MINNESOTA CHAMBER OF COMMERCE, et al., Appellants,

v.

CITY OF MINNEAPOLIS, Respondent.

A18-0771

Supreme Court of Minnesota.

Filed: June 10, 2020

Background: Chamber of commerce and others brought action against city for declaratory relief and temporary injunction against enforcement of city ordinance that required employers to provide employees with sick and safe leave. The District Court, Hennepin County, No. 27-CV-16-15051, Mel I. Dickstein, J., granted partial temporary injunctive relief, enjoining city from enforcing ordinance against employers located outside city boundaries. Both parties appealed, and the Court of Appeals, 2017 WL 4105201, affirmed. City amended ordinance to require leave time accrual only for work performed within city boundaries and use of leave time only when employee was scheduled to work within city boundaries. City and chamber both moved for summary judgment. The District Court granted chamber's motion in part, enjoining enforcement as applied to any employer residing outside city boundaries, but denying motion as to chamber's claim that ordinance was preempted by state law. City appealed and chamber cross-appealed. The Court of Appeals, Bjorkman, J., 928 N.W.2d 757, affirmed in part, reversed in part, and vacated permanent injunction. Chamber's petition for review was granted.

Holdings: The Supreme Court, Hudson, J., held that:

(1) there was no irreconcilable conflict between the ordinance and state sick-leave statute, and so ordinance was not preempted by conflict with statute;

(2) state law did not occupy the field of employer-provided sick and safe time and so did not preempt local regulation; and

(3) the ordinance did not violate the extra-territoriality doctrine.

Affirmed.

Justice Anderson filed a dissenting opinion in which Justice Gildea joined.

1. Appeal and Error ⚿3184

Whether state law preempts a local ordinance is a question of law that is subject to de novo review.

2. Appeal and Error ⚿3554

The Supreme Court applies a de novo standard of review when, on cross-motions for summary judgment, the facts are undisputed and only a question of law remains for the court to consider.

3. Municipal Corporations ⚿111(2)

There are three types of state preemption of municipal legislative authority: express preemption, conflict preemption, and field preemption.

4. Municipal Corporations ⚿111(2)

A general principle for conflict preemption is that conflicts which would render an ordinance invalid exist only when both the ordinance and the statute contain express or implied terms that are irreconcilable with each other.

5. Municipal Corporations ⚿111(2)

An "irreconcilable conflict" between a municipal regulation and state law exists, for purposes of conflict preemption, when the ordinance permits what the statute

forbids, or when the ordinance forbids what the statute expressly permits.

See publication Words and Phrases for other judicial constructions and definitions.

6. Municipal Corporations ⚿111(2)

No conflict exists, for purposes of conflict preemption, when the ordinance, though different, is merely additional and complementary to or in aid and furtherance of the statute.

7. Labor and Employment ⚿182, 373

If an employer provides sick time benefits to employees, the statute governing employer-provided sick and safe time requires the employer to allow employees to use those benefits to care for enumerated sick relatives. Minn. Stat. Ann. § 181.9413(a).

8. Labor and Employment ⚿182, 373

If an employer provides sick time benefits to employees, the statute governing employer-provided sick and safe time requires employers to allow employees to use sick time benefits to assist enumerated family members, or to receive assistance themselves, in response to domestic abuse, sexual assault, or stalking. Minn. Stat. Ann. § 181.9413(b).

9. Labor and Employment ⚿334
Municipal Corporations ⚿592(1)

Municipal ordinance requiring employers to provide paid sick-and-safe leave for employees' work within city was not preempted by conflict with state statute requiring employers offering sick leave to permit the use of sick-leave benefits for certain purposes in addition to an employee's own illness; no language in statute expressly granted a right to an employer to refuse to provide paid sick time, and although the ordinance imposed requirements stricter than the statute, the additional terms only furthered the policy underlying the statute rather than posing an irreconcilable conflict, and an employer who complied with the ordinance also complied with the statute. Minn. Stat. Ann. § 181.9413.

10. Labor and Employment ⚿334
Municipal Corporations ⚿592(1)

Municipal ordinance requiring all employers with more than six employees to provide paid sick time for employees' work within city was not conflict-preempted, even though, in context of parenting leave and accommodations, the Legislature defined an "employer" as "a person or entity that employs 21 or more employees"; nothing in state statute requiring employers offering sick leave to permit the use of sick-leave benefits for certain purposes in addition to an employee's own illness forbade further regulation by local government. Minn. Stat. Ann. §§ 181.940(3), 181.9413.

11. Municipal Corporations ⚿111(2)

There is no irreconcilable conflict between a municipal ordinance and a state statute simply because the terms of the ordinance and the statute differ.

12. Municipal Corporations ⚿111(2)

A rule of law that finds a conflict wherever an ordinance adds a requirement different from state law, no matter the substance of the statute or the ordinance, would preempt every local ordinance setting a standard higher than the floor set by the Legislature, thereby unreasonably constraining local government and undermining the powers allowed to cities by state law. Minn. Const. art. 12, § 4; Minn. Stat. Ann. § 410.07.

13. Municipal Corporations ⚿592(1)

Field preemption test from *Mangold*, 143 N.W.2d 813, is used to determine whether the Minnesota Legislature has impliedly preempted a local ordinance,

asking: (1) what the "subject matter" to be regulated is, (2) whether the subject matter has been so fully covered by state law as to have become solely a matter of state concern, (3) whether the Legislature, in partially regulating the subject matter, has 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.

14. Labor and Employment ⚿334
Municipal Corporations ⚿592(1)

State law did not occupy the field of employer-provided sick and safe time so as to preempt ordinance requiring employers to provide paid sick-and-safe leave for employees' work within city; subject matter to be regulated was employer-provided sick and safe time, most-relevant state statute did not evidence legislative intent to preempt local action, as sick leave statute, which only applied to subset of Minnesota employers who already provided sick time benefits of their own accord, was not a comprehensive statement on the matter, there were no administrative guidelines for how employers were to administer paid or unpaid sick and safe time, nothing in statute indicated that Legislature intended its partial regulation to make employer-provided sick and safe time a matter of solely state concern but, instead, it left room for municipal action, and local regulation would not have unreasonably adverse effect on state's general population, but would benefit the public at large. Minn. Stat. Ann. § 181.9413.

15. Municipal Corporations ⚿592(1)

For purposes of second step of *Mangold*, 143 N.W.2d 813, field preemption test used to determine whether the Minnesota Legislature has impliedly preempted a local ordinance, the Legislature's intent to occupy the field may be found in statements of purpose or in the uniform and comprehensive character of the statutory scheme.

16. Municipal Corporations ⚿592(1)

For purposes of second step of *Mangold*, 143 N.W.2d 813, field preemption test used to determine whether the Minnesota Legislature has impliedly preempted a local ordinance, extensive regulations by the implementing administrative agency may indicate occupation of a field.

17. Municipal Corporations ⚿592(1)

Under fourth factor of *Mangold* test, 143 N.W.2d 813, used in determining whether the Minnesota Legislature has impliedly preempted a local ordinance, which asks whether the subject matter to be regulated is of such a nature that local regulation would have unreasonably adverse effects upon the general populace of the state, focus is whether the state at large would suffer because of local regulation.

18. Municipal Corporations ⚿592(1)

Under fourth factor of *Mangold* test, 143 N.W.2d 813, used in determining whether the Minnesota Legislature has impliedly preempted a local ordinance, which asks whether the subject matter to be regulated is of such a nature that local regulation would have unreasonably adverse effects upon the general populace of the state, it is not enough for a business to show that it will be subject to different regulations in different cities by way of local ordinances; instead, courts have found an unreasonable adverse effect where an ordinance would subject citizens to regulation in some parts of the state but not others.

19. Labor and Employment ⚿334
Municipal Corporations ⚿594(4)

Municipal ordinance requiring employers to provide paid sick-and-safe leave

for employees' work within city, which required leave time accrual only for work performed within city boundaries and use of leave time only when employee was scheduled to work within city boundaries, did not violate the extraterritoriality doctrine, even though it applied to employers whose principal place of business was outside the city limits; primary purpose and effect of ordinance was to regulate employment practices within geographic limits of city, and any recordkeeping or other administrative requirements imposed by ordinance arose only once an employer had sent its employees into city for work and thereby subjected itself to city's police power.

20. Municipal Corporations ⚿594(4)

A business does not need to have an office location within a city to be subject to the city's regulatory powers; the ordinances and regulations of a city are binding upon all within the city, and all who go to the city must obey them.

21. Municipal Corporations ⚿57

A city does not need express or implied authorization from the Legislature to regulate activity within its municipal limits.

22. Municipal Corporations ⚿597

Municipalities have wide discretion to use their police power to regulate matters of public health.

