

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

DISTRICT COURT  
FOURTH JUDICIAL DISTRICT

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Ben Braylock, Marvin Breland,  
and Demetrius Mathews,

Plaintiffs,

v.

The City of Dayton,

Defendant.

**ORDER GRANTING  
PLAINTIFFS' MOTION FOR  
SUMMARY JUDGMENT AND  
DENYING DEFENDANT'S  
MOTION FOR SUMMARY  
JUDGMENT**

Judge Susan M. Robiner  
Court File No. 27-CV-18-199

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This matter came before the Honorable Susan M. Robiner on September 17, 2018 for Plaintiffs' Motion for Summary Judgment and/or a Preliminary Injunction and Defendant's Motion for Summary Judgment. Andrew J. Holly, Esq. and Erik D. Ruda, Esq. appeared on behalf of Plaintiffs Ben Braylock, Marvin Breland, and Demetrius Mathews. Monte A. Mills, Esq. appeared on behalf of Defendant City of Dayton ("Dayton"). Based upon the argument of counsel and all the files, records, and proceedings herein, the Court makes the following:

**STATEMENT OF FACTS**

The parties filed a Stipulation of Facts for the purpose of their cross motions for summary judgment. The Court incorporates the Stipulation of Facts here and considers the facts undisputed solely for the purpose of this Order.

**CONCLUSIONS OF LAW**

**I. Summary Judgment Standard**

Pursuant to Rule 56 of the Minnesota Rules of Civil Procedure as well as settled case law,

summary judgment shall be awarded when there are no genuine issues of material fact and a party is entitled to judgment as a matter of law. Minn. R. Civ. P. 56.03. A trial court shall not decide any issues of disputed fact in deciding summary judgment, and any party challenging summary judgment may not rely upon speculation but must present specific facts that would foreclose summary judgment. *Anderson v. Liberty Lobby Inc.*, 477 U.S. 242, 256 (1986).

Summary judgment is not designed to deny a party of its right to a full hearing on the merits of any fact issue. Rather, summary judgment is an extraordinary remedy – a “blunt instrument” to be employed “only where it is perfectly clear that no issue of fact is involved.” *Poplinski v. Gislason*, 397 N.W.2d 412, 414 (Minn. Ct. App. 1986), rev. denied (Minn. Feb. 18, 1987) (quoting *Donnay v. Boulware*, 144 N.W.2d 711, 716 (1966)). Based on the governing standard and established case law, the Court proceeds with caution in deciding summary judgment motions.

## **II. Preemption**

Plaintiffs claim that the Ordinance passed by Dayton is preempted by state law. There are three types of preemption: “field preemption,” “express preemption,” and “conflict preemption.” *Hous. & Redevelopment Auth. of Duluth v. Lee*, 852 N.W.2d 683, 687 (Minn. 2014). As the parties agree that there is no express preemption, the Court will address field preemption and conflict preemption below.

### **A. Conflict Preemption**

“Notwithstanding a city's broad ‘power to legislate in regard to municipal affairs,’ state law may limit the power of a city to act in a particular area.” *City of Morris v. Sax Investments, Inc.*, 749 N.W.2d 1, 6 (Minn. 2008) (internal quotation omitted). Under conflict preemption, a municipal ordinance may address the same subject matter as a state statute, but will be void and invalid if it conflicts with state law. *State v. Kuhlman*, 729 N.W.2d 577, 580 (Minn. 2007). A

conflict exists “where the ordinance forbids what the statute expressly permits.” *Mangold Midwest Co. v. Vill. of Richfield*, 143 N.W.2d 813, 816 (Minn. 1966). However, “no conflict exists where the ordinance, though different, is merely additional and complementary to or in aid and furtherance of the statute.” *Kuhlman*, 729 N.W.2d at 580.

The Minnesota Commitment and Treatment Act: Sexually Dangerous Persons and Sexual Psychopathic Personalities (“MCTA”) is codified under Minn. Chap. § 253D. The MCTA outlines a comprehensive scheme for committing, managing, treating, supervising, housing, and releasing persons convicted of sex offenses who are subject to civil commitment. Under the MCTA, if a court finds by clear and convincing evidence that a respondent is a “sexually dangerous person or a person with a sexual psychopathic personality,” the court must commit the person to a secure treatment facility run by the Minnesota Sex Offender Program (“MSOP”) at St. Peter, Minnesota. Minn. Stat. § 253D.07, subd. 3. Once a respondent is committed, they may only be transferred, provisionally discharged, or discharged through the process outlined in the MCTA. Minn. Stat. § 253D.07, subd. 4.

