must be licensed under Minnesota Department of Welfare "Rule 36," Minn. Rules, parts 9520.0500 to 9520.0690. [Northwest Residence] intends to apply for a Category II operating license under Rule 36. A Category II program is a "mental health residential program which provides either a transitional semi-independent living arrangement or a supervised group supportive living arrangement for mentally ill persons." Minn. Rules, part 9520.0510, subpart 5. Such facilities must also acquire a board and lodging license from the Minnesota Department of Health or a local agency delegated licensing authority by the Department. Minn. Rules, part 9520.0670, subpart 3.

Minnesota Rules, part 9520.0650, establish standards concerning furnishings, program space, and individual privacy in residential facilities for adult mentally ill persons. The Department of Health board and lodging standards require that one-person bedrooms contain at least seventy square feet of usable floor space, and that multi-occupant bedrooms contain not less than sixty square feet of usable floor space for each occupant, Minn. Rules, part 4625.0900.

Northwest Residence, 352 N.W.2d at 771-72.

governing residential facilities for the mentally ill, Minnesota Administrative Rules parts 9520.0500 to 9520.0690. These regulations establish the program services that must be offered by residential facilities, as well as living unit, individual privacy, and staff requirements. *Northwest Residence*, 352 N.W.2d at 772. The Commissioner engaged staff to implement the regulations and give continued attention to the field. *Id.* at 773.

The Licensing Act further expressly prohibited municipalities from imposing more restrictive conditions on group homes for the mentally ill:

> A township, municipal or county zoning authority may require a conditional use or special use permit in order to assure proper maintenance and operation of a facility, *provided that no conditions shall be imposed on the homes which are more restrictive than those imposed on other conditional uses or special uses of residential property in the same zones,* unless such additional conditions are necessary to protect the health and safety of the residents of the facility.

Minn. Stat. § 245.812, subd. 4 (1982) (emphasis added).

Notwithstanding this state law, the Brooklyn Center City Council denied Northwest Residence's special use permit for a group home for 18 mentally ill residents in a four-plex, even though Brooklyn Center would have allowed 20 unrelated people to live in a four-plex finding: "[t]he facility contains adequate space for no more than 12 mentally ill persons together with support staff;" and "[t]he space needs of 18 mentally ill persons are greater than the space needs of four 'usual type' families." *Northwest Residence*, 352 N.W.2d at 771.

The court acknowledged that municipalities could require residential facilities to meet general occupancy, health, and safety standards applicable to land uses in the community. *Northwest Residence*, 352 N.W.2d at 773. However, if municipalities were allowed to establish special standards for the operation of residential facilities for the mentally ill, in this case stricter occupancy standards than are required under its own ordinances or state regulations, municipalities could effectively bar such facilities or make them economically infeasible, which

the court concluded would be contrary to the state policy in favor of residential treatment for the mentally ill. *Id.*

The court held that the state had preempted local regulations in this field. *Northwest Residence*, 352 N.W.2d at 773. The court held that Brooklyn Center's imposition of a stricter occupancy standard for a residential facility for mentally ill adults conflicted with state law: "The state would clearly permit the facility to house eighteen residents and local regulation that forbids what the state expressly permits cannot stand." *Id.* at 774 (citations omitted).

The MFLSA does not have language forbidding local regulation of minimum wages like *Apple Valley Ready-Mix, Northwest Residence,* or *Northern States Power*. The MFLSA does not set up a detailed process for evaluating what the minimum wage should be in certain locations, like the permitting schemes in *Northern States Power, ValAdCo,* or *Northwest Residence.* Tellingly, the MFLSA does not consider or address the specific needs of different communities in the State. The MFLSA does not grant exclusive authority to the Commissioner to regulate minimum wages like *Northwest Residence*. It cannot be said that the MFSLA considered and expressly provided that local governments could not regulate minimum wages.

In *State v. Kuhlman*, 729 N.W.2d 577 (Minn. 2007), the Minnesota Traffic Regulations Act had a uniformity provision that required that all traffic regulations be applied uniformly throughout the State:

> The provisions of this chapter *shall be applicable and uniform throughout this state* and in all political subdivisions and municipalities therein, and *no local authority shall enact or enforce any rule or regulation in conflict with the provisions of this chapter* unless expressly authorized herein.

Kuhlman, 729 N.W.2d at 580. The purpose of the uniformity provision is to enable a driver to travel in all parts of the State without the risk of violating an ordinance with which he is not familiar. *Id.* at 581 (citing *Duffy v. Martin*, 121 N.W.2d 343, 346 (Minn. 1963)). Thus, where

there is such a uniformity provision, an ordinance cannot "add a requirement that is absent from the statute." Therefore, an ordinance that made the owner of a vehicle guilty of a petty misdemeanor if the vehicle was photographed running a red light conflicted with state law that only imposed liability on motor vehicle drivers for running red lights.

In *Bicking v. City of Minneapolis,* the state law required municipalities to defend and indemnify police officers acting within the scope of their job duties. 891 N.W.2d 304, 307 (Minn. 2017). Thus, the ordinance requiring police officers to carry professional liability insurance as their primary insurance conflicted with state law. *Id.* at 315.

In *Lilly v. City of Minneapolis,* 527 N.W.2d 107 (Minn. App. 1995), the state law defining the people to whom municipalities were allowed to provide health care benefits prohibited municipalities from providing health care benefits to domestic partners of employees. *Id.* at 109-13. Thus, the ordinance that provided health care benefits for same sex domestic partners and sought an affirmative inclusion of the term "domestic partners" in state legislation on health care benefits conflicted with state law. *Id.*

The court noted that the Minnesota Legislature had considered the issue of benefits to same sex domestic partners in relation to the Minnesota Human Rights Act, and wrote:

> Nothing in this chapter shall be construed to * * * mean that the state of Minnesota condones homosexuality or bisexuality or any equivalent lifestyle [or to] authorize the recognition of or the right of marriage between person of the same sex.