23. Municipal Corporations ⚿594(4)

Proper focus of an extraterritoriality challenge to a municipal ordinance is not whether the regulation goes farther than is reasonably necessary to accomplish the goal of the regulation; instead, courts look to the purpose and effect of the regulation to determine whether the regulation violates the extraterritoriality doctrine.

24. Municipal Corporations ⚿594(4)

Question of city's policy judgment in setting the specifics of the challenged regulation is irrelevant to the extraterritoriality doctrine.

Syllabus by the Court

1. The City's ordinance governing employee sick and safe time does not pose an irreconcilable conflict with state law, and state law does not occupy the field of employer-provided sick and safe leave. State law therefore does not preempt the ordinance.

2. The City's ordinance does not violate the extraterritoriality doctrine because the primary purpose and effect of the ordinance is to regulate sick and safe time for employees who work within the geographic limits of Minneapolis.

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OPINION

HUDSON, Justice.

The Minneapolis Sick and Safe Time Ordinance (the Ordinance) requires employers to provide sick and safe time to employees who work within the city. This appeal asks us to decide two issues. The first issue is whether state law preempts the Ordinance. Both the district court and the court of appeals held that state law does not conflict with the Ordinance or occupy the field of employer-provided sick and safe time.

The second issue is whether the Ordinance violates the extraterritoriality doctrine. The district court enjoined the City of Minneapolis (the City) from enforcing the Ordinance against employers resident outside Minneapolis because the court concluded that the Ordinance violated the extraterritoriality doctrine. The court of appeals concluded that the primary purpose and effect of the Ordinance is to regulate activity within the geographic boundaries of Minneapolis, reversed the district court's decision that the Ordinance violated the extraterritoriality doctrine, and vacated the permanent injunction. We affirm the court of appeals on both issues.

FACTS

In May 2016, the Minneapolis City Council passed the Sick and Safe Time Ordinance, which is codified in Chapter 40 of the Minneapolis Code of Ordinances. Minneapolis, Minn., Code of Ordinances (MCO) §§ 40.10–40.310 (2019). Under the Ordinance, employees who work in the City for at least 80 hours a year accrue at least one hour of sick and safe time for every 30 hours worked in a calendar year, up to a maximum of 48 hours. MCO § 40.210. Employers must allow employees to carry over unused sick and safe time into the next year, but the total amount of accrued sick and safe time may not exceed 80 hours. *Id.* § 40.210(c).

Employees can use sick and safe time for their own mental or physical illness, for the care of a sick family member, for an absence due to domestic violence or sexual assault, or for workplace or school closures due to emergencies. MCO § 40.220(b). The Ordinance allows employers to require advance notice of up to seven days' time to use accrued leave, but only if the need to use leave is foreseeable. *Id.* § 40.220(c). For employers with six or more employees, the leave is paid; otherwise, the employer must provide unpaid leave. *Id.* § 40.220(g)–(h). The Ordinance defines "employee" as "any individual employed by an employer . . . who perform work within the geographic boundaries of the city for at least eighty (80) hours in a year for that employer." MCO § 40.40.

Employers must post a notice of employee rights under Chapter 40 in the workplace. MCO § 40.250(b). A business owner must also keep records of the amount of sick and safe time accrued by each employee and make that information available to employees upon request. MCO § 40.270. The City's Department of Civil Rights implements and enforces the Ordinance. MCO §§ 40.40, 40.100–40.120. Employers who violate the Ordinance are subject to administrative fines, enforcement actions, and civil penalties. MCO §§ 40.120, 40.140.

The Minnesota Chamber of Commerce (the Chamber) first sued the City in October of 2016, seeking (1) a declaratory judgment that the Ordinance is invalid; (2) a temporary injunction to stop the City from enforcing the Ordinance during the pendency of the lawsuit; and (3) a permanent injunction. The complaint focused primarily on the Chamber's contention that state law preempts the Ordinance, but it also included a paragraph on the alleged extra-

territorial effect of the Ordinance. The district court ordered additional briefing on the question of the Ordinance's extraterritorial effect.

In ruling on the Chamber's request for a temporary injunction, the district court held that the Chamber did not show a likelihood of success on the merits of its preemption arguments. The district court did, however, temporarily enjoin the City from enforcing the Ordinance against any employer "resident outside the geographic boundaries of the City of Minneapolis" because the court concluded that the Ordinance had an impermissible extraterritorial effect.

Both the Chamber and the City appealed the district court's decision on the temporary injunction. The Chamber argued that the court erred in denying the temporary injunction with respect to its preemption claims. The City argued that the district court erred in temporarily enjoining enforcement against employers resident outside of Minneapolis. The court of appeals affirmed the district court's ruling on both issues. *Minn. Chamber of Commerce v. City of Minneapolis*, No. A17-0131, 2017 WL 4105201 (Minn. App. Sept. 18, 2017), *rev. denied* (Minn. Nov. 28, 2017).

The parties then returned to district court and filed cross-motions for summary judgment. The Chamber sought a permanent injunction, again raising both the preemption and extraterritoriality challenges to the Ordinance. The City asked the district court to grant judgment as a matter of law because state law does not preempt the Ordinance and the Ordinance does not have an impermissible extraterritorial effect. Concerning the alleged extraterritorial impact of the Ordinance, the City asserted that a March 2018, amendment to the Ordinance clarified that the required sick and safe time accrues only for hours worked within the geographic boundaries of the City and that the use of leave could be restricted to hours the employee is scheduled to work within the geographic boundaries of the City.

The district court granted the City's summary judgment motion on the Chamber's preemption claim and granted the Chamber summary judgment on its extraterritoriality claim. In doing so, the district court upheld the validity of the Ordinance as applied to employers within Minneapolis, but permanently enjoined the City from enforcing the Ordinance against any employer resident outside of Minneapolis. Both parties appealed. The court of appeals affirmed the district court's ruling on the Chamber's preemption claim, but reversed the district court's ruling on extraterritoriality. *Minn. Chamber of Commerce v. City of Minneapolis*, 928 N.W.2d 757 (Minn. App. 2019). We granted the Chamber's petition for review.

ANALYSIS

[1] This appeal presents two challenges to the validity of the Ordinance. The Chamber first argues that state law preempts the Ordinance, either because state law conflicts with the Ordinance or because state law has occupied the field of employer-provided sick and safe time. Whether state law preempts a local ordinance is a question of law that we review de novo. *Bicking v. City of Minneapolis*, 891 N.W.2d 304, 312 (Minn. 2017); *State v. Kuhlman*, 729 N.W.2d 577, 580 (Minn. 2007).

[2] Second, the Chamber asserts that the Ordinance violates the extraterritoriality doctrine by regulating employers outside of Minneapolis. We apply a de novo standard of review to this issue, because the facts are undisputed and only a question of law remains for us to consider. *See Melrose Gates, LLC v. Chor Moua*, 875

N.W.2d 814, 820 n.2 (Minn. 2016) (explaining that we apply a de novo standard of review when there are "cross-motions for summary judgment, based on undisputed facts, [and] equitable relief [is] sought.").

I.

[3] We first consider whether state law preempts the Ordinance. There are "three types of state preemption of municipal legislative authority: express preemption, conflict preemption, and field preemption." *Jennissen v. City of Bloomington*, 913 N.W.2d 456, 459 (Minn. 2018). Only conflict preemption and field preemption are at issue in this case.

A.

[4–6] We begin with conflict preemption and *Mangold Midwest Co. v. Village of Richfield*, 274 Minn. 347, 143 N.W.2d 813 (1966). Our decision in *Mangold* states a general principle for conflict preemption: "conflicts which would render an ordinance invalid exist only when both the ordinance and the statute contain express or implied terms that are irreconcilable with each other." *Id.* at 816. We provided three standards to illustrate when an irreconcilable conflict between a municipal regulation and state law exists. *Id.* at 816–17. First, a "conflict exists where the ordinance permits what the statute forbids." *Id.* Second, "a conflict exists where the ordinance forbids what the statute *expressly* permits." *Id.* Third, "no conflict exists where the ordinance, though different, is merely additional and complementary to or in aid and furtherance of the statute." *Id.*

[7, 8] Minnesota Statutes § 181.9413 (2018) governs employer-provided sick and safe time. If an employer provides sick time benefits to employees, the statute requires an employer to allow employees to use those benefits to care for enumerated sick relatives. Minn. Stat. § 181.9413(a). The statute also requires employers to allow employees to use sick time benefits to assist enumerated family members, or to receive assistance themselves, in response to domestic abuse, sexual assault, or stalking. Minn. Stat. § 181.9413(b).