A provisional discharge, under the MCTA, allows civilly committed sex offenders to move to a different, less restrictive facility. MSOP may file a petition on behalf of an offender for a provisional discharge. Minn. Stat. § 253D.27, subd. 2. The petition is then heard by a Special Review Board, which is created according to Minn. Stat. §253B.18, subd. 4c. *Id.* The Special Review Board must consider whether the “committed person is capable of making an acceptable adjustment to open society.” Minn. Stat. § 253D.30, subd. 1(a). In making this decision, the Special Review Board must consider

- (1) whether the committed person's course of treatment and present mental status indicate there is no longer a need for treatment and supervision in the committed person's current treatment setting; and

(2) whether the conditions of the provisional discharge plan will provide a reasonable degree of protection to the public and will enable the committed person to adjust successfully to the community.

Minn. Stat. § 253D.30, subd. 1(b). Once it makes a determination, the Special Review Board must make written findings of fact and recommend denial or approval of the petition to the Judicial Appeal Panel. Minn. Stat. § 253D.27, subd. 4.

The written report is then considered by the Judicial Appeal Panel, which is created by the Minnesota Supreme Court pursuant to Minn. Stat. § 253B.19, subd. 1. The Judicial Appeal Panel considers the report and may hold a hearing at which interested parties can intervene. Minn. Stat. § 253B.19, subd. 2. The Judicial Appeal Panel then must issue an order, which is automatically stayed for 15 days, after which it takes effect. Minn. Stat. § 253B.19, subd. 3.

As outlined in the Stipulation of Facts, this statutory process was followed for each of the three Plaintiffs. The Judicial Appeal Panel ordered provisional discharge for each of the three Plaintiffs to a house in Northern Hennepin County, commonly understood to be the River Road House in Dayton.

Plaintiffs argue that the Ordinance, which effectively denies Plaintiffs the ability to reside in the River Road House as ordered by the Judicial Appeal Panel, directly conflicts with the state statutory scheme described above and, therefore, is preempted. In contrast, Defendant argues that the Ordinance does not expressly forbid what the statute permits – the statute permits the process of determining whether to provisionally discharge a civilly committed sex offender while the Ordinance forbids convicted sex offenders from living in specific locations in Dayton. Defendant attempts to distinguish between the process mandated by the statutory scheme and the outcome of that process, which is not specifically mandated under the statutory scheme.

Defendant's distinction does not avoid a conflict between the two regulatory schemes. It

is true that the MCTA provides a procedural process for determining when to provisionally discharge civilly committed sex offenders under certain conditions and does not mandate the outcome of the process, i.e. the actual residential site. However, to specifically state the outcome of the process in the statute would be nonsensical – there would be no need for the process in the first place if the outcome was preordained. Further, it would be impossible to state an outcome in the statute when that outcome depends on the individual characteristics of the civilly committed sex offender. The variations in each case explain why there is a need for the comprehensive process in the first place.

The processes surrounding provisional discharge are so detailed and far-reaching that they effectively dictate the outcome – i.e. the parameters of a discharged sex offender’s living situation. The process for a provisional discharge includes devising a provisional discharge plan that exhaustively addresses appropriate treatment, public safety, and reintegration issues.

Since the statute is so detailed that it effectively determines the outcome, the Court finds that a conflict exists between state law and the Ordinance.<sup>1</sup> The state statutory scheme led to three orders specifically allowing Plaintiffs to be discharged to the River Road House. The Ordinance was specifically designed to directly conflict with the provisional discharge orders and ultimately denies Plaintiffs the ability to reside in the River Road House. In the plainest terms, the Ordinance forbids Plaintiffs from residing in the River Road House while the statutory scheme expressly allows Plaintiffs to reside in River Road House.

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<sup>1</sup> Although Minnesota courts have not addressed this issue yet, the Court’s finding is consistent with similar court orders in other states that have addressed preemption of local residency restrictions on sex offenders against comprehensive state statutory schemes. *See Fross v. Cty. of Allegheny*, 20 A.3d 1193, 1203 (Penn. 2011); *People v. Nguyen*, 166 Cal. Rptr. 3d 590, 598 (Cal. App. 4th 2014); *G.H. v. Twp. of Galloway*, 951 A.2d 221, 223 (N.J. App. Div. 2008), *aff’d*, 971 A.2d 401 (N.J. 2009); *People v. Kramer*, 994 N.Y.S.2d 256, 265 (Just. Ct. 2014).

