HOME Line

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July 1, 2020

Dear Saint Paul City Council and Mayor:

HOME Line previously submitted written and verbal testimony in support of the City of Saint Paul's Proposed Ordinance 20-14. Since submitting that testimony, we have fielded a number of follow-up questions from council offices, city staff, and community members. Because of this, we submit the below additional testimony specifically focused on ordinance Sec. 193.05. Just cause notice for tenants.

Last year our hotline heard from over 2,100 Saint Paul renter households, representing about 5,400 total renters, calling for advice to solve housing problems. The most common issues renters inquired about are addressed by this ordinance--they included evictions, security deposits, informal notices to vacate, and lease questions. Since the beginning of this year, we've heard from about the same number of tenants with the same concerns in 2019, except the pandemic has greatly impacted our clients. We've seen an increase in threats of displacement--informal notice to vacate calls and lease non-renewals. All the more reason to enact just cause notice protections for tenants.

Here are a number of reasons, based on our legal analysis and the experiences of our clients, why just cause notice is an important protection for tenants:

- Numerous studies have documented the impact of formal and informal evictions on communities throughout the United States (MARS 2009-2011) and specifically in Minnesota, including St. Paul (2018), Minneapolis (2016), Brooklyn Park (2018), and communities throughout greater Minnesota (2018). Further, a University of Minnesota CURA North Minneapolis qualitative study delves into detail regarding the direct consequences of housing instability caused by formal and informal evictions. All of this quantitative and qualitative research reflects what we hear from the predominantly low-income tenant clients we advise daily--housing stability can be very precarious when tenants must rely on "fragile" lease terms providing for notices to vacate in as little as 30 or 60 days. Creating a local just cause notice requirement directly strengthens the rights of tenants--those who remain current on rent and do not materially violate their lease--to stay stably housed.
- There are already thousands of renters in certain federally subsidized properties as well as manufactured home communities who benefit from various existing just cause

requirements. Many of these protections have been in place for decades and have not negatively impacted tenants, landlords, or the communities they are located in. Rather, they have provided tenants with stronger negotiating positions, they have helped to balance the power dynamic in tenant/landlord relationships, and they have empowered tenants to organize with neighbors to secure decent, safe, quality, affordable housing.

- This ordinance does not impact landlord and tenants' opportunity to mutually agree to terminate a lease. One example we sometimes advise our clients about involves a "cash for keys" agreement for the tenant to hand over possession of the rental unit in exchange for a payment. This can often be less costly for the landlord instead of filing a formal eviction, and it can ensure the tenant does not end up with a negative eviction mark on their background.

Finally, there are a number of reasons why St. Paul is well within their authority to enact and enforce an ordinance that regulates establishes grounds for lease termination:

- There are already examples of policies that require lease renewals beyond the end of the contract. A clear parallel are local ordinances, state statutes, and state case law (see CHA, LP v. Olson, which recognized a common-law defense to retaliatory evictions) that apply to retaliation in tenant/landlord relationships already do this exact thing. For example, what if a landlord retaliates against a tenant for calling a city inspector and decides not to renew the tenant's lease because of the inspector call? Once the tenant's original lease expires, the landlord files an eviction the day after the tenant was supposed to vacate. The landlord would file the eviction alleging that the tenant was 'holding over' past the term of the lease that had ended. The tenant defends, asserting a retaliation defense. The original lease has clearly ended. The landlord gave a properly-timed, written notice, but still can't remove the tenant. The retaliation laws protect the tenant. The state, through the enactment and judicial interpretation of local and state laws, has extended the terms of the original contract to protect the tenant. Without this type of protection, city inspections departments that rely on complaints from tenants would likely cease to exist, as landlords would frequently decide to non-renew any complaining tenants.
  The proposed just cause ordinance simply requires the landlord to assert their counter to the tenant's retaliation defense in advance. There are many things that satisfy the just cause ordinance explicitly stated in the ordinance, but it requires the landlord to state these upfront instead of in an eviction case where the tenant has asserted a retaliation defense. Creating a local just cause notice requirement simply regulates this issue before formal court evictions take place instead of after. This helps to avoid the parties ending up in court, which is financially costly to the landlord and can have long-term housing access consequences for the tenant.

- Many cities in the metro have local "crime/drug-free" “nuisance” or “disorderly conduct" ordinances that require landlords to proceed with eviction (or penalizes them if they do not) in instances where state law does not require eviction. Landlords must enforce these lease provisions whether or not they actually wish to. These types of policies demonstrate that cities have enacted and regularly enforce local rules that directly impact how evictions proceed in rental housing, much like what St. Paul proposes with their just cause notification ordinance.
- Lastly, for the record, we attach a 2017 legal memo prepared for HOME Line by Lawrence R. McDonough, who at the time was Pro Bono Counsel, Dorsey & Whitney LLP. The memo was prepared for discussions with policymakers in Minneapolis, but many of the points addressed are relevant to St. Paul’s consideration of a just cause notice requirement.

We again applaud the authors of these proposals, and call on the Saint Paul City Council and Mayor to pass and implement them while continuing to pursue additional meaningful legal protections for tenants and proactive policies to preserve and increase the supply of decent, safe, affordable housing accessible for all.