[9] The Chamber contends that the Ordinance conflicts with Minn. Stat. § 181.9413 because by requiring employers to provide paid sick and safe time, the Ordinance is irreconcilable with the permissive form of the statute. In essence, the Chamber argues that the lack of a prohibition in the state statute against paid employer-provided leave is express permission from the Legislature to refuse to provide paid leave. The Chamber also argues that features of the Ordinance, such as time accrual and use standards, conflict with the statute because the Ordinance forbids the form of accrual and use that the statute expressly permits. Finally, the Chamber asserts that by defining small employers differently from the state law, the Ordinance adds regulations and requirements that are not imposed by that statute. The Chamber argues that the definition of "employer" in Minn. Stat. § 181.940, subd. 3 (2018), as "a person or entity which employs 21 or more employees" means the Legislature "expressly exempt[ed] small employers from the sick leave regulations."

We do not agree that the state statutes cited by the Chamber expressly permit what the Ordinance forbids. We have not found an irreconcilable conflict between a municipal regulation and state law based on implied statutory permission. Instead, we look for express language of permission in a statute. Our decision in *Lewis ex rel. Quinn v. Ford Motor Co.* involved a city ordinance and a state statute that each prohibited discrimination in employment based on disability. 282 N.W.2d 874, 876 (Minn. 1979). The state statute provided an

affirmative defense to employers in cases when a disability posed a "serious threat to the health or safety of the disabled person or others." *Id.* The ordinance provided an affirmative defense only when the disability posed "a serious threat to the safety of others." *Id.* We held that the statute "clearly and expressly" granted an employer the right to discriminate against a potential employee if the disability presented a threat to the potential employee's own health or safety, something forbidden by the ordinance. *Id.* at 877. No similar language in Minn. Stat. § 181.9413 expressly grants a right to an employer to refuse to provide paid sick time. The Ordinance imposes requirements stricter than the statute, but the additional terms only further the policy underlying the statute rather than posing an irreconcilable conflict. *See Graco, Inc. v. City of Minneapolis*, 937 N.W.2d 756, 761 (Minn. 2020) ("[I]f employers can comply with both the municipal regulation and the state statute, the provisions are not irreconcilable, and therefore no conflict exists.").

[10] Next, the Chamber contends that in contrast to the Ordinance, which mandates that all employers with more than 6 employees provide paid sick time, the Legislature expressly exempted small businesses from paid sick time regulation by defining an "employer" as "a person or entity that employs 21 or more employees." Minn. Stat. § 181.940, subd. 3. On these types of definitional differences, however, we have looked to whether the Legislature has expressly prohibited activity by local authorities. *See, e.g.*, *Bicking*, 891 N.W.2d at 315 (noting that a proposed charter amendment would prohibit what the statute allows because the statute specifically states that its provisions supersede all charter provisions on the same subject); *see also Cty. of Wright v. Kennedy*, 415 N.W.2d 728, 731 (Minn. App. 1987) (finding a conflict where a state law allowed for construction of manufactured homes meeting certain statutory requirements and expressly prohibited any zoning ordinances to the contrary); *State v. Apple Valley Redi-Mix, Inc.*, 379 N.W.2d 136, 138–39 (Minn. App. 1985) (addressing a statute that specifically prohibited local governments from setting standards more stringent than the thresholds implemented by the responsible state agency). Nothing in Minn. Stat. § 181.9413 forbids further regulation by local government.

Finally, we address the Chamber's argument that our decision in *Bicking* requires us to invalidate the Ordinance. The Chamber cites *Bicking* for the proposition that state law preempts the Ordinance because the Ordinance adds a requirement (paid sick and safe time) that is absent from state law.

Bicking involved a proposed amendment to the Minneapolis city charter requiring Minneapolis police officers to obtain personal liability insurance that would serve as the primary source of recovery in the event of a lawsuit. 891 N.W.2d at 307. State law, however, already required the City to "defend and indemnify" the officers. *Id.* at 314. We held that the proposed charter amendment conflicted with state law because the amendment altered statutory requirements by placing "the officer's personal coverage ahead of the City's mandatory defense and indemnification obligation." *Id.* The proposed local regulation in *Bicking* disrupted the insurance system established by state law because the amendment required police officers to carry insurance that would be the primary coverage for personal liability. *Id.* This requirement made it impossible to comply with both the charter amendment and the state law at the same time: only one insurer can be primarily liable, and state law

requires a municipality to assume that position. *Id.*

[11] *Bicking* does not apply here. We stated in *Mangold* that there is no irreconcilable conflict simply because the terms of an ordinance and a statute differ. 143 N.W.2d at 816. The Ordinance incorporates several concepts from the statute and an employer who complies with the Ordinance also complies with the statute.[1] Thus, the Ordinance, "though different, is merely additional and complementary to . . . the statute." *Mangold Midwest Co.*, 143 N.W.2d at 817.

[12] The distinction between an irreconcilable conflict like the one in *Bicking* and a situation that embodies the third *Mangold* standard is important. A rule of law that finds a conflict wherever an ordinance adds a requirement different from state law—no matter the substance of the statute or the ordinance—would preempt every local ordinance setting a standard higher than the floor set by the Legislature. *See, e.g.*, *Lewis ex rel. Welles v. Metro. Transit Comm'n*, 320 N.W.2d 426, 432 n.8 (Minn. 1982) ("Appellant's argument, carried to its logical extent, would preclude municipalities from enforcing ordinances for the licensing of professional drivers where the ordinances contain requirements beyond those for obtaining a state license."). Such a rule would unreasonably constrain local government and undermine the powers allowed to cities by state law. *See* Minn. Const. art. XII, § 4 ("Any local government unit when authorized by law may adopt a home rule charter for its government."); Minn. Stat. § 410.07 (2018) ("[A city charter] may provide for the establishment and administration of all departments of a city government, and for the regulation of all local municipal functions, as fully as the legislature might have done before home rule charters for cities were authorized by constitutional amendment in 1896."); *Power v. Nordstrom*, 150 Minn. 228, 184 N.W. 967, 969 (1921) ("Every business and occupation is subject to the reasonable exercise of the police power of the municipality where [the business activity occurs] and in the exercise of the power a city or village may regulate that which the state has failed to regulate.").

For these reasons, we conclude there is no irreconcilable conflict between the Ordinance and state law.

B.

[13, 14] We turn next to the question of whether state law occupies the field of employer-provided sick and safe time such that local regulation is preempted. We use the field preemption test from *Mangold* to determine whether the Legislature has impliedly preempted a local ordinance:

> (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?

1. *Compare* MCO § 40.220 (detailing the permitted uses of accrued sick and safe time), *and* MCO § 40.310 (stating that the Ordinance has no effect on more generous sick and safe leave policies), *with* Minn. Stat. § 181.9413(a)–(b) (explaining when an employee may use sick and safe leave benefits), *and* Minn. Stat. § 181.9413(g) ("This section does not prevent an employer from providing greater sick leave benefits than are provided for under this section.").

Mangold Midwest Co., 143 N.W.2d at 820. We consider each factor in turn.

The courts below held that the subject matter to be regulated is employer-provided sick and safe time. The Chamber argues this definition is too narrow, and that the subject matter is instead "employer-provided leave." We disagree. The most relevant state statute here is Minn. Stat. § 181.9413, titled "Sick leave benefits; care of relatives," because it covers the same topic as the Ordinance (sick and safe time). *See Jennissen*, 913 N.W.2d at 460 (looking to the relevant state statute to identify the subject matter for the first *Mangold* field preemption factor). Although the Chamber cites to other provisions in Chapter 181 that pertain to leave,[2] the Ordinance does not require employers to provide paid or unpaid leave for reasons besides health and safety, which means the other statutes cited by the Chamber are beyond the scope of the Ordinance and do not inform our consideration of the Chamber's field preemption claim.

[15, 16] Second, we consider whether the subject matter of employer-provided sick and safe time has "been so fully covered by state law as to have become solely a matter of state concern." *Mangold Midwest Co.*, 143 N.W.2d at 820. The Legislature's intent to occupy the field may be found in statements of purpose or in the uniform and comprehensive character of the statutory scheme. *See id.* at 821 (explaining that occupation of a field generally involves a "legislative enactment which purports to completely dictate the specific regulation of an area, as for instance, the tax and traffic provisions do."); *see also Nordmarken v. City of Richfield*, 641 N.W.2d 343, 349 (Minn. App. 2002) ("[B]y its statements of policies and purposes and its enactment of comprehensive, uniform procedural laws for land use planning, the legislature has evinced its intent to occupy the field ...."), *rev. denied* (Minn. June 18, 2002); *Bd. of Sup'rs of Crooks Twp., Renville Cty. v. ValAdCo*, 504 N.W.2d 267, 269 (Minn. App. 1993) ("[T]he state has set up a statutory structure for issuing animal feedlot permits that provides for local input but retains ultimate control in the state. This promotes uniform interpretation and application of state rules ...."), *rev. denied* (Minn. Sept. 30, 1993); *State v. Gonzales*, 483 N.W.2d 736, 738 (Minn. App. 1992) ("The statute involves forfeitures for a wide variety of criminal offenses .... [T]his listing is so comprehensive as to indicate a legislative intention to preempt the field."), *rev. denied* (Minn. June 10, 1992). Extensive regulations by the implementing administrative agency may also indicate occupation of a field. *See Nw. Residence, Inc. v. City of Brooklyn Ctr.*, 352 N.W.2d 764, 772–73 (Minn. App. 1984), *rev. denied* (Minn. Jan. 4, 1985).