In a second area of conflict, the Court notes that the Special Review Board was specifically ordered by the state legislature to consider whether a provisional discharge plan “will enable the committed person to adjust successfully to the community.” Minn. Stat. § 253D.30, subd. 1(b)(2). Thus, the state legislature intended the Special Review Board to consider the offender’s reintegration into society under the MCTA when considering the offender’s provisional discharge plan, which includes the offender’s discharge location. This reintegration responsibility directly conflicts with the Ordinance, which specifically states that its purpose and intent is to prevent sex offenders from residing in certain areas; the Ordinance does not consider the reintegration of offenders back into the community, but directly works to hamper that process. As such, the Ordinance conflicts with state law and is preempted.

B. Field Preemption

Even if the Ordinance were not void due to conflict preemption, the Court finds that the Ordinance is void due to field preemption. Field preemption, in the municipal context, 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 at 778, citing *Mangold*, 143 N.W.2d at 819. Where there is field preemption, a local law will be voided “even if the law is not directly in conflict with the state law.” *Id.*

Whether state law has preempted a field “depends on the facts and circumstances of each case.” *Nordmarken v. City of Richfield*, 641 N.W.2d at 348 (citation omitted). There are four factors that Minnesota courts consider to decide whether preemption has occurred: (1) the subject matter regulated; (2) whether the subject matter is so fully covered by state law that it has become solely a matter of state concern; (3) whether any partial legislation reflects an intent to treat the subject matter as solely a state concern; and (4) whether the subject matter is such that local

regulation would adversely affect the general state population. *Mangold*, 143 N.W.2d at 820.

*I. Subject Matter Regulated*

“In identifying the subject matter,” a court must “look first to the relevant state statute to determine what the Legislature intended to regulate.” *Jennissen v. City of Bloomington*, 913 N.W.2d 456, 460 (Minn. 2018). As stated above, the MCTA outlines a comprehensive scheme for committing, managing, treating, supervising, housing, and releasing persons convicted of sex offenses who are subject to civil commitment. *See* Minn. Stat. § 253D.01 et seq. As such, the subject matter being regulated is nothing less than the lives and locations of civilly committed sex offenders.

Defendant states that the Ordinance regulates the use of property within city limits pursuant to its right to create zoning laws under Minn. Stat. § 462.357. The Court disagrees. The Ordinance does not regulate the use of property, but rather *who* uses the property. Dayton specifically designed the Ordinance to create residency restrictions for sexual offenders and sexual predators. It therefore overlaps in the subject matter regulated by the MCTA by similarly addressing where civilly committed sex offenders may live.<sup>2</sup>

Defendant argues that it has the statutory right to create zoning laws under Minn. Stat. § 462.357 and that § 462.357 is as valid as the MCTA. Defendant argues that there is no reason to elevate the MCTA above the Municipal Planning Act. However, Defendant’s argument is flawed.

“Generally, municipalities have no inherent powers and possess only such powers as are

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<sup>2</sup> Although the parties focus on the MCTA, the Court also notes that Minn. Stat. § 244.052, which addresses the release of predatory offenders, is relevant here. The statute specifically addresses residency restrictions by stating that the review “committee shall determine whether residency restrictions shall be included in the conditions of the offender's release based on the offender's pattern of offending behavior.” Minn. Stat. § 244.052, subd. 2(k); *see also* Minn. Stat. § 244.052, subd. 4a(a). These residency restriction requirements under state law would overlap with the subject matter of the Ordinance as well.

expressly conferred by statute or implied as necessary in aid of those powers which have been expressly conferred.” *Sax Investments, Inc.*, 749 N.W.2d at 6, quoting *Mangold*, 143 N.W.2d at 820. These powers include the power to create zoning laws under the Municipal Planning Act. However, municipal provisions “must be consistent with state law and state public policy.” *Bicking v. City of Minneapolis*, 891 N.W.2d 304, 312 (Minn. 2017). “Cities have no power to regulate in a manner that conflicts with state law or invades subjects that have been preempted by state law.” *Jennissen*, 913 N.W.2d at 459. Therefore, although Defendant can generally create zoning laws under the Municipal Planning Act, it cannot use that power to create zoning laws that are preempted by other state laws. Doing so would essentially allow municipalities to preempt state law.