Lilly, 527 N.W.2d at 112 (citing Minn. Stat. § 363.021). Prior to the vote on the bill, the author of the bill assured legislators that there was "nothing in [the bill]" that could lead to domestic partners benefits. *Id.* (citing *Senate Floor Debate on S.F. No. 444* (Mar. 18, 1993) (statement of Sen. Allen Spear)). In light of that legislative history, the court found that the Legislature had considered and rejected extending benefits to domestic partners. *Id.*

The MFLSA does not contain a uniformity provision requiring minimum wage regulations be applied statewide or that they be applied uniformly like *Kuhlman*. A legislative attempt to add a uniformity provision to the MFLSA failed. Unlike *Lilly,* where the legislative history shows that the Legislature considered and rejected extending benefits to domestic partners, the legislative history of the MFLSA shows the Minnesota Legislature has expressly recognized that municipalities can pass local minimum wage laws. The Legislature incorporated language recognizing "local minimum wage law" from federal law that also expressly recognizes that municipalities can pass local minimum wage laws. Moreover, a legislative attempt to prohibit local minimum wage regulation failed. Thus, the Court cannot find that the MFLSA expressly permitted employers to be free from local minimum wage regulation, and must conclude that the Minneapolis Minimum Wage Ordinance does not conflict with state law.

III. The Ordinance is Not Preempted by State Law

In matters of municipal concern, home rule cities such as Minneapolis have all the legislative power possessed by the legislature of the state, except power that is expressly or impliedly withheld. *See Dean v. City of Winona*, 843 N.W.2d 249, 256 (Minn. App. 2014), *appeal dismissed*, 868 N.W.2d 1 (Minn. 2015). Graco does not argue that the regulation of minimum wages is not a matter of municipal concern, or that the City does not have power to regulate minimum wages in Minneapolis. Graco has also made clear that it is not arguing that the Legislature expressly withheld the power to regulate minimum wages in Minneapolis. Graco's argument is that the Legislature "impliedly withheld" the power of the City to regulate minimum wages in Minneapolis. For the following reasons, the Court cannot find that the Legislature impliedly preempted the power of the City to regulate minimum wages for workers in Minneapolis.

Implied preemption, also known as field preemption, occurs when a state law fully occupies a particular field of legislation so that there is no room for local regulation. *Mangold*, 143 N.W.2d at 819. In such a case, a local ordinance attempting to impose additional regulations in that field will be regarded as conflicting with the state law, and for that reason, void. *Id.* "The doctrine of field preemption is premised on the right of the state to so extensively and intensively occupy a particular field or subject with state laws that there is no reason for municipal regulation." *Haumant v. Griffin,* 699 N.W.2d 774, 778 (Minn. App. 2005).

In determining whether field preemption exists, Minnesota courts consider four factors: (1) the subject matter to be regulated; (2) whether the subject matter has been so fully covered by state law that it has become *solely* a matter of state concern; (3) whether any partial legislation regulating the subject matter indicated that it is a matter *solely* of state concern; and (4) whether the subject matter itself is of such a nature that local regulation would have unreasonably adverse effects upon the general populace of the State. *Mangold*, 143 N.W.2d at 820.

In *Mangold,* the court held that the state law forbidding Sunday sales did not preempt the field so as to prohibit supplementary local ordinances regulating Sunday sales. *Mangold*, 143 N.W.2d 813. The *Mangold* court began its analysis by recognizing that a municipality can act to protect the security of the community and that in so doing it is not limited to the things enumerated in the general welfare clause in its charter. *Id.* at 820. It stated:

> It would therefore seem that, generally stated, the rule would be that once the municipality is granted a charter with a general welfare clause, as the village has been, that clause will be construed liberally to allow effective self-protection by the municipality.

Id.; *see also Crabtree,* 15 N.W.2d at 100 ("No specific legislative sanction is needed to vitalize the general welfare clause of a city charter. No express grant of power to legislate upon any particular subject is necessary. It is entirely appropriate that each municipality of any

considerable size should make its own police regulations for the preservation of the health, safety, and welfare of its own citizens.").

The *Mangold* court then turned to the narrower issue of field preemption. Addressing the third *Mangold* factor, the court concluded that the Legislature did not expressly preclude local regulation of Sunday sales. *Mangold*, 143 N.W.2d at 821. The court determined the state Sunday sales laws were not like state traffic laws that had uniformity provisions requiring the state laws to be applicable and uniform throughout the State. *Id.* at 820. The court found the provisions requiring uniformity and statewide application in the state traffic laws "clearly showed the legislative intent to preempt the field." *Id.* at 820-21.

Turning to the issue of whether the state law had so fully covered the area as to have made it an area solely of state concern, the *Mangold* court concluded:

> . . . it would appear that this area of Sunday closing is *not one which has been impliedly declared by the legislature to be solely of state concern. This is not the type of legislative enactment which purports to completely dictate the specific regulation of an area as for instance, the tax and traffic provisions do.*

Mangold, 143 N.W.2d at 821 (emphasis added). The *Mangold* court continued: "Instead, this is a rather complete *policy statement by the legislature which the local municipalities should be able to shape to its own needs by supplementary ordinances.*" *Id.*; *see also G.E.M. of St. Louis, Inc. v. City of Bloomington.*, 144 N.W.2d 552, 554-55 (Minn. 1966) (state law prohibiting Sunday sales did not preempt local ordinance regulating business activities on Sunday); *see Markley*, 172 N.W.2d at 216 (state worker's compensation law did not preempt local ordinance requiring full pay for six months for injured firefighters); *see Crabtree*, 15 N.W.2d at 100 (extensive state legislation regulating sales of cigarettes did not preempt additional local regulation of same); *see City of Duluth*, 159 N.W. at 793 (state law set minimum liquor distribution standards and local ordinance set higher, stricter standard banning the sale

completely); *see Am. Elec. Co. v. City of Waseca,* 113 N.W. 899, 899-901 (Minn. 1907) (legislature limited indebtedness on a contract to five percent of the assessed valuation of the taxable property, but the municipality allowed indebtedness up to ten percent of the same); *State v. Dailey,* 169 N.W.2d 746, 748 (Minn. 1969) (local ordinance criminalizing prostitution was not preempted by a state criminal statute also criminalizing prostitution).