We cannot identify any legislative intent in the state statute, Minn. Stat. § 181.9413, to preempt local action by occupying the field of employer-provided sick and safe time. There is no language in the statute indicating that the Legislature intended to create a uniform or comprehensive statutory scheme for employer-provided sick and safe time. To the contrary, Minn. Stat. § 181.9413 only applies to employers who already provide sick time benefits of their

2. Specifically: leave for adoptive parents, Minn. Stat. § 181.92 (2018); leave for pregnancy and parenting, Minn. Stat. § 181.941 (2018); leave for school conferences and activities, Minn. Stat. § 181.9412 (2018); leave to donate bone marrow, organs, or blood Minn. Stat. §§ 181.945–.9458 (2018); leave for service in the civil air patrol, Minn. Stat. § 181.946 (2018); leave for employees with family members killed or injured in active military service, Minn. Stat. § 181.947 (2018); and leave to attend military ceremonies, Minn. Stat. § 181.948 (2018).

own accord. It is not a comprehensive statement on employer-provided sick and safe time because it only applies to a subset of Minnesota employers.

The lack of administrative rules governing an employer's requirement to provide paid or unpaid leave further shows that the state has not occupied the field of employer-provided sick and safe time. *See, e.g.*, *City of Morris v. Sax Invs., Inc.*, 749 N.W.2d 1, 8–9 (Minn. 2008) (looking to administrative rules to decide whether the terms of a statute excluded local regulations); *Nw. Residence, Inc.*, 352 N.W.2d at 773 ("The Commissioner of Public Welfare has promulgated extensive regulations to ensure an appropriate environment and services in residential facilities for the mentally ill. The Commissioner has engaged staff to implement these regulations and to give continued attention to this field."). The Chamber cites to numerous statutes and regulations that contain the term "sick leave" or "sick pay," but none of the provisions cited by the Chamber set forth guidelines for how employers must administer paid or unpaid sick and safe time.[3] We therefore cannot conclude that employer-provided sick and safe time is so fully regulated by state law as to demonstrate that it is solely a matter of state concern.

Third, we consider whether the Legislature has shown that employer-provided sick and safe time is a matter of solely state concern by partially regulating the subject matter. When we analyzed the third *Mangold* field preemption factor in *Jennissen*, we looked to the plain language of the state statute to determine whether the Legislature "intended for its partial regulation of the subject matter to show that it is solely a matter of state concern." 913 N.W.2d at 462. We do the same here. Nothing in the plain language of Minn. Stat. § 181.9413 clearly shows that the Legislature intended its partial regulation to make employer-provided sick and safe time an area of solely state concern. Like the statute in *Jennissen*, the Legislature left room for municipal action. 913 N.W.2d at 462 ("[T]he Legislature clearly contemplated that municipalities would exercise additional authority" and "professed neutrality on whether or not a municipality

3. Notably, the Commissioner of the Department of Labor and Industry has stated that the legislation in this area is not comprehensive enough to occupy the field of paid leave. The Commissioner instead describes the state statute as providing ''minimum standards'' that are not as comprehensive as the statute at issue in *Jennissen*. 913 N.W.2d at 460–61.

The Commissioner is correct that the cited statutes and regulations do not reflect a comprehensive regulatory scheme. The cited provisions contain the term ''sick leave'' or ''sick pay,'' but do not present a uniform or comprehensive set of regulations for employer-provided sick and safe time benefits. *See* Minn. Stat. §§ 79.211, 176.221 (2018) (workers' compensation insurance rates and payments); Minn. Stat. § 144.4196 (2018) (employee protections when placed in isolation or quarantine); Minn. Stat. § 144A.04 (2018) (nursing home licensing qualifications); Minn. Stat. § 268.085 (2018) (unemployment insurance benefits eligibility); Minn. Stat. § 290.92 (2018) (tax withholding); Minn. Stat. § 354B.211 (2018) (retirement for employees of state universities and colleges); Minn. Stat. § 576.51 (2018) (receivership claim priority).

The only provisions cited by the Chamber that seem to have any relationship to one another are those relating to calculation of income for means-tested public assistance programs, which generally designate ''sick pay'' as income. *See* Minn. Stat. § 256J.08 (2018) (Minnesota Family Investment Program); Minn. Stat. § 256P.01 (2018) (Economic Assistance Program); Minn. R. 3400.0170 (2019) (income eligibility for child care assistance); Minn. R. 9050.0040 (2019), 9050.0710 (2019) (Minnesota veterans home facilities); Minn. R. 9500.1206 (2019) (Minnesota General Assistance Program). These provisions do not, however, attempt to regulate the area of employer-provided sick and safe time.

should organize collection."). The Legislature included a subdivision that says it "does not prevent an employer from providing greater sick leave benefits than are provided for under this section." Minn. Stat. § 181.9413(g). Similar provisions appear in other statutes cited by the Chamber. *See* Minn. Stat. § 181.945, subd. 4 (stating that the leave provided for bone marrow donations "does not prevent an employer from providing" additional leave); Minn. Stat. § 181.9456, subd. 4 (stating that the leave provided for organ donation "does not prevent an employer from providing" additional leave); Minn. Stat. § 181.947, subd. 4 (stating that the leave provided to certain family members of military personnel injured or killed in active service does not "prevent[ ] an employer from providing" additional leave benefits).

The last factor of the *Mangold* field preemption test requires us to evaluate whether local regulation of employer-provided sick and safe time would have an unreasonably adverse effect on the general population of Minnesota. *See* 143 N.W.2d at 820 ("Is the subject matter itself of such a nature that local regulation would have unreasonably adverse effects upon the *general populace* of the state?" (emphasis added)).

[17, 18] Although the Chamber claims that the Ordinance will negatively affect both employers and employees, the Chamber does not identify the nature of the unreasonable and adverse effects of the City's regulation on employees. While employers may disfavor the Ordinance's recordkeeping and tracking requirements, the focus of *Mangold*'s fourth factor is whether the *state at large* would suffer because of local regulation. *Id.* It is not enough for a business to show that it will be subject to different regulations in different cities by way of local ordinances. *See Mangold Midwest Co.*, 143 N.W.2d at 821 (rejecting the idea that a patchwork of regulations applying to businesses in some places but not others is enough to show an unreasonably adverse effect on the general population); *G.E.M. of St. Louis, Inc. v. City of Bloomington*, 274 Minn. 471, 144 N.W.2d 552, 554–55 (1966) ("If the Minnesota Legislature determines that local regulation of commercial activity by ordinances of this type is creating economic confusion, the problem can be corrected by a clear expression of the legislative will that regulation of such commercial activity be uniform throughout the state.").

Instead, courts have found an unreasonable adverse effect where an ordinance would subject *citizens* to regulation in some parts of the state but not others. *See City of Birchwood Vill. v. Simes*, 576 N.W.2d 458, 462 (Minn. App. 1998) ("[P]ermitting each municipality to enact different regulations regarding the size of boats that may be moored to private docks would have an adverse effect on the public. For example, a boat that is permitted at one dock may not be permitted at a dock across the lake."); *Gonzales*, 483 N.W.2d at 738 ("Forfeitures of motor vehicles, for misdemeanor offenses varying from jurisdiction to jurisdiction, imposes uncertainty and confusion."). This is not a situation where regulation of a business spills over resulting in negative effects on the public, and there is no evidence that members of the public traveling to and from Minneapolis will suffer due to the Ordinance.[4]

4. Instead, empirical evidence suggests that such policies benefit the public at large. These benefits include improved health outcomes for both employees and their families, as well as a reduction in the transmission of communicable diseases. *See* Human Impact Partners and San Francisco Department of Public Health, A Health Impact Assessment of the

The situation is much closer to the facts of *Mangold*, where we declined to invalidate an ordinance based on a business's contention that the local ordinance "resulted in very unequal" regulation. 143 N.W.2d at 821.

We therefore conclude that state law does not occupy the field of employer-provided safe time and does not preempt the Ordinance.

II.

We turn next to the Chamber's challenge to the Ordinance under the extraterritoriality doctrine. The Chamber contends that the Ordinance is invalid because the City has impermissibly extended its jurisdiction to employers whose principal place of business is outside of the Minneapolis city limits. The City disagrees, arguing that any effect on employers outside of Minneapolis does not violate the doctrine because the Ordinance only regulates activities occurring within the city limits.