Respectfully,
Eric Hauge, Executive Director
HOME Line

Encl.: Preemption Memo - August 10, 2017

MEMORANDUM

TO: HOME Line

FROM: Lawrence R. McDonough, Pro Bono Counsel, Dorsey & Whitney LLP

DATE: August 10, 2017

RE: Conflict and Preemption of Proposed City Ordinance

This Memorandum addresses the question about whether a proposed city ordinance that would require landlords to have cause to terminate tenancies attempts to regulate conduct in a field that the state legislature intended for state law to exclusively occupy, or conflict with state statutes. I believe that an ordinance requiring landlords to have cause to terminate all Minneapolis tenancies likely would not conflict with or be preempted by state law.[1]

I. Minnesota Law of Preemption and Conflicts

Ordinances passed by municipalities in the exercise of their policy power "will generally be upheld if they are not inconsistent with state law." *Mangold Midwest Co. v. Village of Richfield*, 143 N.W.2d 813, 815 (Minn. 1966).

Cities do not have inherent power. They possess powers expressly conferred by statute or by implication from powers expressly conferred. *Id.* at 820. Within these powers, cities have a great deal of latitude to act.

> It is also true 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. 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.

[1] The author has represented thousands of clients and litigated hundreds of cases in state and federal district courts and state appellate courts for over 30 years, and contributed to almost all of the landlord and tenant statutes enacted since 1986. He co-founded Minnesota's Annual Housing Law Institute and authored Residential Eviction Defense in Minnesota through many editions, and has written many journal articles on landlord and tenant law. He also has taught at all of the law schools in the Twin Cities, and regularly presents at seminars both in the state and around the country. A complete bio along with a list of publications, presentations, litigation, legislation, media appearances, and awards is posted at http://povertylaw.homestead.com. His biography at Dorsey & Whitney LLP is at https://www.dorsey.com/people/m/mcdonough-lawrence.

A home rule charter city, such as 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, sec. 4; Minn. Stat. §410.07; *Dean v. City of Winona*, 843 N.W.2d 249, 256 (Minn. App. 2014), appeal dismissed, 868 N.W.2d 1 (Minn. 2015); *Nordmarken v. City of Richfield*, 641 N.W.2d 343, 347 (Minn. App. 2002).

Preemption of a local ordinance can occur in three ways: (1) express preemption, when a statute explicitly defines the extent to which its enactments preempt local regulation; (2) field preemption, when a city ordinance attempts to regulate conduct in a field that the state legislature intended for state law to exclusively occupy; and (3) conflict preemption, when a city ordinance permits what a state statute forbids or forbids what a state statute permits. *State v. Kuhlman*, 722 N.W.2d 1, 4 (Minn. App. 2006), citing *English v. General Elec. Co.,* 496 U.S. 72, 78-80 (1990) (federal preemption); *Mangold*, 143 N.W.2d at 816, 819-820 (state field and conflict preemption).

A. Express Preemption

When a statute explicitly forbids local regulation that imposes greater restrictions, any ordinance doing so will conflict with state statute. For example, in *State v. Apple Valley Redi-Mix, Inc.*, a state statute provided that "No local government unit shall set standards of air quality which are more stringent than those set by the pollution control agency." 379 N.W.2d 136, 138 (Minn. Ct. App. 1985) (citing Minn. Stat. § 116.07, subd. 2). When a St. Louis Park Ordinance set a more stringent standard for air quality than that of the statute, the Minnesota Court of Appeals held that the ordinance conflicted with the statute because it violated the statutory mandate. *Id.* The court also noted that a party could violate the air quality standards of the ordinance, while being in compliance with the air quality standards in the state statute, which also is a conflict. *Id.*

In *City of Morris v. Sax Invs., Inc.*, 749 N.W.2d 1 (Minn. 2008), the Court considered whether the City of Morris Rental Licensing Ordinance conflicted with the State Building Code. The Court noted:

> In this case, the relevant language of the State Building Code expresses the legislature's specific intent to supersede municipal building codes. In enacting a statewide building code, the legislature recognized that a single, uniform set of building standards was necessary to lower costs and make housing more affordable. *See* Act of May 26, 1971, Ch. 561, § 1, 1971 Minn. Laws 1018, 1019 (noting that multiple laws, ordinances, and rules regulating the construction of buildings "serve to increase costs without providing correlative benefits of safety to owners, builders, tenants, and users of buildings"). The statute therefore provides:
>
> > The State Building Code applies statewide and supersedes the building code of any municipality. A municipality must not by ordinance or through development agreement require building code provisions regulating components or systems of any residential structure that are different from any provision of the State Building Code.
>
> Minn. Stat. § 16B.62, subd. 1.

Id., 749 N.W.2d at 7. The Court concluded that the Rental Licensing Ordinance impermissibly regulated ground fault interrupter receptacles, bathroom ventilation, and egress window covers in a way that conflicted with the State Building Code, because those were all properly under the State Building Code's purview since they governed the construction or design of buildings. *Id.* at 10-12.