## 2. *Coverage of State Law*

The Court must next ask whether the subject matter is so fully covered by state law that it has become solely a matter of state concern. The Court outlined the process under the MCTA for a provisional discharge *supra* at 3-4. The process is comprehensive and detailed. There are multiple layers of review by trained professionals who find specific accommodations that meet numerous requirements for civilly committed sex offenders who are found eligible for provisional discharge. The state legislature clearly intended to fully cover the subject matter.

Defendant argues that the MCTA does not specifically cover where offenders may reside in Dayton. However, this is the same argument that Defendant made in attempting to distinguish between the process and the outcome of the MCTA. The Court addressed this argument *supra* at 4-5.

Defendant also argues that the provisional release orders for each of the Plaintiffs issued by the Judicial Appeal Panel specifically state that Plaintiff must abide by municipal ordinances.



Defendant contends that this must mean that the MCTA allows for more expansive local regulation of residency requirements for sex offenders. However, the release orders only generally state that the Plaintiffs “must remain law abiding. This includes any conduct which is in violation of federal law, state statute, municipal or county ordinances, tribal law, or which is not in the best interest of the public’s welfare.” This language does not specifically open the door for local regulation of residency requirements. Rather, it appears to be boilerplate language reminding Plaintiffs to follow all laws. This would of course mean all valid laws. As found above, the Ordinance is not valid as it is preempted by state law.

### 3. *Partial Legislation*

The third factor asks whether any partial legislation reflects an intent to treat the subject matter as solely a state concern. Although Defendant argues that Plaintiff failed to address the third factor, Plaintiff correctly states that the Court need not consider the third factor if it finds that state law completely regulates the subject matter under the second factor. Attempting to find partial legislation that covers the subject matter after finding full coverage is illogical.

The Court does note that Defendant’s sole argument under this factor is that state law does not expressly prohibit local regulation of residency requirements. However, that is not the purpose of this factor. If there were express prohibition in the MCTA, then there would be express preemption, and the Court would not need to address field preemption or conflict preemption.

### 4. *State-wide Effect*

Finally, the Court must ask whether the subject matter is such that local regulation would adversely affect the general state population. Defendant argues that the Ordinance would only adversely affect Plaintiffs and not the entire state. Defendant further reasons that any adverse effect would be minimal as Plaintiffs could be released elsewhere.

The Court finds Defendant's view too focused on its own Ordinance. Dayton is not the only city in Minnesota with a residency restriction ordinance. There are approximately 88 such local laws in Minnesota that restrict sex offenders.<sup>3</sup> These varying local laws create a patchwork of different rules. Compliance with these varying local laws would be burdensome, and any provisional discharge would become impossible if every municipality in Minnesota created a similar ordinance. *See ValAdCo*, 504 N.W.2d at 271. This would have a devastating effect on MSOP's ability to follow provisional release orders granted under the MCTA. *See Fross v. Cty. of Allegheny*, 20 A.3d 1193, 1199 (Penn. 2011). Therefore, the cumulative effect of numerous local regulations would create a state-wide effect.

The Court finds that the Ordinance is preempted under field preemption, and thus is void. As the Court has found that the Ordinance is void under both conflict preemption and field preemption, the Court need not address the remaining claims that the Ordinance is constitutionally invalid. *See Ninetieth Minnesota State Senate v. Dayton*, 903 N.W.2d 609, 624 (Minn. 2017) (courts should "avoid reaching constitutional questions if there is another way to resolve the case.").

### **ORDER**

1. Plaintiff's Motion for Summary Judgment is GRANTED.
2. Defendant's Motion for Summary Judgment is DENIED.
3. The City of Dayton's Ordinance No. 2016-21 is void and invalid.
4. Pursuant to any other lawfully imposed conditions and regulations, Plaintiffs may reside in the

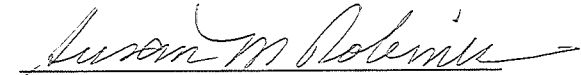
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<sup>3</sup> Dayton argued orally that the vast majority of municipalities in Minnesota do not have residency restriction ordinances for sex offenders. However, Dayton also did not have a law until it was faced with the immediate residency of Plaintiffs, at which point it created the Ordinance in an expedited process. Nothing currently restricts other Minnesota municipalities from also doing so.

River Road House located in the City of Dayton as identified and pursuant to the final orders issued by the Judicial Appeal Panel in Appeal Panel File Nos. AP15-9038 (Plaintiff Braylock), AP15-9035 (Plaintiff Mathews), and AP15-9054 (Plaintiff Breland).

**LET JUDGMENT BE ENTERED ACCORDINGLY**

Date: December 11, 2018

  
Susan M. Robiner  
Judge of District Court