In *Markley,* a firefighter was incapacitated while performing his duties. The city charter provided that the firefighter receive full pay for six months and one-half pay not to exceed another six months. *Markley*, 172 N.W.2d at 215. Under the state worker's compensation statute, however, the firefighter was only entitled to receive his monthly wage for four months. *Id.* The *Markley* court held:

> The theory of the Compensation Act includes the idea that the wage-earner ought not to be required to bear the whole result of a personal injury arising out of and in the course of his employment, and that the community ought to share in the loss. The carrying of this theory into practical effect, the subject of which is one of public policy, must necessarily be committed to the Legislature for governmental control. *But such provision will not prevent a city operating under a home rule charter from providing additional compensation to a fireman injured in the course of his employment.* Nor is a charter inconsistent with the object of the Compensation Act.

Id. at 216.

Similarly, in *City of Duluth,* the court held:

> The general laws regulating the liquor traffic did not wholly divest the municipalities of the state of power to regulate and control such traffic within such municipalities, but prescribed regulations and restrictions more stringent than those theretofore existing, and took from all municipalities the power to abrogate or lessen the regulations and restrictions so prescribed. *The various municipalities remained free, however, to impose any additional regulations and restrictions authorized by their charters or other laws.*

City of Duluth, 159 N.W. at 792.

In *Dailey,* the state law defined prostitution as sex for hire which was punishable as a gross misdemeanor. *Dailey,* 169 N.W.2d at 747. The court upheld a local ordinance that defined

prostitution more broadly, including any female indiscriminately offering sex, whether or not for consideration, and was punishable as a misdemeanor. *Id.* at 748. The court stated:

> We do not have any problem, however, of a municipality undertaking by ordinance to prohibit activities that the state by statute would permit . . . this court has recognized that such an ordinance may be sustained as "*an important adjunct in preserving the standard of regulation as moulded by the general law.*
>
> [The] legislature has . . . moved on several fronts to assist, but not to replace, local government in meeting the extraordinary needs of the metropolitan area, such as the elimination of conditions which diminish the quality of urban life. We are averse, in these circumstances, to hold that the legislature contemplates its own regulation to exclude municipal regulation, without most clear manifestation of such intent. It is imperative, if we are to give faithful effect to legislative intent, that the legislature should manifest its preemptive intent in the clearest terms. We can be spared the sometimes elusive search for such intent if it is declared by express terms in the statute. And where that is not done in the enactments of future legislatures, we shall be increasingly constrained to hold that statutes and ordinances on the same subject are intended to be coexistent.

Id. at 748; *see also Lilly,* 527 N.W.2d at 114 (Schumacker J. dissent) (quoting *Dailey*, 169 N.W.2d at 748)); *see also City of Birchwood Village v. Simes,* 576 N.W.2d 458, 461-62 (Minn. App. 1998); *see also State v. Westrum,* 380 N.W.2d 187, 191 (Minn. App. 1986).

A. The Subject Matter to be Regulated is Minimum Wages for Workers

Regarding the first *Mangold* factor, the parties agree the subject matter to be regulated is minimum wages for workers.

B. Minimum Wages Are Not Solely a Matter of State Concern

Regarding the second and third *Mangold* factors, the Court cannot find the subject matter of minimum wages has been so fully covered by state law that it has become *solely* a matter of state concern, or that partial legislation regulating the subject matter indicated that it is *solely* a matter of state concern.

As a home rule charter city, Minneapolis has the same regulatory authority within its boundaries as the State, unless state law has limited or otherwise withheld that power. *See*

MINN. CONST., art XII, sect. 4; *see also* Minn. Stat. § 410.07; *see also Dean*, 843 N.W.2d at 256 ("In matters of municipal concern, home rule cities have all the legislative power possessed by the legislature of the state, save as such power is expressly or impliedly withheld.") (quotations omitted). The City's charter contains a broad claim of plenary powers, granting the City "any power that a municipal corporation can lawfully exercise at common law." Ex. 36, § 1.4(a).

As previously noted, Graco does not argue that the regulation of minimum wages is not a matter of municipal concern, or that the City's charter did not give the City of Minneapolis the power to regulate minimum wages in Minneapolis, or that the Legislature expressly withheld that power. Because Graco's argument is that state law impliedly preempted municipal action, the Court must determine whether the subject matter of minimum wage regulation has become *solely* a matter of state concern.

To begin, the MFLSA does not indicate that minimum wage is *solely* a matter of state concern, nor does it "purport[] to completely dictate the specific regulation" of minimum wages, as the tax and traffic laws do. *Mangold.* 143 N.W.2d 821.

As previously discussed, there are no provisions in the MFLSA prohibiting municipalities from setting minimum wage requirements higher than the state minimum wage. Moreover, there are no uniformity provisions in the MFLSA demonstrating an intent to make minimum wage laws uniform across the state.