> The Court noted that the State Building Code permitted some local regulation.
>
> Local governing bodies, however, are specifically authorized to adopt more restrictive smoke detector requirements for single-family homes: "Notwithstanding subdivision 7, or other law, a local governing body may adopt, by ordinance, rules for the installation of a smoke detector in single-family homes in the city that are more restrictive than the standards provided by this section." Minn. Stat. § 299F.362, subd. 9 (emphasis added). If the building at issue in this case is a single-family home, the smoke detector provision of the Rental Licensing Ordinance would be expressly permitted by section 299F.362, subdivision 9, and would therefore not be different than the State Building Code.

Id., 479 N.W.2d at 13. The Court then concluded:

> But because the record in this case does not reveal whether the building owned by Sax is a single-family home, we cannot determine whether the ordinance provision requiring the installation of smoke detectors in each sleeping room is invalid under state law. Accordingly, we remand this issue to the district court for further proceedings.

Id.

B. Field Preemption

"Local regulation will be preempted when the legislature has fully and completely covered the subject matter, clearly indicated that the subject matter is solely of state concern, or the subject matter itself is of such a nature that local regulation would have unreasonably adverse effects on the general populace." *Hannan*, 623 N.W.2d at 285. Full and complete coverage of subject matter by the State, often called field preemption, can be express or implied. *Mangold Midwest Co.*, 143 N.W.2d at 820-21.

1. Express Field Preemption

Provisions requiring uniformity and statewide applications will sometimes expressly preempt ordinances. *See State v. Kuhlman*, 729 N.W.2d 577, 580 (Minn. 2007) (quoting Minn. Stat. § 169.022, "which imposes a uniformity requirement on traffic regulations throughout the state"); *City of Morris,* 749 N.W.2d at 7 (State Building Code). Statutes that expressly allow for limited local regulation do not negate state occupation of a field. *Mangold Midwest Co.*, 143 N.W.2d at 823.

2. Implied Field Preemption

In *Mangold*, the Court set forth four questions that are relevant in determining whether the area is one the legislature has impliedly declared to be an area solely of state concern:

> (1) What is the 'subject matter' which is to be regulated? (2) Has the subject matter been so fully covered by state law as to have become solely a matter of state concern? (3) Has the legislature in partially regulating the subject matter indicated that it is a matter solely of state concern? (4) Is the subject matter itself of such a nature that local regulation would have unreasonably adverse effects upon the general populace of the state?

143 N.W.2d at 820.

The Court noted previous decisions concerning field preemption. *Id.* at 821-23. Those finding field preemption included *Minnetonka Elec. Co. v. Village of Golden Valley*, 141 N.W.2d 138 (Minn. 1966) (adverse effects upon the electrical contractors of the state outweighed the policy of allowing local regulation); *State v. Hoben*, 98 N.W. 2d 813 (Minn. 1959) (provision requiring uniformity and statewide application regarding traffic regulation clearly showed the legislative intent to preempt this field except for the limited local regulation the statute expressly permitted); and *Village of Brooklyn Center v. Rippen*, 96 N.W. 2d 585 (Minn. 1959) (boat licensing was of such a nature that there would be unreasonably adverse effects upon the general populace of the state if local licensing were allowed).

Those finding no field preemption included *State ex rel. Sheahan v. Mulally*, 99 N.W. 2d 892 (Minn. 1959) (legislature had not acted comprehensively on disorderly conduct and had not expressly indicated that it was a matter of state concern; there were no adverse effects of local regulation); and *State v. The Crabtree Co.,* 15 N.W. 2d 98 (Minn. 1944) (statute expressly allowed cities to regulate cigarette sales disposed of the issue).

C. Conflict Preemption

If an ordinance and statute address "separate and distinct aspects" of a subject matter, "the plan and ordinance can be reconciled." *Canadian Connection v. New Prairie Tp.*, 581 N.W.2d 391, 396 (Minn. Ct. App. 1998). In *Canadian Connection,* a state management plan set standards for "storing, processing, monitoring, and applying manure," along with a requirement "to take wind patterns into account" when placing manure storage bins. *Id.* The ordinance "impos[ed] setback requirements for the feedlot facility." *Id.* The court held that the two regulations did not conflict. The state plan and the township ordinance "address[ed] separate and distinct aspects of feedlot odor," one addressing wind patterns, and the other a setback requirement. Accordingly, "the plan and ordinance can be reconciled." *Id.*

In *Hannan v. City of Minneapolis*, 623 N.W.2d 281, 284-85 (Minn. Ct. App. 2001), the Minnesota Court of Appeals upheld a city ordinance providing for the classification and regulation of dangerous-animal behavior. The relevant state statute included two scenarios that allowed for the destruction of a dangerous dog. *Id.* at 284. The ordinance added another circumstance for destruction, with some provisions that were "more severe" than the statute. *Id.* Because "the state ha[d] not expressly precluded local regulation," the court found no conflict between the statute and ordinance. Local government may provide additional regulations that create "consequences greater than those already provided [in the state statute]" without a conflict. *Id.* at 285.