We have considered the extraterritoriality doctrine only twice in our history, beginning with *State v. Nelson*, 66 Minn. 166, 68 N.W. 1066 (1896). The case involved a Minneapolis ordinance requiring any party wishing to sell milk within the city limits to apply for a license to do so and provide information about the source of the milk. *Id.* at 1067. With that information, the City's Commissioner of Health would inspect the dairy herd and the milk itself for tuberculosis and other infectious diseases. *Id.* If the herd and the milk passed inspection, the Commissioner issued a license to sell the milk in Minneapolis. *Id.* The appellant argued that the ordinance was invalid because it operated extraterritorially by requiring inspection of dairies and herds outside of the Minneapolis city limits. *Id.* at 1067–68. We upheld the ordinance, finding no violation of the extraterritoriality doctrine because the ordinance applied "only to those whose milk product it is proposed to sell in the city." *Id.* at 1068. Based on this, we concluded that the ordinance went "only so far as it is reasonably necessary to prevent the milk of diseased cows being sold within the city." *Id.*

We next considered the extraterritoriality doctrine in *City of Duluth v. Orr*, 115 Minn. 267, 132 N.W. 265 (1911). An amendment to the Duluth city charter prohibited the storage of explosives within one mile of the city limits without a permit from the city of Duluth. *Id.* at 265. We held that the charter amendment violated the extraterritoriality doctrine because the regulation targeted activity occurring entirely within "territory beyond the city." *Id.* We stated the "general rule, applicable to municipalities . . . is that the power and jurisdiction of the city are confined to its own limits and to its own internal concerns." *Id.*

[19] Both our decisions looked to the purpose and effect of the regulation when faced with a challenge to municipal authority based on the extraterritoriality doctrine. In *Nelson*, the aim of the Minneapolis ordinance was to "prevent the milk of diseased cows being sold within the city." 68 N.W. at 1068. In *Orr*, the city charter amendment targeted potential explosions outside of the Duluth city limits. 132 N.W. at265. We therefore review the Ordinance here to determine if it is valid under the extraterritoriality doctrine based on whether the primary purpose and effect of the Ordinance is to regulate activ-

Healthy Families Act of 2009 23–39 (2009). The Commissioner of the Department of Labor and Industry, an amicus to this proceeding, also notes that businesses already comply with a variety of record-keeping requirements, and that those requirements protect the interests of both businesses and their employees.

ity within the geographic limits of the City of Minneapolis.[5]

The Ordinance incorporates the findings made by the Minneapolis City Council and includes an express statement of purpose. *See* MCO § 40.20 (making findings regarding the purpose of the Ordinance); MCO § 40.30 (stating the purposes of the chapter). Both of these sections confirm that the Ordinance's purpose is to regulate employment practices within the Minneapolis city limits. The City Council expressed its concern about the effects on the public when employees report to work in Minneapolis while they are ill. *See* MCO § 40.20(g) ("Employees who come to work when they are sick are likely to expose other employees, customers, and members of the public to infectious diseases, such as the flu."). In addition, the Ordinance includes the City Council's conclusion that access to paid sick time would have positive effects on other indicators of health and well-being in the Minneapolis community. *See* MCO § 40.20(*o*) ("To safeguard the public welfare, health, safety, and prosperity of the city, all persons working in our community should have access to adequate paid sick and safe leave, because doing so will ensure a more stable workforce in our community, thereby benefitting workers, their families, employers, and the community as a whole."). The stated purposes of the Ordinance correspond with these findings. *See* MCO § 40.30(a)–(e) (detailing the five purposes of the Ordinance).

[20, 21] Further, the primary effect of the Ordinance is also to regulate activity within the geographic limits of the City of Minneapolis. The Ordinance allows employees to accrue paid time off only for hours worked within the geographic limits of the city. *See* MCO § 40.210(a) ("Employees accrue a minimum of one (1) hour of sick and safe time for every thirty (30) hours worked within the geographic boundaries of the city up to a maximum of forty-eight (48) hours in a calendar year."). Once employees accrue sick and safe time, employers are "only required to allow an employee to use sick and safe time ... when the employee is scheduled to perform work within the geographic boundaries of the city." MCO § 40.220(k). These provisions ensure that the Ordinance does not operate extraterritorially,[6] because they limit the accrual and use of sick and

5. The dissent describes this analysis as "invent[ing] a new test" for the extraterritoriality doctrine. The dissent is wrong—there is no "new test." As we explain, our decisions in both *Nelson* and *Orr* looked to the purpose of the ordinance to determine if the ordinance violated the extraterritoriality doctrine.

6. The dissent's entire argument proceeds from the false assumption that the Ordinance operates extraterritorially because it affects employers that do not have a "physical presence in Minneapolis" and requires nonresident employers to "perform activities outside of Minneapolis," even though the employers direct employees to work in Minneapolis. The rule of law proposed by the dissent would mean that the City could take no action to regulate an employer that sends employees to work within Minneapolis unless (a) the employer has "substantial physical infrastructure" within Minneapolis; or (b) a state statute expressly or impliedly authorizes the City to regulate the employer's business. This proposed rule represents a flawed understanding of municipal police powers and the extraterritoriality doctrine.

First, a business does not need to have an office location within Minneapolis to be subject to the City's regulatory powers. The "ordinances and regulations of a city are binding upon all within the city, and all who go to the city must obey them." 6A McQuillin, *The Law of Municipal Corporations* § 24.69 (3d ed. 2015). If employers send their employees to perform work within Minneapolis, the employers must obey the City's regulations, regardless of whether they have offices within Minneapolis or not.

Second, the City does not need express or implied authorization from the Legislature to regulate activity within its municipal limits—

safe time to hours worked and scheduled within the city, respectively.

We note that the dissent offers several hypotheticals to demonstrate the "extraordinary" reach of the Ordinance. But the situations imagined by the dissent are extreme examples, and we decline to apply this court's extraterritoriality jurisprudence using hypothetical outliers. Instead, we can look to the real-life examples cited by the City, such as the 2,000 janitors regularly working throughout Minneapolis, cleaning commercial office space like the Wells Fargo Center and the U.S. Bank Plaza. Many of these janitors work exclusively within Minneapolis, even though the cleaning services that employ them do not have physical office locations within the city limits. The dissent ignores these real-world examples in favor of speculation about enforcement scenarios that may never occur.

[22] Moreover, municipalities have "wide discretion" to use their police power to regulate matters of public health. *State v. Crabtree Co.*, 218 Minn. 36, 15 N.W.2d 98, 100 (1944); *see also Alexander Co. v. City of Owatonna*, 222 Minn. 312, 24 N.W.2d 244, 251 (1946) ("Municipalities have generally been accorded wide latitude in the exercise of police powers .... This is especially true with respect to conditions affecting public health and safety."), *overruled on other grounds*, *Johnson v. City of Plymouth*, 263 N.W.2d 603, 608 (Minn. 1978). We will not overrule the City's use of its discretion to implement regulations intended to protect the health of those living and working within Minneapolis based on speculation and hypotheticals.

[23, 24] Finally, the Chamber urges us to hold that the Ordinance violates the extraterritoriality doctrine because the Ordinance goes farther than is reasonably necessary to accomplish the goal of the regulation.[7] But this is not the proper focus of an extraterritoriality challenge.[8] In-

as the dissent acknowledges. And, as explained, the primary purpose and effect of the Ordinance is to regulate activity that occurs within the Minneapolis city limits. Any recordkeeping or other administrative requirements imposed by the Ordinance arise only once an employer has sent its employees into the City for work and thereby subjected itself to the City's police power. The Ordinance is therefore valid under the extraterritoriality doctrine without any need for implied or express authorization from the Legislature.

7. The Chamber argues that the Ordinance does not "materially benefit" the City of Minneapolis because an employee working only the minimum 80 hours per year within the city would not accumulate a full day of sick time for four years. The question of the City's policy judgment in setting the threshold at 80 hours per year is irrelevant to the extraterritoriality doctrine. *See State ex rel. Beery v. Houghton*, 164 Minn. 146, 204 N.W. 569, 570–71 (1925) ("[T]he exercise of the police power is legislative. Its policy is not for the courts. Only when its exercise unconstitutionally affects personal or property rights do the courts take cognizance; and it is presumed that the legislative body investigated and found conditions such that the legislation which it enacted was appropriate.").

8. The Chamber argues that the Ordinance is not "narrowly crafted" and lacks a "sufficient nexus with the harm it is intended to protect against." These arguments import substantive due process principles into the extraterritoriality doctrine. The Chamber has not asserted that the Ordinance violates state or federal due process protections. *See, e.g., Fairmont Foods Co. v. City of Duluth*, 260 Minn. 323, 110 N.W.2d 155, 157 (1961) (holding a licensing requirement for the sale of milk unconstitutional because it not reasonable in light of the public health justifications offered by the City of Duluth); *State v. Clarke Plumbing & Heating, Inc.*, 238 Minn. 192, 56 N.W.2d 667, 669 (1952) ("[W]here the authority of the city to enact any given regulation or ordinance is, by its terms, general, any ordinance passed pursuant thereto must be a reasonable exercise of that power, or it will be pronounced

stead, as explained above, we look to the purpose and effect of a municipal regulation to determine whether the regulation violates the extraterritoriality doctrine. The findings, conclusions, and purposes laid out in extensive detail in the Ordinance demonstrate that the City's regulation is a valid exercise of municipal authority.