When the Legislature attempted to pass a law that would have preempted local regulation of minimum wages and established a uniform set of minimum wage laws, Governor Dayton vetoed the bill. Governor Dayton vetoed the bill explaining that "the role of state government is to set *minimum* standards for workplace protections, wages, and benefits, not *maximums.*" Ex. 37 (emphasis added). Governor Dayton clearly stated that *local officials retained the right to*

require a higher minimum wage in order to meet the needs of their residents. Id. Governor Dayton further explained:

> Local governments can be more adept at responding to local needs with ordinances that reflect local values and the unique needs of their communities. State government does not always know what works best for every community, and may lag behind when improvements are needed.

Id.

Furthermore, as recently as 2015, the Minnesota Legislature specifically recognized that municipalities could establish a minimum wage higher than the state minimum wage. In a statute related to vocational rehabilitation programs, the Legislature defined "noncompetitive employment" as work "for which the person is compensated at a rate specified in the applicable state *or local minimum wage law*. Minn. Stat. § 268A.01, subd. 15 (emphasis added). The Minnesota Legislature incorporated this language from federal law that also explicitly recognized that municipal ordinances could establish higher minimum wages than those established by the federal minimum wage law. 29 U.S.C. § 218.

The MFLSA only sets a floor for minimum wage regulation, leaving room for a municipality to set a higher minimum wage standard to address the specific needs of its community. *See Mangold,* 143 N.W.2d at 821; *see Markley*, 172 N.W.2d at 216; *see Crabtree*, 15 N.W.2d at 100; *see City of Duluth*, 159 N.W. at 793; *see Am. Elec. Co.,* 113 N.W. at 899-901; *see Dailey,* 169 N.W.2d at 748. Thus, it cannot be said that the subject matter has been so fully covered by state law that it has become solely a matter of state concern.

Graco relies on cases in which the Legislature set up a uniform system of state regulation that deeply and thoroughly considered the regulated subject matter and left no room for municipal regulation. In fact, municipal regulation would have been inconsistent and at odds with the purpose of those state laws. The same is not true regarding the MFLSA.

In *Nordmarken v. City of Richfield,* the subject matter to be regulated was "the process by which municipalities adopt and finally approve ordinances pertaining to land use planning and zoning." 641 N.W.2d 343, 348 (Minn. App. 2002). The Municipal Planning Act and the Metropolitan Land Planning Act set out a "detailed and elaborate structure of procedural authority and processes" for comprehensive municipal land use planning and for ensuring reasonable compatibility with land use plans of other municipalities. *Id.* at 348-49. In the MPA policy statement, the Legislature declared its intent to provide Minnesota municipalities with "*a single body of law*," with the necessary powers and a *"uniform procedure" for adequately conducting and implementing municipal planning. Id.* (emphasis added). Local regulation was "antithetical" to the avowed purposes of creating the single body of law and uniform procedure. There was no room for municipal regulation. *Id.* at 349. Municipal regulation would have been detrimental and inconsistent with the stated purpose of the state law. Thus, where the city had complied with comprehensive process and uniform procedure set forth in the MPA and MPLA, local residents opposed to a large commercial development in Richfield were not entitled to require a vote on its land use plan and zoning. *Id.*

Similarly, in *Jennissen v. City of Bloomington,* the subject matter to be regulated was "the process a municipality must follow in order to implement organized [garbage] collection." 904 N.W.2d 234, 240 (Minn. 2017). The Minnesota Waste Management Act[6] completely set out detailed processes cities were mandated to follow when considering organized garbage collection.[7] The stated purpose of the Minnesota Waste Management Act was to "coordinate

[6] Minn. Stat. Ch. 115A, the Minnesota Waste Management Act, contains over 150 subsections. Unlike the MFLSA that only has 17 subsections, the MWMA has over 150 subsections.

[7] The *Jennissen* court stated: "The MWMA describes two processes, one of which a city must follow when pursuing the establishment of organized collection. Minn. Stat. § 115A.94, subds. 4a, 4d. Under both statutory processes, the city must provide public notice, hold hearings, and invite and employ the assistance of licensed collectors. *Id.*, subds. 3(c), 4c. Under the MWMA, a city must first establish an "organized collection options committee" (OCOC) that

solid-waste management among political subdivisions," and "to promote the orderly and deliberate development and financial security of waste facilities," and "to foster an integrated waste management system." *Id.* at 239. A "uniform process" fosters an integrated waste management system. *Id.* at 241. If a municipality wanted to consider organized garbage collection, it had to follow the process set out in the MWMA. Thus, where the city had complied with the MWMA process to establish organized garbage collection, local residents opposed to organized garbage collection could not require a vote on whether to do so. *Id.* at 243.

In *ValAdCo,* the subject matter to be regulated was "the control of pollution from manure produced in animal feedlots." 504 N.W.2d at 269. The Minnesota Pollution Control Act regulated exactly this subject matter. *Id.* (citing Minn. Stat. chapters 115 and 116; Minn. R. 7020.0100-.1900). The MPCA set up a comprehensive permitting scheme for animal feedlots. *Id.* The permitting scheme provided for local input but retained ultimate control in the state. *Id.* As previously discussed, the permitting scheme was extremely detailed, comprehensive, and project-specific. *Id.* The MPCA gathered voluminous amounts of site-specific information,