A city ordinance requiring a license and permit to install heating systems specifically required the plans to be prepared by a registered engineer. *State v. Clarke Plumbing & Heating, Inc.*, 56 N.W.2d 667, 672 (Minn. 1952). Although a state statute existed on the same subject, with narrower coverage, the Minnesota Supreme Court upheld the ordinance. *Id.* The

court recognized that it was valid for the city to decide that a greater restriction was necessary in a city the size of Minneapolis. *Id.*

In another case, the state granted a permit amendment to a company allowing it to burn a mixture of coal and fluid at a plant in Granite Falls. *Northern States Power Co. v. City of Granit Falls*, 463 N.W.2d 541, 542 (Minn. Ct. App. 1990). The city, however, had an ordinance which in effect prohibited the application of the state amendment. *Id.* Because the "ordinance and statute contain irreconcilable express and implied terms," the Minnesota Court of Appeals held that the ordinance conflicted with the statute. *Id.*

II. The Ordinance Is Likely Not Preempted by Minnesota State Law.

A. Minn. Stat. Ch. 504B

Minn. Stat. Ch. 504B is titled Landlord and Tenant, and contains most of the state laws concerning landlords and tenants.[2] The predecessors of current landlord and tenant statutes date back to the Territorial Laws of Minnesota. *See* Minn. Terr. Stat. Chs. 74, 87 (1851); Minn. Stat. Chs. 64, 77 (1858); Minn. Stat. Chs. 504, 566 (1941); Minn. Stat. Chs. 504, 566 (1998). The statutes were consolidated into Chapter 504B in 1999.[3]

The initial statutes were few, and governed creation and termination of tenancies, and remedies. The Legislature gradually began a piecemeal expansion of tenant and landlord protections in the 1970s. Significant enactments included habitability and retaliation in 1971;[4] security deposits, automatic renewals, and tenant remedies actions in 1973;[5] landlord's disclosure of address in 1974;[6] abandoned personal property, unlawful ouster crime, utility termination, and unlawful exclusion action in 1975;[7] family status discrimination in 1980;[8] death of tenant in 1981;[9] unlawful ouster damages in 1984;[10] condemned property actions in 1988;[11] the 1989 Governor Commission on Affordable Housing creating the rent escrow action, emergency tenant remedies action, housing courts, tenant screening regulation, unlawful activity, and more;[12] landlord's disclosure of inspection orders and pets in subsidized handicapped accessible rental housing units in 1993;[13] privacy in 1995;[14] police and emergency

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[2] A few landlord and tenant statutes are contained in other chapters, such as Chapters 484 and 557. *See* Minn. Stat. §§ 484.014, 557.08, 557.09.

[3] The author was one of five attorneys appointed to draft Chapter 504B.

[4] Minn. Laws 1971 Ch. 219 §1, creating Minn. Stat. § 504.18, now § 504B.161; and Minn. Laws 1971 Ch. 240 § 1, creating Minn. Stat. § 566.03, Subd. 2, now § 504B.285, Subd. 2.

[5] Minn. Laws 1973 Ch. 561 § 1, creating Minn. Stat. § 566.20, now § 504B.178; Minn. Laws 1973 Ch. 603 § 1, creating Minn. Stat. § 504.21, now § 504B.145; and Minn. Laws 1973 Ch. 611 §13, creating Minn. Stat. § 566.18, *et. seq.*, now § 504B.395, *et. seq.*

[6] Minn. Laws 1974 Ch. 370 § 1, creating Minn. Stat. § 504.22, now § 504B.181.

[7] Minn. Laws 1975 Ch. 410, creating Minn. Stat. §§ 504.24, 504.25, 504.26, 566.175, now §§ 504B.271, 504B.225, 504B.221, 504B.375.

[8] Minn. Laws 1980 Ch. 531 § 9, creating Minn. Stat. § 504.265, now § 504B.315.

[9] Minn. Laws 1981 Ch. 168 § 2, creating Minn. Stat. § 504.28, now § 504B.265.

[10] Minn. Laws 1984 Ch. 612 § 1, creating Minn. Stat. § 504.255, now § 504B.231.

[11] Minn. Laws 1988 Ch. 526 § 1, creating Minn. Stat. § 504.245, now § 504B.204.

[12] Minn. Laws 1989 Ch. 214, Ch. 305, and Ch. 328 Art. 2. The author was a Commission Task Force member and lobbyist for the statutes.

[13] Minn. Laws 1993 Ch. 317 § 4, creating Minn. Stat. § 504.246, now § 504B.195; and Minn. Laws 1993 Ch. 369 § 145, creating Minn. Stat. § 504.36, now § 504B.261. The author was a lobbyist for these statutes.

calls in 1997;[15] pre-lease deposits and application fees in 1999;[16] and the 2010 HOME Line Tenants Bill of Rights on expungement, receipts, attorney's fees, late fees, deposits, utility metering, abandoned person property, foreclosure notice, and money orders.[17]

Only two statutes in Chapter 504B expressly preempt local regulation. The first is Minn. Stat. § 504B.205, concerning a residential tenant's right to seek police and emergency assistance.