Because the primary purpose and effect of the Ordinance is the regulation of sick and safe time within the City of Minneapolis, we hold that the Ordinance does not violate the extraterritoriality doctrine.

CONCLUSION

For the foregoing reasons, we affirm the decision of the court of appeals.

Affirmed.

Dissenting, Anderson, J., Gildea, C.J.

DISSENT

ANDERSON, Justice (dissenting).

Respondent City of Minneapolis passed an ordinance that requires employers to provide paid leave time to any employee who performs work within the city. Because the effects of this ordinance extend beyond the borders of Minneapolis, in violation of the extraterritoriality doctrine, I respectfully dissent.[1]

I.

Minnesota municipalities, including the City of Minneapolis, "possess no inherent powers and are purely creatures of the legislature." *Breza v. City of Minnetrista*, 725 N.W.2d 106, 110 (Minn. 2006); *see* Minn. Const. art. XII, § 3 ("The legislature may provide by law for the creation, organization, administration, consolidation, division and dissolution of local government units and their functions . . . ."). Municipalities "possess only those powers that are conferred by statute or implied as necessary to carry out legislatively conferred powers." *Breza*, 725 N.W.2d at 110. Municipalities have private (or corporate) powers, such as the power to contract for services, and governmental powers, such as the power to pass ordinances. 2A McQuillin, *The Law of Municipal Corporations* § 10.5 (3d ed. 2017). This case involves a dispute over the use of a governmental power by Minneapolis to require employers located outside of its borders to implement a leave time policy for employees if those employees perform work in Minneapolis. The Minneapolis Sick and Safe Time Ordinance (the Ordinance), inter alia, requires non-Minneapolis employers, including those with no physical presence in Minneapolis, to post notices, maintain records, and submit to inspections by Minneapolis inspectors. Minneapolis, Minn., Code of Ordinances (MCO) §§ 40.250(b), 40.270 (2019). The reach of the Ordinance beyond the borders of Minneapolis violates our extraterritoriality doctrine.

The extraterritoriality doctrine, as it applies to Minnesota municipalities, is inherent to the American form of municipal organization.[2] It has been a longstanding

invalid.''); 5 McQuillin, *The Law of Municipal Corporations* § 18.1 (3d ed. 2015) (''Generally speaking, ordinances must be reasonable and not oppressive, and unreasonable ordinances are void.''). Thus, we decline to address these arguments.

1. Because I conclude that the Minneapolis Sick and Safe Time Ordinance violates the extraterritoriality doctrine and cannot be sustained, even with the geographic limit imposed by the district court's injunction, I would reverse the court of appeals. Thus, I would not reach the preemption issue.

2. For a history of the jurisdictional reach of cities in ancient times, including Greek city-states and early British hamlets, and the evo-

rule of American jurisprudence that municipalities are creatures of the state and can exercise only those powers permitted by the state.[3] The general rule regarding a municipality's authority is that, absent a specific grant of authority by the Legislature, "the power and jurisdiction of [a] city are confined to its own limits and to its own internal concerns." *City of Duluth v. Orr*, 115 Minn. 267, 132 N.W. 265, 265 (1911) (holding that constitutional authority to adopt a municipal charter does not expressly or impliedly allow a city to regulate a "territory or people not a part of or within the city"). When there is an express grant of authority by the Legislature to regulate for a specific purpose, we have looked to whether the statute implies the power to regulate beyond the borders of the municipality to achieve the Legislature's purpose in granting such power. *See State v. Nelson*, 66 Minn. 166, 68 N.W. 1066, 1067–68 (1896).

We have had two occasions to apply the extraterritoriality doctrine to municipal legislation; and the holdings are consistent with each other and with the history, tradition, and jurisprudence on extraterritoriality. *See Orr*, 132 N.W. at 266; *Nelson*, 68 N.W. at 1067–68; *see generally* William Anderson, *The Extraterritorial Powers of Cities*, 10 Minn. L. Rev. 475 (1926) (discussing the extraterritorial powers of cities). Contrary to the court's holding today, the law applied in both *Orr* and *Nelson* leads to the conclusion that Minneapolis exceeded its authority by adopting the Ordinance, which applies to employers located beyond its borders.

In *Orr*, we held that the City of Duluth exceeded the authority granted by the Legislature when it enacted an ordinance regulating the storage of explosives. 132 N.W. at 265. Through its general powers granted by the Legislature, Duluth had the authority to pass ordinances to protect the "public health, comfort and safety" of its residents. *Id.* Duluth exercised this power by passing an ordinance to protect its residents from explosives that were being stored in an unsafe manner. *Id.* The effect of the ordinance was that the locations, types, and storage of the explosives were regulated and licensed. *Id.*

To fully protect its residents, Duluth extended the reach of its authority by regulating the storage of explosives within a territory up to one mile outside of the city limits. *Id.* We held that this extraterritorial effect was impermissible because a general grant of authority to regulate an activity does not permit a municipality to regulate beyond its borders. *Id.* at 266 ("The right given to the people within prescribed territorial limits to adopt a complete municipal code does not warrant the assumption by them of power over territory and people beyond those limits, even though the control of such territory and people would be convenient and gratifying to the people within the city."). Thus, for municipal regulations based on a general grant of authority, we do not balance or weigh the purpose and effect of the regulation; rather, we draw a firm line at the boundary of the municipality, holding that any extraterritorial effect is impermissible.

lution of municipalities to the more limited modern statutory and charter cities, see Russell Webber Maddox, *Extraterritorial Powers of Municipalities in the United States* 6–8 (1955).

3. The doctrine is readily apparent in the early years of the last century in the judicial rejection of municipal taxation of traffic through a city without an express legislative grant authorizing that taxation. *See* William Anderson, *The Extraterritorial Powers of Cities,* 10 Minn. L. Rev. 564, 567 (1926) (citing several supporting cases and stating that such ordinances should reach businesses that are only "strictly or primarily within the city").

In *Nelson*, we were faced with whether there was implied authority for an ordinance to operate, in part, outside a city's borders when there was an express grant of power by the Legislature to cities to regulate for a specific purpose. 68 N.W. at 1067. The issue was whether a Minneapolis ordinance that required an inspection of dairy herds outside the city, as a condition to obtain a license to sell milk within the city, was implied in the Legislature's specific grant of authority for cities to regulate the sale of milk and dairy herds within the city. *Id.* We held that "[t]he manifest purpose of the statute under which this ordinance was passed was to enable the city council to adopt such reasonable police regulations as would prevent the sale of unwholesome milk within the city, and not merely to prevent the keeping of unhealthy dairy herds within the city limits." *Id.* at 1068. In analyzing the scope of the ordinance, we held that it was "reasonably necessary to prevent the milk of diseased cows being sold within the city." *Id.* We concluded that there was no extraterritorial operation because the only subject upon which the ordinance operated was the sale of milk within Minneapolis. *Id.*

Thus, in *Nelson*, we upheld an ordinance that had effects outside the city limits because there was an implied power to regulate extraterritorially so as to effectuate the manifest purpose of the statute. Unlike in *Orr*, in *Nelson*, the authority for the city ordinance was derived not from a general grant of power but rather from an express grant of legislative authority for the city to regulate the sale of milk within city limits. *See* 1895 Minn. Laws 489, 489, ch. 203, § 1 ("The city council of any city may by ordinance ... issue licenses ... for the sale of milk within its limits and regulate the same ... and [ ] appoint such inspectors ... as are necessary for the proper enforcement of such laws and ordinances ...."). In accordance with this express grant of authority to regulate the sale of milk, Minneapolis passed an ordinance requiring that individuals or businesses obtain a license prior to selling milk within the city.[4] We held there to be no extraterritorial issues because Minneapolis operated under an express grant of legislative authority and because individuals or businesses seeking a license to sell milk within the city voluntarily subjected them-

4. The court disagrees with my reading of *Nelson*, but the court misunderstands how the extraterritoriality doctrine applies.