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examines and evaluates various methods of organized collection. *Id.*, subd 4a. The OCOC must determine whether a system of collection with a single collector or a group of multiple collectors is preferable. *Id.* And the OCOC must establish a list of criteria for evaluating the organized collection methods, which may include: (1) costs to residential subscribers, (2) miles driven by collection vehicles on city streets and alleys, (3) the city's operating costs, (4) whether incentives for waste reduction are provided, (5) impacts on solid-waste collectors, and (6) "other physical, economic, fiscal, social, environmental, and aesthetic impacts." *Id.*, subd. 4b. The MWMA requires the OCOC to seek input from local officials, residents, and licensed collectors and then must issue a report on its research, findings, and any recommendations to the city's governing body. *Id.* The city's governing body must consider the OCOC's recommendations, provide public notice, and hold at least one public hearing. *Id.*, subd. 4c. If the city decides to implement organized collection, six months must elapse before waste collection under the new system begins. *Id.* Under the second process in the MWMA, the city has the option—after first notifying the public and licensed collectors of its intention to consider organized collection—to meet and negotiate with licensed collectors to develop an organized-collection proposal. *Id.*, subd. 4d. This process must occur within 60 days after providing notice and before the formation of an OCOC. *Id.* The proposal must include "identified city ... priorities, including issues related to zone creation, traffic, safety, environmental performance, service provided, and price. . . ." *Id.* This process bypasses most of Minn. Stat. § 115A.94, subds. 4a-c." *Jennissen*, 904 N.W.2d at 239.

conducted environmental assessments and pumping tests, received public comment from individuals and agencies, and addressed local concerns with written findings before approving a permit for hog feedlots. *Id.* at 270. Thus, a local ordinance that set stricter setback requirements and prohibited the hog feedlots that had been specifically permitted by the state was preempted. *Id.* at 272.

The MPCA thoroughly investigated and considered the appropriate regulation needed for pollution caused by hog feedlots in Crooks Township. The MPCA left no room for local regulation of the same. In contrast, there is no indication that the MFLSA, has thoroughly considered the need for local minimum wages in different cities in the State. The MFLSA merely sets a floor for minimum wage regulation, leaving room for local regulation.

In *Northwest Residence,* the subject matter to be regulated was "the physical environment and care provided by residential facilities for the mentally ill." 352 N.W.2d at 772. As previously discussed, the Public Welfare Licensing Act was passed to assure proper care and services for mentally ill adults through the licensure of residential facilities. *Id.* The Licensing Act precluded municipal regulation of residential facilities for the mentally ill by statutorily granting "exclusive" authority to the Commissioner of Public Health to set license standards, inspect all facilities, and enforce the rules and standards. *Id.* at 773; Minn. Stat. § 144.653, subds. 1, 3.

Pursuant to the Licensing Act, the Commissioner of Public Welfare promulgated extensive and comprehensive regulations governing residential facilities for the mentally ill, Minn. Rules parts 9520.0500 to 9520.0690. *See supra*, at 12-14, n.5. These regulations established the program services that must be offered by residential facilities, as well as living unit, individual privacy, and staff requirements. *Northwest Residence*, 352 N.W.2d at 772. The

Commissioner engaged staff to implement the regulations and give continued attention to the field. *Id.* at 773. The Licensing Act further expressly prohibited municipalities from imposing more restrictive conditions on group homes for the mentally ill. Minn. Stat. § 245.812, subd. 4 (1982). Where Northwest Residence complied with the exclusive and comprehensive licensing process, Brooklyn Center's denial of a special use permit for a group home for mentally ill adults based on a stricter occupancy standard and a finding that mentally ill residents would require more space than "usual type" families was preempted. *Northwest Residence*, 352 N.W.2d at 773.

Thus, the Licensing Act set up a comprehensive procedure for licensing group homes for the mentally ill. *Northwest Residence*, 352 N.W.2d at 773. The state agency had "exclusive" authority to license, inspect, and enforce its standards and rules. *Id.* There was no room for a municipal process for approving group homes for the mentally ill. *See id.*

In other cases cited by Graco, it is clear that the Legislature thoroughly considered the subject matter sought to be regulated and evinced an intent to preclude municipal regulation. In *State v. Gonzales,* the subject matter to be regulated was "forfeiture of property used in, or associated with, criminal offenses." 483 N.W.2d 736, 738 (Minn. App. 1992). The court found traffic regulations were to be uniform. *Id.* The broad regulation of forfeiture for criminal offenses showed that the Legislature had thoroughly considered the subject of forfeiture and limited forfeiture to certain offenses. *Id.* The state law covered forfeiture of contraband, weapons, and all forms of property, as well as motor vehicles. *Id.* The state law covered forfeitures for a wide variety of criminal offenses, including murder, promotion of prostitution, bribery, and receiving stolen property. *Id.* Thus, a St. Paul ordinance requiring forfeiture of motor vehicles driven by customers of prostitutes was preempted. *Id.*

In *Haumant,* the subject matter to be regulated was "the possession and distribution of marijuana." 699 N.W.2d at 778. The state law attached criminal penalties to the possession, sale, or cultivation of marijuana. *Id.* (citing Minn. Stat. § 152.01, subd. 7; Minn. Stat. § 152.02, subd. 1 (1990); Minn. Stat. § 152.09, subd. 1(1) (1988)). The Legislature designated marijuana as a Schedule I substance, which it defined as having "no currently accepted medical use in the United States." *Id.* (citing Minn. Stat. § 152.02, subd. 7(1)). The Legislature enacted only one exception to allow the use of marijuana for cancer patients undergoing chemotherapy. *Id.* (citing Minn. Stat. § 152.21, subds. 1, 3, 6 (1990)). The court held that these provisions demonstrated that the Legislature had specifically addressed and determined the possible medical uses of marijuana, and evinced its intent to occupy the field. *Id.* The court also found that allowing inconsistent treatment of marijuana laws between municipalities would make the state's marijuana laws difficult to enforce fairly. *Id.* Thus, local residents were not entitled to vote on a charter amendment that would require the City of Minneapolis to license a reasonable number of medical marijuana distribution centers. *Id.* at 776.