> Subd. 3. Local preemption. This section preempts any inconsistent local ordinance or rule including, without limitation, any ordinance or rule that:
>
> (1) requires an eviction after a specified number of calls by a residential tenant for police or emergency assistance in response to domestic abuse or any other conduct; or
>
> (2) provides that calls by a residential tenant for police or emergency assistance in response to domestic abuse or any other conduct may be used to penalize or charge a fee to a landlord.
>
> This subdivision shall not otherwise preempt any local ordinance or rule that penalizes a landlord for, or requires a landlord to abate, conduct on the premises that constitutes a nuisance or other disorderly conduct as defined by local ordinance or rule.

The second is Minn. Stat. § 504B.111, concerning landlords of larger properties having to provide written leases. This statute provides:

> A landlord of a residential building with 12 or more residential units must have a written lease for each unit rented to a residential tenant. *Notwithstanding any other state law or city ordinance to the contrary, a landlord may ask for the tenant's full name and date of birth on the lease and application*. A landlord who fails to provide a lease, as required under this section, is guilty of a petty misdemeanor.

Id. (emphasis added).

Several statutes in Chapter 504B contain non-waiver provisions that prohibit waiver of statutory requirements. *See* Minn. Stat. §§ 504B.145 (automatic renewal of leases); 504B.161 (covenants of habitability); 504B.171 (tenant's covenant not to manufacture, sell or distribute illegal drugs); 504B.178 (security deposits); 504B.204 (rental of condemned residential premises); 504B.205 (prohibiting penalty on tenant for calling for police or emergency

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[14] Minn. Laws 1995 Ch. 226 Art. 4 § 21, creating Minn. Stat. § 504.183, now § 504B.211. The author was a lobbyist for this statute.
[15] Minn. Laws 1997 Ch. 133 § 1, creating Minn. Stat. § 504.215, now § 504B.205. The author was a lobbyist for this statute.
[16] , Minn. Laws 1999 Ch. 97 § 1, creating Minn. Stat. § 504.301, now § 504B.175; and Minn. Laws 1999 Ch. 150 § 1, creating Minn. Stat. § 504.38, now § 504B.173. The author was a lobbyist for this statute.
[17] Minn. Laws 2010 Ch. 315, creating Minn. Stat. §§ 504B.118, 504B.172, 504B.177, and amending others. The author was a lobbyist, along with HOME Line and the Legal Aid Society for the Tenants Bill of Rights.

assistance in response to domestic abuse or any other conduct); 504B.211 (notice of landlord entry onto premises); 504B.215 (landlord's nonpayment of utility or essential services; shared meters); 504B.221 (unlawful termination of utilities); 504B.231 (unlawful eviction); 504B.271 (abandoned property); 504B.365 (execution of eviction writ of restitution). While non-waiver is not the same as express preemption, it is evidence of the Legislature's intent that a statute not be modified.

B. Minn. Stat. §§ 504B.135, 504B.141, and 504B.285

Turning to the statutes implicated by a proposed just-cause tenancy ordinance, Minn. Stat. § 504B.135 provides:

> TERMINATING TENANCY AT WILL.
>
> (a) A tenancy at will may be terminated by either party by giving notice in writing. The time of the notice must be at least as long as the interval between the time rent is due or three months, whichever is less.
>
> (b) If a tenant neglects or refuses to pay rent due on a tenancy at will, the landlord may terminate the tenancy by giving the tenant 14 days notice to quit in writing.

Accordingly, the statute addresses *who* may terminate a tenancy, and *how* that party may terminate a tenancy, but other than discussing nonpayment of rent, is silent as to *why* a party may terminate a tenancy.

Section 504B.285 provides in relevant part:

> EVICTION ACTIONS; GROUNDS; RETALIATION DEFENSE; COMBINED ALLEGATIONS.
>
> Subdivision 1.Grounds. (a) The person entitled to the premises may recover possession by eviction when:
>
> (1) any person holds over real property:
>
> (i) after a sale of the property on an execution or judgment; or
>
> (ii) after the expiration of the time for redemption on foreclosure of a mortgage, or after termination of contract to convey the property;
>
> (2) any person holds over real property after termination of the time for which it is demised or leased to that person or to the persons under whom that person holds possession, contrary to the conditions or covenants of the lease or agreement under which that person holds, or after any rent becomes due according to the terms of such lease or agreement; or

> (3) any tenant at will holds over after the termination of the tenancy by notice to quit.[18]

While the statute states the grounds for an eviction action, it is silent on whether a termination notice is required or prohibited for a breach of lease claim, and whether any termination notices are required to or prohibited from stating a cause for termination.

> Section 504B.141 provides:
>
> URBAN REAL ESTATE; HOLDING OVER.
>
> When a tenant of urban real estate, or any interest therein, holds over and retains possession after expiration of the lease without the landlord's express agreement, no tenancy for any period other than the shortest interval between the times of payment of rent under the terms of the expired lease shall be implied.

The statute and its predecessors date back to 1901.[19] The statute simply states that after end of a tenancy, if the tenant does not leave, the only tenancy that could be implied would be one no longer than the interval between rents. It says nothing about how a tenancy could be properly terminated.

C. Proposed Ordinance

Several councilmembers are considering proposing an ordinance that requires landlords in Minneapolis to have cause in order to terminate a tenancy or evict a tenant. The proposal lists various grounds for termination or eviction along with various time frames for the termination notices.