The issue is not whether the Legislature passed a statute to allow a municipality to regulate beyond its borders, which it could do, as is the classic case when the Legislature passes a statute allowing cities to regulate activities within a certain number of miles beyond their borders. *See, e.g.*, *Higgins v. City of Galesburg*, 401 Ill. 87, 81 N.E.2d 520, 523 (1948) (allowing a city, by statute, to extend its regulations one-half mile beyond its borders and, by implication, holding that the city has no authority to regulate beyond that limit, stating, "[m]unicipalities have no extra-territorial licensing power unless expressly or impliedly delegated by statute"). Absent an express statutory grant to regulate beyond its borders, the issue is whether a municipality has an implied grant of authority to do so for the purpose of carrying out an express grant to regulate activities. *See* 9 McQuillin, *The Law of Municipal Corporations* § 26.10 (3d ed. 2016) ("[T]he right to exercise police power beyond the municipal boundaries must be derived by legislative grant which expressly or impliedly permits it ....").

The *Nelson* court determined whether, under an *express* grant of authority to regulate the sale of milk within the city, there was an *implied* grant to pass ordinances that were effective beyond the city's borders. The court today does not point to a single statute that *expressly* authorizes Minneapolis to regulate paid leave time. If Minneapolis had that authority, then, perhaps, the court could take the next step of determining whether, under that statute, there was *implied* authority to regulate businesses extraterritorially because the regulated entities conduct some business within Minneapolis.

selves to an inspection outside of the city. *Nelson*, 68 N.W. at 1068.

Together, these decisions, and our jurisprudence on city powers in general, stand for the proposition that a municipality must have statutory authority to act. *See* Minn. Const. art. XII, § 3; *Breza*, 725 N.W.2d at 110. When a municipality relies on a general grant of authority to regulate for the general welfare, as was the case in *Orr*, the municipality cannot reach beyond its borders, even if the purpose of that regulation is to protect its residents. *See Orr*, 132 N.W. at 266. But if the empowering statutory authority specifically provides that a municipality may regulate for a particular purpose, such as ensuring that milk is not contaminated, and if achieving that purpose implies that the Legislature granted extraterritorial authority, then we will look to whether the extraterritorial effect was reasonably necessary to carry out the purpose of the Legislature. *Nelson*, 68 N.W. at 1068.

II.

As an initial inquiry, the first question is whether the Ordinance reaches beyond its borders. If the Ordinance regulates only the activities of Minneapolis residents, or the activities of nonresidents while they are within the borders of Minneapolis, then there is no extraterritorial effect.

Here, on its face, the Ordinance applies to businesses outside Minneapolis and requires those businesses to perform activities outside of Minneapolis, and both the City and the court concede as much.

The reach of the Ordinance is extraordinary. A non-Minneapolis employer is subject to the Ordinance when any of its employees work more than 80 hours in a year within the city limits of Minneapolis. MCO § 40.40. In a five-day work week, if an employee works as few as 19 minutes a day in Minneapolis, the employer is subject to the Ordinance. This would mean that a St. Louis Park pizza delivery business whose employee drives 3 minutes into Minneapolis to deliver a pizza, spends 1 minute handing the pizza to the customer, and 3 minutes driving out of Minneapolis will accrue leave time under the Ordinance if that employee makes as few as *three* such pizza deliveries each work day. A business that picks up raw materials from a northeast Minneapolis warehouse each morning and brings them to a plant in Apple Valley will inevitably travel on Interstate 35W, through Minneapolis, for more than 19 minutes a day.[5]

And the effects need not be limited to employers in Minnesota. A nationwide freight business in Arizona with thousands of drivers throughout the country is subject to the Ordinance if one of its semi-

5. As discussed at oral argument, the Minneapolis Department of Civil Rights has interpreted the Ordinance to not require an employer to accrue leave hours for its employees when employees are driving through the city, making only incidental stops for gas or food. *See* Minneapolis, Minn., Department of Civil Rights Rules Implementing the Minneapolis Sick and Safe Time Ordinance, Rule 2.2 (i.) (July 3, 2019). This concession, if it is one, is unsatisfying for several reasons. This ''interpretation'' is more akin to non-enforcement rather than an interpretation. The express language of the Ordinance applies to employees ''who perform work within the geographic boundaries of the city for at least eighty (80) hours in a year'' for a particular employer. MCO § 40.40. The work a delivery driver performs is, in part, to drive through cities, even if one of the delivery stops is not within a particular city. Thus, as the rules associated with the city's ordinances state, the City may change those rules at any time and there is nothing in the Ordinance that prevents enforcement against those whose employees merely pass through Minneapolis while on work assignments that occur wholly or substantially outside the municipal boundaries of the city of Minneapolis.

truck drivers, who lives in Wisconsin with a regular route to California, spends just over *three hours every other week* in Minneapolis while his trailer is loaded and unloaded at a customer's warehouse, as one stop among many, en route to the final destination. In that scenario, the employer must (1) post notices in its Arizona offices regarding the Minneapolis leave policy; (2) require its truck driver to track and report how much time he spent in Minneapolis driving and time stopped while his trailer was unloaded and reloaded; (3) record and track in its Arizona offices the hours the driver spent in Minneapolis on each trip through the city; (4) create a special policy to allow the truck driver to take his accrued leave time when he is in Minneapolis; (5) account for accrued leave time on its financial statements; and (6) have procedures in place to accommodate inspections in Arizona by Minneapolis Civil Rights Department inspectors.[6]

Further, the effects of the Ordinance do not apply only to businesses that have employees who actually work in Minneapolis for more than 80 hours a year. An employer may not know which employees, if any at all, will meet the 80-hour requirement in a calendar year, and thus non-Minneapolis employers must create and maintain a recordkeeping system to track all employees who work in Minneapolis, however briefly, in the event that any employee *might* reach 80 hours.[7] For a business with no Minneapolis locations, all of these required activities, by definition for these businesses, must occur entirely outside of Minneapolis.[8]

6. During oral argument, the City argued that the complications suffered by a nonresident dairy herd owner were much greater in *Nelson* than here. But in *Nelson,* we upheld the *licensing* ordinance at issue because it regulated the sale of milk within the city. The act of seeking a license was something the seller voluntarily chose to do. The ordinance required a potential licensee to consent to an inspection of the licensee's dairy supplier. If the licensee consented without the authority to do so, then the non-Minneapolis dairy herd owner simply could deny the city inspector access to his herd, and the person seeking a license would not be able to obtain a license. Unlike *Nelson* (and *Orr*), there is no licensing regime here to which employers voluntarily subject themselves.

7. The Ordinance contains a presumption of non-compliance if an employer fails to meet the recordkeeping burden. MCO § 40.270(e). The Ordinance provides that if an employer ''fails to maintain or retain adequate records or does not allow'' the Minneapolis Department of Civil Rights ''reasonable access to the records and an issue arises as to an alleged violation of an employee's rights under this chapter, it shall be presumed that the employer has violated this chapter, absent clear and convincing evidence otherwise.'' *Id.* It is true that rules promulgated by the Minneapolis Department of Civil Rights do not require an employer to track the activity of all employees; but the Department does not need to adopt such a rule because the plain language of the Ordinance creates the presumption and liability for a business that does not track every possible data point that the Department might insist on reviewing. Given the heavy penalties associated with alleged civil rights violations, it would be an enormous business risk to do otherwise.

If the City finds that a business violated the Ordinance, then the business may be ordered to pay back pay, credit the employee the uncredited leave time plus double the dollar value of the uncredited leave time (up to $250), pay up to a $1,500 penalty to the employee for each violation, and pay a fine of up to $50 per day to the City if the employer fails to comply within five business days. MCO § 40.120. If an employer fails to comply with a final order, the City may initiate a civil action in court seeking legal and equitable relief, along with attorney fees and costs. MCO § 40.140.

8. The court, citing to *State v. Crabtree Co.,* 218 Minn. 36, 15 N.W.2d 98, 100 (1944), states that municipalities have ''wide discretion'' to use their police power to regulate matters of public health. But, as *Crabtree* states: ''No specific legislative sanction is needed to vitalize the general welfare clause of a city char-

Thus, there can be no dispute that the Ordinance has an effect beyond the borders of Minneapolis. This extraterritorial effect is neither incidental nor indirect, nor an unintended byproduct of the Ordinance. Put another way, the extraterritorial reach of the Ordinance is a feature, not a bug, and that reach is plain from the intended scope of the Ordinance. Because the Ordinance does not exempt employers located outside of Minneapolis, and requires those non-Minneapolis employers to perform activities at locations that, by definition, must be outside Minneapolis, the Ordinance has extraterritorial effects on *all* non-Minneapolis businesses whose employees work in Minneapolis, regardless of how minimal the work.[9]

III.

Because there are extraterritorial effects, I next turn to the question of whether the Legislature granted Minneapolis the power to regulate employer leave outside of the city's boundaries. Unlike in *Nelson*, there is no statute that authorizes Minneapolis to regulate leave and to impose, either directly or by implication, the requirements of the Ordinance on employers located outside of the city. Unlike in *Nelson*, no statutory authority for municipalities to regulate leave offered, or not offered, by businesses located outside city limits exists.[10] Thus, Minneapolis must rely on its general powers, and we have said that a general grant of authority does not give a municipality "power over territory and people beyond [its boundaries]." *Orr*, 132 N.W. at 266. This should end the analysis; and the Ordinance, to the extent it reaches employers located outside of Minneapolis, should be invalidated.