In *Lilly,* the subject matter to be regulated was health care benefits provided by a municipality for same-sex domestic partners. 527 N.W.2d at 110. Chapter 471 of the Minnesota Statutes governed the rights, powers and duties of municipalities. *Id.* Section 471.61 gave municipalities power to insure their employees and their dependents. *Id.* Section 471.61 defined dependents to mean "spouse and minor unmarried children under the age of 18 years and dependent students under the age of 25 years actually dependent upon the employee." *Id.* at 110-11. Domestic partners were outside the definition of dependents to whom municipalities could provide health care benefits. *Id.* at 111.[8]

[8] The City of Minneapolis operated under the assumption that Minn. Stat. §471.61 governed its ability to provide insurance benefits to its employees and their dependents. *Lilly*, 527 N.W.2d at 111. One of the City's resolutions

Section 471 was passed in 1943, and only covered officers and employees. *Lilly*, 527 N.W.2d at 110. In 1957, the Legislature added spouses and minor unmarried children actually dependent upon the employee. *Id.* In 1971, the Legislature added dependent students under the age of 25 years actually dependent upon the employee. *Id.* In 1973, the Legislature reduced the age of coverage for minor children from 19 to age 18. *Id.* These changes were in accordance with the desires of the municipalities. *Id.*

As previously discussed, the legislative history showed that the Legislature had considered and rejected extending benefits to same sex domestic partners. *Lilly*, 527 N.W.2d at 110. The Minnesota Human Rights Act provided:

> Nothing in this chapter shall be construed to * * * mean that the state of Minnesota condones homosexuality or bisexuality or any equivalent lifestyle [or to] authorize the recognition of or the right of marriage between person of the same sex.

Id. at 112 (citing Minn. Stat. § 363.021). Prior to the vote on the bill, the author of the bill assured legislators that there was "nothing in [the bill]" that could lead to domestic partners benefits. *Id.* (citing *Senate Floor Debate on S.F. No. 444* (Mar. 18, 1993) (statement of Sen. Allen Spear)). In light of that legislative history, the court found that the Legislature had considered and rejected extending benefits to domestic partners:

> Given the legislative history provided in Senator Spear's remarks and the requirements for interpretation of the sexual orientation amendments provided in Minn. Stat. § 363.021, it is apparent that the legislature did not intend to expand the list of health care benefits to employees with same sex domestic partners as are available to employees who are married.

Id. Thus, the city was enjoined from giving health care benefits to same-sex domestic partners.[9]

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contained a mandate to seek an affirmative inclusion of the term "domestic partners" in the state legislation on health care benefits. *Id.*

[9] Although the *Lilly* court did not appear to strictly apply the *Mangold* test, the legislative history in that case showed that the Legislature had considered and evinced an intent to prohibit municipalities from granting health care benefits to same-sex domestic partners. *Lilly*, 527 N.W.2d at 112.

In all of these cases, the Legislature thoroughly considered the subject matter to be regulated and evinced an intent to occupy the field and preclude municipal regulation of the subject matter. That cannot be said about the MFLSA.

The MFLSA does not set up a comprehensive system for municipalities to follow like in *Nordmarken, Jennissen*, and *Lilly.*[10] The MFLSA does not set up a uniform system of regulations that thoroughly consider the regulated subject matter like in *ValAdCo* and *Northwest Residence.* The language and legislative history of the MFLSA do not evince an intent to preclude local regulation like in *Haumant* and *Lilly.*

To the contrary, the Legislature passed a law specifically providing for local minimum wage law. It incorporated a reference to "local minimum wage law" from federal law that also specifically provided for local minimum wage laws. An attempt in the Minnesota Legislature to make the state minimum wage uniform and prohibit local minimum wage laws failed.

Moreover, the MFLSA leaves room for supplemental regulation that a municipality can "shape to its own needs." *Mangold,* 143 N.W.2d at 821. The MFLSA sets a floor for minimum wages. The MFLSA does not grant "exclusive" authority to the commissioner of labor and industry. *See Northwest Residence*, 352 N.W.2d at 773. The purpose of local minimum wage laws is consistent with the stated purposes of the MFLSA. Although the Legislature has updated and amended the MFLSA, it has only made amendments to the state minimum wage. It has not evinced an intent to preclude municipal regulation of minimum wages.

Nothing in the MFLSA indicated that minimum wage regulation is solely a matter of state concern, and the MFLSA has not so fully covered the subject of minimum wages that it has

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[10] Unlike the 150 subsections of the Minnesota Waste Management Act in *Jennissen,* the MFLSA contains a mere 17 subsections.

become solely a matter of state concern. Thus, the court cannot find that minimum wages for workers is solely a matter of state concern.

C. Local Regulation of Minimum Wages Would Not Have Unreasonably Adverse Effects Upon the General Populace of the State

Under the fourth *Mangold* factor, the Court must determine whether the nature of the subject matter is such that local regulation would have unreasonably adverse effects upon the general populace of the state. *Mangold*, 143 N.W.2d at 820. The court should consider whether the subject matter is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the municipality. *See Gonzales*, 483 N.W.2d at 737-38 (citing *Mangold*, 143 N.W.2d at 820) (finding adverse effect of local regulation of vehicle forfeitures, because vehicle owners traveling across the state could risk forfeiture for a different offense in each municipality)).

Courts have found unreasonable adverse effects when the State established a uniform process for addressing a problem and local regulation was inconsistent with the process established by the State. *Nordmarken,* 641 N.W.2d at 349; *Jennissen,* 904 N.W.2d at 242; *Northwest Residence,* 352 N.W.2d at 773; *ValAdCo*, 504 N.W.2d at 271. However, in the absence of a uniform process, courts have upheld local regulation of business even when it could result in a patchwork of unequal regulation in a small trade area or a "checkerboard" of conflicting regulations. *See Mangold*, 143 N.W.2d at 821; *G.E.M.*, 144 N.W.2d at 554-55.