D. Express Preemption

Unlike Minn. Stat. §§ 504B.111 and 504B.205 or the statutes in *City of Morris* and *Apple Valley Redi-Mix*, Minn. Stat. §§ 504B.135, 504B.141, and 504B.285 do not expressly preclude local regulation that provides more protection for tenants. The statutes also do not include non-waiver provisions.

E. Field Preemption

1. Express Field Preemption

Minn. Stat. Ch. 504B contains no express preemption of the field of landlord and tenant relations, or the subfield of tenancy termination and eviction. As noted above, the only preemptive provisions in Chapter 504B concern a residential tenant's right to seek police and emergency assistance and the obligation of landlords of certain properties to use written leases. Minn. Stat. §§ 504B.205, Subd. 3; 504B.111.

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[18] The remainder of the statute discusses foreclosure rights, retaliation, and combining claims for eviction. See Minn. Stat. § 504B.285, Subds. 1(a)-5. Other statutes discuss eviction grounds. *See* Minn. Stat. §§ 504B.291 (nonpayment of rent), 504B.301 (unlawful detention).

[19] 1901 Minn. Laws Ch. 31; Minn. Stat. § 3333 (1905); Minn. Stat. § 68.12 (1913); Minn. Stat. § 504.07 (1927), recodified to the current statute in 1999.

2. Implied Field Preemption

Again, the *Mangold* factors are:

> (1) What is the 'subject matter' which is to be regulated? (2) Has the subject matter been so fully covered by state law as to have become solely a matter of state concern? (3) Has the legislature in partially regulating the subject matter indicated that it is a matter solely of state concern? (4) Is the subject matter itself of such a nature that local regulation would have unreasonably adverse effects upon the general populace of the state?

143 N.W.2d at 820.

a. What is the 'subject matter' which is to be regulated?

The subject to be regulated is one element of the relationship between landlords and tenants within the City of Minneapolis: how, when, and for what reason the landlord can terminate a lease and evict a tenant.

b. Has the subject matter been so fully covered by state law as to have become solely a matter of state concern?

The Territory of Minnesota and later this State only marginally regulated landlords and tenants. *See* Minn. Terr. Stat. Chs. 74, 87 (1851); Minn. Stat. Chs. 64, 77 (1858). While the number of statutes has increased, it did not occur at one time but rather has resulted from a gradual evolution. There is no point in time where one could conclude that the State moved beyond treating landlord and tenants as not a matter of sole state concern.

The City of Minneapolis already regulates landlord and tenants. Title XII of the Mpls. Code of Ord. covers housing, including lead poisoning, maintenance, and rental licenses. Mpls. Code of Ord. Chs. 240-44.

Some of the ordinances cover topics that are governed by state statutes.

- Section 244.80 prohibits landlord retaliation against tenants and goes beyond Minn. Stat. §§ 504B.285, Subds. 2-3, and 504B.441.
- Section 244.265 requires landlords to notify tenants of mortgage foreclosure or contract for deed cancellation and goes beyond Minn. Stat. § 504B.151, which the ordinance predated.
- Section 244.280 requires the landlord to give a tenant a copy of a written lease within five days of signing and goes beyond Minn. Stat. § 504B.115.
- Section 244.285 requires the landlord to notify a tenant before entering the dwelling and goes beyond Minn. Stat. § 504B.211.
- Section 244.1840 requires landlords to disclose address and contact information, including a contact within the metropolitan area, and goes beyond the requirement of Minn. Stat. § 504B.181.

- Section 244.2020 prohibits various types of activity on rental property and goes beyond Minn. Stat. §§ 504B.165, 504B.171, and 504B.285.

Other ordinances regulate landlords and tenants on which state statutes are silent. Sections 244.1800-244.2020 require landlords to obtain rental dwelling licenses. Minn. Stat. 504B contains no provisions on rental licenses.

Another example of the coexistence of state and local regulation of landlords and tenants is in city civil-rights law. For many years, the state has extensively regulated discrimination in the area of housing. Minnesota Human Rights Act ("MHRA"), Minn. Stat. Chap. 363A (originally Minn. Stat. Chap. 363). Since 1961, the MHRA has prohibited landlords from evicting Minnesota tenants based on race, color, creed, religion, or national origin. 1961 Minn. Laws Ch. 428, Minn. Stat. § 363.03, subd. 2 (1962). Over the next few years other protected classes were added so that in 1974 the state statute prohibited landlords from terminating the leases of Minnesota tenants based on race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance or disability. Minn. Stat. § 363.03, subd. 2 (1974).

Absent from this list was "sexual orientation". In 1974 the Minneapolis City Council, which had subsequent to 1961 created its own civil rights ordinance, added to the protected-class list within Minneapolis "sexual orientation." Minneapolis Code of Ordinances 99-68 (1974) (now codified in Minneapolis Code of Ordinances 139.10 *et seq.*) It was not for almost another two decades before Minnesota added "sexual orientation" to the list of protected classes. 1993 Minn. Laws Ch. 22 s. 1-2 (now codified in Minn. Stat. §§ 363A.02, 363A.03, Subd. 44, 363A.09).