In this case, local regulation of minimum wages would not have unreasonably adverse effects upon the general populace of the State. In fact, such regulation should not have any adverse effect on the citizens of Minnesota as they travel throughout the State. This case is unlike *Gonzales,* where citizens might be subject to motor vehicle forfeiture for different offenses in different municipalities.

As previously discussed, the MFLSA does not purport to establish a uniform process to address the need for minimum wage regulation in municipalities. Local regulation is in harmony with and consistent with the MFLSA. Businesses routinely face a variety of local regulations that vary city-to-city. *See* Ex. 19. It is unlikely local regulation of minimum wages could result in a patchwork of regulation that is more complicated than the patchwork of Sunday sales regulation upheld in *Mangold* and *G.E.M.*

Moreover, employers already track and keep records of employees' hours to comply with the MFLSA. The additional tracking and record-keeping and compensation requirements are not unreasonable when weighed against possible benefits to the City of Minneapolis. The City of Minneapolis seeks to address pressing social and economic issues facing the City, such as poverty and economic and racial disparities. Possible benefits to the City of Minneapolis include improved quality of health, children's education, family life, and community stability. Improved employee performance, reduced turnover, lowered absenteeism, and improved productivity and quality of services furnished by employees should benefit the City of Minneapolis, as well as the economy as a whole.

D. Conclusion

The Court has considered the *Mangold* factors. The subject to be regulated is minimum wages for workers. Nothing in the MFLSA indicated that minimum wage regulation is solely a matter of state concern, and the MFLSA has not so fully covered the subject of minimum wages that it has become solely a matter of state concern. Moreover, the Court cannot find that local regulation of minimum wages for workers would have unreasonably adverse effects upon the general populace of the State. Weighing all the *Mangold* factors, the Court must conclude that the Minneapolis Minimum Wage Ordinance is not preempted by state law.

IV. The Ordinance Does Not Have an Impermissible Extraterritorial Reach

When determining whether an ordinance has an impermissible extraterritorial reach, the court must focus on whether the harm to be prevented occurs within a municipality's borders. *See City of Plymouth v. Simonson*, 404 N.W.2d 907, 909 (Minn. App. 1987); *see also State v. Nelson*, 68 N.W. 1066, 1068 (Minn. 1896); *see also City of Duluth v. Orr*, 132 N.W.2d 265, 265 (Minn. 1911). "The general rule, applicable to municipalities as well as to states, is that the power and jurisdiction of the city are confined to its own limits and to its own internal concerns." *Orr*, 123 N.W.2d at 265. A municipality has no authority "to legislate as to matters outside the municipality in the guise of municipal concern." *Almquist v. City of Biwabik*, 28 N.W.2d 744, 746 (Minn. 1947).

For example, in *Nelson*, the court upheld a municipal ordinance allowing a city to inspect herds of dairy cows that produce milk for sale within the city limits regardless of the herds' location. *Nelson*, 68 N.W. at 1068. The ordinance had "no extraterritorial operation" because the "manifest purpose of the statute" was to prevent the retail of tainted milk within the city. *Id.* Such a purpose could not be accomplished without inspections beyond the city's borders. *Id.* The ordinance's subject of regulation was the sale of milk within the city. *Id.*

Likewise, in *Simonson*, the court upheld a city ordinance that prohibited the delivery of harassing materials within the city limits even if the letters were sent from outside the city. *Simonson*, 404 N.W.2d at 909. The court found that the harm to be prevented occurred within the city limits, regardless of whether it was sent from inside or outside the city. *Id.*

In *Orr*, however, the court invalidated a municipal ordinance because it attempted to regulate the storage of gunpowder within its city limits and up to one mile outside its city limits. *Orr*, 132 N.W.2d at 265. The court noted that the city had the authority to regulate

conduct within the city limits, but not beyond its borders. *Id.* (finding the mere possibility of an explosion outside the city limits impacting the citizens within a city not enough to justify reach of statute).

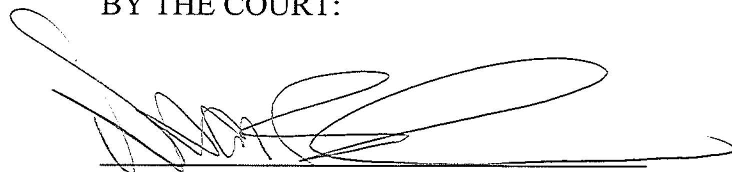
The Minimum Wage Ordinance focuses on preventing harms occurring within the City of Minneapolis. The purpose of the Ordinance is to address sub-standard living conditions and poverty existing within the Minneapolis city limits, to address racial and income disparities existing among Minneapolis workers, and to ensure a livable wage for people working in the City of Minneapolis. The Ordinance only applies to work actually performed within the city limits of Minneapolis. Thus, the Ordinance does not have an impermissible extraterritorial reach.

ORDER

Accordingly, **IT IS HEREBY ORDERED** that:

1. Graco's request to have the Court declare that the Minneapolis Minimum Wage Ordinance is invalid and unenforceable is **DENIED**.
2. Graco's request to permanently enjoin the City of Minneapolis from taking any action to enforce the Ordinance is **DENIED**.
3. Graco's request for legal costs under Minn. Stat. § 555.10 is **DENIED**.
4. The City of Minneapolis's request for costs and disbursements is **GRANTED**.