In other words, for almost two decades, landlords throughout all of Minnesota could evict a tenant based on sexual orientation but could not do so in Minneapolis. The availability of local regulation of discriminatory evictions within the context of the extensive regulation of the MHRA is consistent local regulation of tenancy terminations within the context of more limited regulation in Chapter 504B.

Another example is local regulation requiring landlords to evict tenants when not required by state law. A number of cities require landlords to terminate tenants in situations where state law imposes no such requirement.[20] For example, under Saint Louis Park

[20] There are nearly 50 cities in the 7-county Twin Cities metro area that regulate conduct and/or nuisances within rental housing, most of which penalize landlords in some fashion if they do not pursue lease termination and/or eviction for certain activities. In a number of unique examples, cities require that landlords include detailed lease language or lease addendums that outline specific "good causes" for termination of the tenancy. Below we cite 18 cities that include such lease requirements:

Brooklyn Park: Code of Ordinances, Title XI, Chapter 117, 117.491 (C)
Golden Valley: City Code, Chapter 6, § 6.29 Subd 4 (I) (1)
Maple Grove: Code of Ordinances, Chapter 10, Article X, § 10-358 (e) (1)
Robbinsdale: City Code, Chapter 4, 425.31, Subd. 5
St. Louis Park: City Code, Chapter 8, Subd. VIII, § 8-331 (a)
Wayzata: City Code, Part VII, Section 815.18
Falcon Heights: Code of Ordinances, Part II, Chapter 105, Article IV, 105-96 (a)
Little Canada: Code of Ordinances, Municipal Code, Chapter 3200, 3200.40 (I) (1) & (2)
North Oaks: Rental Properties Ordinance No 121 § 114.80 (M & N)
Shoreview: City Code, Chapter 700 § 714.040 (H)
South St. Paul: City Code, Subpart B, Chapter 106, Article VII, § 106-237 (4)
West St. Paul: Code of Ordinances, Title XV, Chapter 150, § 150.037 (A) (M)

Ordinance § 3-331, a St. Louis Park landlord's lease shall permit termination for drug-related activity not just on the premises (as required by Minn. Stat. § 504B.171) but also near the premises; for other crimes not regulated by Minn. Stat. Chap. 504B; and for a range of "disorderly uses" not regulated by Minn. Stat. Chap. 504B. The landlord must enforce these lease provision whether the landlord likes it or not. *Id*.; Saint Louis Park Ordinance §§ 3-326 - 3-335.

In summary, for many years state law and local ordinances have co-existed to address landlord and tenant concerns, such that landlord and tenant relationships are not solely of state concern.

c. Has the legislature in partially regulating the subject matter indicated that it is a matter solely of state concern?

Chapter 504B contains no general provision precluding local regulation. The only statutes in Chapter 504B that expressly preempts local regulation are Minn. Stat. §§ 504B.111 and 504B.205 concerning written leases and a residential tenant's right to seek police and emergency assistance. Several other statutes include non-waiver provisions. Minn. Stat. §§ 504B.145, 504B.161, 504B.171, 504B.178, 504B.204, 504B.205, 504B.211, 504B.215, 504B.221, 504B.231, 504B.271. It would be redundant for Chapter 504B to contain these provisions if landlord and tenant law was solely of state concern. Chapter 504B is in sharp contrast to the State Building Code, which expressly precludes local regulation. *See City of Morris,* 749 N.W.2d at 7, citing Minn. Stat. § 16B.62, subd. 1.

d. Is the subject matter itself of such a nature that local regulation would have unreasonably adverse effects upon the general populace of the state?

The rental of an apartment is a necessarily local activity, as the apartment and tenant reside in only one city. The landlord and tenant relationship differs from others that are not geographically specific that the courts have held cannot be locally regulated, such as electrical contractors, *Minnetonka Elec. Co. v. Village of Golden Valley*, 141 N.W.2d 138, traffic regulation, *State v. Hoben*, 98 N.W. 2d 813, and boat licensing, *Village of Brooklyn Center v. Rippen*, 96 N.W. 2d 585. The subject is more like local regulation of disorderly conduct that the Court upheld in *State ex rel. Sheahan v. Mulally*, 99 N.W. 2d 892.

C. Conflict Preemption

A city ordinance providing the acceptable reasons for the termination of a tenancy would therefore not conflict with any express terms of the statute. Looking at the case law, the relationship between the proposed ordinance and the statute is best categorized as different from the statutes, but merely additional or complementary and not in conflict.

Anoka: City Code, Chapter 48, Article II §, 48-43 (b) (9) (a)
Columbia Heights: City Code, Chapter 5A, Article IV, § 5A.410 (A) (1) (e)
Coon Rapids: Code of Ordinances Title 12, Chapter 12, § 12-903 (7)
Lexington: Code of Ordinances, Chapter 15, § 15.107 Subd. 1 (J)
Shakopee: City Code, Title XI, Chapter 111, § 111.18 (G) (5)
Woodbury: Code of Ordinances, Article V, § 6-204 (I) (8) (a)

Second, the ordinance would not prevent the application of the statute, unlike the conflicting ordinance in *Northern State Power*, 463 N.W.2d at 542. Instead, it would provide additional protection to tenants, by addressing a "separate and distinct aspect[]" of terminating a tenancy – why that tenancy may be terminated. *See Canadian Connection*, 581 N.W.2d at 396.