BY THE COURT:



Dated: February 27, 2018

SUSAN N. BURKE
District Court Judge

APPENDIX A

Trial Record – Exhibits[1]

1. Exhibit 1 – Minneapolis Minimum Wage Ordinance.

2. Exhibit 2 – Press Release dated October 5, 2017 and Minimum Wage Rules.

3. Exhibit 3 – Affidavit of Christopher K. Larus.

4. Exhibit 4 – Minn. Dept. of Labor & Industry, *Minimum-wage rate adjusted for inflation as of Jan. 1, 2018* (Aug. 17, 2017).

5. Exhibit 5 – Affidavit of Michael Hatling.

6. Exhibit 6 – Affidavit of Heather Kittridge.

7. Exhibit 7 – Declaration of Mark Binda.

8. Exhibit 8 – Minnesota's annual cost of living data by county.

9. Exhibit 9 – Minnesota's statewide cost of living data.

10. Exhibit 10 – Bar Graph of Minnesota's annual cost of living data by county and Minnesota's statewide cost of living data.

11. Exhibit 11 – Bar Graph of Stevens County, Blue Earth County, and Hennepin County's annual cost of living data.

12. Exhibit 13 – Declaration of Mageen Caines.

13. Exhibit 14 – Atherosclerosis Risk in Communities Study (Franks, Winters, Tancredi, and Fiscella, 2011).

14. Exhibit 15 – Declaration of Alexander David Doebler.

15. Exhibit 16 – Declaration of Javier Morillo-Alicea.

16. Exhibit 17 – 2016-2019 Master Agreement between SEIU Local 26 and the companies comprising the Minneapolis—St. Paul Contract Cleaners Association.

17. Exhibit 18 – Declaration of Charles Edward Thorton.

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[1] Pursuant to the parties' Stipulation for Dismissal with Prejudice dated December 28, 2017, the affidavits of Doug Loon, Kathy Harrell-Latham, and Deb McMillan, which were submitted in support of Plaintiff's Motions for a Temporary Injunction and for Consolidation are not part of the record.

18. Exhibit 19 – Declaration of Grant Wilson.

19. Exhibit 20 – Declaration of Mark Winklehake.

20. Exhibit 21 – Declaration of Sara J. Lathrop.

21. Exhibit 22 – Adopted Municipal Minimum Wage Ordinance.

22. Exhibit 23 – Evaluation of a Minimum Wage Increase in Minneapolis and Hennepin/Ramsey County, Technical Report ("Roy Wilkins Study").

23. Exhibit 24 – City of Minneapolis Municipal Minimum Wage Staff Report dated May 22, 2017.

24. Exhibit 25 – Appendix A to the Municipal Minimum Wage Staff Report, Summary of Peer Policies.

25. Exhibit 26 – Appendix B to the Municipal Minimum Wage Staff Report, Minneapolis Economy Data.

26. Exhibit 27 – Appendix C to the Municipal Minimum Wage Staff Report, Listening Session Summaries.

27. Exhibit 28 – Appendix D to the Municipal Minimum Wage Staff Report, Summary of Survey Data.

28. Exhibit 29 – Appendix E to the Municipal Minimum Wage Staff Report, Department of Health Report.

29. Exhibit 30 – Appendix F to the Municipal Minimum Wage Staff Report, Public Comments.

30. Exhibit 31 – Appendix G to the Municipal Minimum Wage Staff Report, UC Berkeley Diagram.

31. Exhibit 32 – Appendix H to the Municipal Minimum Wage Staff Report, Summary of Key Policy Studies.

32. Exhibit 33 – Staff Report Presentation for the Municipal Minimum Wage Staff Report.

33. Exhibit 34 – Letter of support from Council Member Abdi Warsame regarding the Municipal Minimum Wage Ordinance.

34. Exhibit 35 –Transcript of the June 22, 2017, meeting of the Minneapolis Committee of the Whole, containing public hearing on proposed Municipal Minimum Wage Ordinance.

35. Exhibit 36 – City of Minneapolis Charter, Article I.

36. Exhibit 37 – Letter dated May 30, 2017, from Governor Mark Dayton, addressed to Michelle Fishbach, President of the Minnesota Senate.

37. Exhibit 38 – Pages from City of Minneapolis' Property Information System, containing information for properties listed as owned by Graco, Inc.

38. Exhibit 39 – Affidavit of George B. Ashenmacher.

39. Exhibit 40 – Transcript excerpts of the January 10, 2018 deposition of Heather Kittridge.

40. Exhibit 41 – Transcript excerpts of the January 12, 2018 deposition of Christian Rothe.

41. Exhibit 42 – Declaration of Sarah L. McLaren.

42. Exhibit 43 – List of Graco employees working within the Twin Cities making less than $15.00 per hour.

43. Exhibit 44 – Transcript of deposition of Christian Rothe.

44. Exhibit 45 – Example of Graco's weekly schedule.

45. Exhibit 46 – Transcript of deposition of Heather Kittridge.

46. Exhibit 47 – Transcript of deposition of Michael Hatling.

47. Exhibit 48 – Excerpts from C&M's 2018 Rate Change Layout for services provided to Graco.

48. Exhibit 49 – Minneapolis, Minnesota Code of Ordinances Chapter 40, Articles I-III.

49. Exhibit 50 – Minneapolis Department of Civil Rights, Municipal Minimum Wage Frequently Asked Questions.

50. Exhibit 51 – Affidavit of Katherine S. Barrett-Wiik.

51. Exhibit 52 – Transcript of deposition of Grant Wilson.

52. Exhibit 53 – Sick and Safe Time FAQs.

53. Exhibit 54 – Minnesota Department of Employment and Economic Development (DEED) News and Resources on the Proposed Rule Change regarding Extended Employment dated February 8, 2018.

54. Exhibit 55 – Extended Employment Rule Change Frequently Asked Questions.

55. Exhibit 56 – DEED PowerPoint Presentation on Extended Employment Finding Changes.