In sum, because the statutes are silent as to the permissible reasons for terminating a tenancy, the proposed ordinance would likely not conflict with Minn. Stat. §§ 504B.135, 504B.141 and 504B.285.

III. Other States Have Upheld Their Own Good Cause Eviction Laws.

Examples and experiences from other states also support the conclusion that a good cause eviction law would likely be upheld, if subject to challenge. When reviewing these cases from around the country, the distinction between regulating the procedure and the substantive grounds is clear. Courts have distinguished between ordinances setting the grounds for eviction and those regulating procedures for obtaining evictions. Only the latter will be preempted by state statutes. *See* Schoshinski, *American Law of Landlord and Tenant* (1980 and 2012 Supp.), § 7:10.

A review of the case law confirms that the majority of courts faced with such an ordinance have upheld those limiting the grounds for an eviction so long as the ordinance does not affect the procedure for bringing prosecuting an eviction in court. *See, e.g.*, *Birkenfeld v. City of Berkeley*, 550 P.2d 1001 (Cal. 1976) ("The purpose of the unlawful detainer statutes is procedural. . . . In contrast the charter amendment's elimination of particular grounds for eviction is a limitation upon the landlord's property rights under the police power, giving rise to a substantive ground of defense in unlawful detainer proceedings."); *Warren v. City of Philadelphia*, 115 A.2d 218 (Pa. 1955) ("This Act sets up the procedure whereby a landlord may repossess premises if he has a *right* to evict the tenant. The substantive law as to *when* he has a right to evict is not touched upon."); *see also Burton v. City of Hartford*, 127 A.2d 251 (Conn. 1956) (striking down an ordinance when "both the statutes and the ordinance relate to remedial rather than substantive rights").

Good cause eviction laws in the private sector were first challenged in *Block v. Hirsch*, 256 U.S. 135 (1921). In *Block*, the Supreme Court was asked to address the legality of the District of Columbia Rents Act, which, at the time, prohibited a landlord from evicting a tenant, even when the lease was expired, without good cause. The landlord argued that the law interfered with his right to use his land and to contract as he pleased, in essence, constituting an unconstitutional taking. In upholding the law, the Supreme Court noted that the DC law was a temporary measure designed only to last for two years and that it was appropriately aimed at solving post-war housing problems in the city.

Since *Block v. Hirsch*, other jurisdictions have implemented good cause eviction laws. The most widespread (and perhaps well-known law) is New Jersey's 1974 Anti-Eviction Act which provides that "no lessee or tenant . . . may be removed by the Superior Court from any house, building, mobile home or land in a mobile home park or tenement leased for residential purposes . . . except upon establishment of one of [seventeen] grounds as good cause." N.J. Stat. Ann. § 2A:18-61.1. This statute has survived constitutional challenges brought in New Jersey state courts.

Specifically, in *Stamboulos v. McKee*, 342 A.2d 529 (N.J. Super. Ct. App. Div. 1975), a landlord challenged the legality of New Jersey's Anti-Eviction law. The landlord had purchased

a four-unit apartment building occupied by month-to-month tenants that had been living in the apartment for several years. After buying the property, the landlord gave a 30-day notice to vacate to one of the tenants, since the landlord planned to move into the unit himself. Twenty-six days after giving the notice to vacate, the New Jersey legislature passed the good cause eviction statute. In denying the landlord's claim that the statute was unconstitutional, the court explained that the statute was permissible because it had a rational relationship to its statutory objective – to address problems facing tenants due to critical housing shortages.

Further, numerous states have also implemented good cause eviction statutes for certain "special" tenancies. A typical "special" tenancy that is subject to good cause eviction are tenancies in mobile home parks, with the rationale being that mobile home owners renting land need additional protections to avoid oppression from landlords. The basic principle is that owners of mobile home parks may not evict mobile home owners without "good cause." At least twenty states have adopted this type of law, including Minnesota.[21]

Given that Minnesota has its own good cause eviction statute that applies only to mobile park owners, it would be consistent to apply a similar requirement to general private rental properties. Based on the experience of other states and the failed constitutional challenges to good cause eviction statutes, it appears likely that a good cause eviction statute would be upheld.

IV. Conclusion

In conclusion, based on Minnesota case law and the experiences of other states and cities with good cause eviction ordinances, there is a strong argument that the proposed ordinance would not conflict with or be preempted by Minnesota state law. The applicable statutes do not address the reasons for which a landlord may terminate a tenancy, and accordingly the ordinance would likely be upheld as an additional protection that can be reconciled with the language of state statutes.

[21] For example, Minn. Stat. § 327C.09 provides that "[a] park owner may recover possession of land upon which a manufactured home is situated only for a reason specified in this section." These reasons include nonpayment of rent or utilities, violations of law, rule violations, endangerment/substantial annoyance, repeated serious violations, material misstatements in applications, or where the park owner has specific plans to make improvements to the park premises.