Instead of applying our precedent as analyzed above, the court invents a new test for analyzing whether a municipality can regulate activity beyond its borders. The court now looks to the primary purpose and effect of the Ordinance, divorced from the statutory authority element that was the foundation for our decision in *Nelson*.[11] Under the court's test, if the pri-

ter. No express grant of power to legislate upon any particular subject is necessary." *Id.* This is true in Minnesota and in many jurisdictions and is cited as the general rule in treatises as it relates to regulation within a municipality. *See* 6A McQuillin, *The Law of Municipal Corporations* § 24.46 (3d ed. 2015) ("[A] general welfare or general grant of power clause unquestionably vests broad police power in a municipal corporation" but "is limited to matters of an inherently local nature."). But Minneapolis seeks to regulate activities outside its municipal boundaries and the *Crabtree* declaration is of no help to the court because the general rule is that an assertion of general welfare powers is not effective outside of municipal boundaries. *Id.* ("A general welfare clause does not authorize extraterritorial action."); *see also* 9 McQuillin, *The Law of Municipal Corporations* § 26.10 (3d ed. 2016) ("[E]xercis[ing] police power beyond the municipal boundaries must be derived by legislative grant which expressly or impliedly permits it . . . .").

9. The circumstances in which the extraterritoriality doctrine applies to prevent municipal regulation outside city boundaries are not a model of mathematical precision. It is certainly clear enough that if an employer's operation is *completely outside* the municipality, with no physical presence within the municipality, the municipality violates the extraterritoriality doctrine by regulating that employer's business activities. An employer with substantial physical infrastructure within the boundaries of the city has a weaker claim to exemption from municipal regulation on the basis of the extraterritorial doctrine.

10. When asked this question at oral argument, the City conceded that there is no special grant of power by the Legislature to regulate extraterritorial leave policies.

11. The absence of any support from other jurisdictions for what is essentially a judicial blessing over the exercise of municipal authority beyond territorial limits is telling. Moreover, the problem the City is attempting

mary effect of the Ordinance is to regulate activity within the city, then the Ordinance is valid; in essence, if the purpose and effect align, the Ordinance is self-empowering regardless of municipal boundaries and the extraterritorial doctrine.[12] Under the court's new test, *Orr* would have been decided differently. Surely the primary purpose and effect of regulating explosives by Duluth was to protect its residents from the effects of the unsafe storage of explosives. Certainly, under the new test, Duluth could extend its ordinance a mere mile beyond city limits as a reasonable means of protecting its citizens.

The court raises concerns about a business outside of Minneapolis sending employees into the city and posits a janitorial service located outside Minneapolis that each day sends 2,000 janitors into the city. The outcome that the extraterritoriality doctrine dictates in the janitorial service example is the same as it is for the hypothetical pizza delivery worker that enters the city for only a few deliveries. The outcome in either circumstance is not an anomaly or a defect, regardless of the numbers or the work location: a municipality simply cannot extend its regulatory powers beyond its geographic borders without (at least) an implied grant of authority *from the State* to do so. Municipalities are creatures of the State. The State grants municipalities wide latitude within municipal borders, but not otherwise. *Compare* 6A McQuillin, *The Law of Municipal Corporations* § 24.59 (3d ed. 2015) ("[O]rdinances and regulations of a city are binding upon all within the city, and all who go to the city must obey them."), *with id.* § 24.46 (3d ed. 2015) ("A general welfare clause does not authorize extraterritorial action."). *See Higgins v. City of Galesburg*, 401 Ill. 87, 81 N.E.2d 520, 523 (1948) ("Municipalities have no extra-territorial licensing power unless expressly or impliedly delegated by statute.").

The court's new test is disturbing enough, but the manner in which that test is deployed here is alarming. It is, to say the least, not self-evident that a purpose of preventing those who are ill from entering Minneapolis, as the court here alleges exists, leads inevitably to the conclusion that a St. Louis Park pizzeria must comply with the Ordinance. But even if the result under these facts was otherwise, the court's new test is equivalent to no test at all and amounts to abolishing the extraterritorial doctrine altogether. What carefully crafted ordinance, with all of the usual language about protecting the rights and interests of the residents of any municipality, in the name of some worthy cause, will fail this new test?[13] The better business choice,

to solve does not require either ignoring or violating the extraterritoriality doctrine. Assuming that it is not preempted, Minneapolis can apply its ordinance to all employers located within the city's boundaries. Alternatively, the Legislature can enact a law either establishing leave policies for the entire state or enact a law that allows municipalities, including Minneapolis, to regulate the type of extraterritorial activity governed by the Ordinance that it enacted here. *See, e.g., State ex rel. Anoka Cty. Airport Protest Comm. v. Minneapolis-St. Paul Metro. Airports Comm'n*, 248 Minn. 134, 78 N.W.2d 722, 728 (1956) ("In the final analysis, it must be kept in mind that a municipality is only a political subdivision of the state created for the purpose of performing those functions entrusted to it by the legislature acting for the people of the state as a whole.").

12. After hearing arguments and reviewing the record, the district court found that the benefit of the Ordinance "pales when weighed against the imposition of record keeping and administrative obligations incurred by companies located outside the City." Minneapolis does not challenge this finding.

13. Under the new purpose and effect test, could a municipality require an employer to provide free healthcare coverage whenever an

here, might be to avoid Minneapolis, or Minnesota, altogether.

The court's application of its new test also ignores the broader statewide effects of the Ordinance. We have evaluated the burden of an ordinance on statewide commerce by examining the potential ripple effect of local legislation across municipalities in other circumstances that did not involve the direct application of the extraterritorial doctrine.[14] In *State v. Schmidt*, even though there was a statute authorizing municipalities to regulate transient merchants, we invalidated a Brainerd ordinance based on the premise that, if every municipality enacted its own burdensome regulations, the result would be an "intolerable and unreasonable imposition on the operation of a legitimate business." 280 Minn. 281,159 N.W.2d 113, 117 (1968) (invalidating a Brainerd ordinance requiring transient merchants to obtain a permit and pay a bond before selling door to door because of the potential impact it would have on a business if the same were required in every municipality the merchant visited);[15] *see also Welsh v. City of Orono*, 355 N.W.2d 117, 121 (Minn. 1984) (stating that while "[r]egulation of cigarette sales in a municipality has little or no effect upon other jurisdictions . . . if all political subdivisions adjoining Lake Minnetonka could regulate dredging of its lakebed, different portions of the lake would be subject to different and varied standards and regulations."). Thus, even under the new primary purpose and effects test, our existing jurisprudence requires us to look at the ripple effect of multiple cities implementing related legislation.

The doctrine of extraterritoriality is neither obscure nor outdated, nor unique to two Minnesota Supreme Court decisions.[16]

employee enters a municipality? Could a municipality require vacation time to be accrued in the name of well-being and mental health? This new test has no limits. The court states that the "primary purpose and effect of the Ordinance is to regulate work performed within the Minneapolis city limits." This judicially created doctrine is a bottomless grant of municipal power—any ordinance is valid as long as it regulates work performed within the municipality.

14. This consideration fits well with an extraterritoriality analysis. Other states have applied this ripple-effect analysis as part of their extraterritoriality doctrine. *Cf. Commercial Nat'l Bank of Chicago v. City of Chicago*, 89 Ill.2d 45, 59 Ill.Dec. 643, 432 N.E.2d 227, 243 (1982) (stating that "unrestrained extraterritorial exercise of [home rule] powers in zoning, taxation and other areas could create serious problems" because other cities could pass similar extraterritorial ordinances). In some instances when city legislation has effects that extend beyond its borders, and it is not authorized by statute to do so, courts have invalidated that legislation because there have been "serious consequences to residents outside the municipality, and [the effects have been] more than incidental or de minimus." *Ryals v. City of Englewood*, 364 P.3d 900, 907 (Colo. 2016) (citation omitted) (internal quotation marks omitted). The seriousness of these consequences includes an evaluation of the "ripple effect"—i.e., what would the effect be if multiple municipalities were to enact such legislation. *See City of Longmont v. Colo. Oil & Gas Ass'n*, 369 P.3d 573, 581 (Colo. 2016) (enjoining the city from enforcing an ordinance prohibiting fracking).

15. We suggested that lesser regulations, such as merely registering with the city, could be permissible. 159 N.W.2d at 117. We also suggested that a statewide requirement for such a license and bond would be permissible. *Id.*

16. The court cites to *Alexander Co. v. City of Owatonna*, 222 Minn. 312, 24 N.W.2d 244, 251 (1946), for the proposition that municipalities have wide latitude in the exercise of their police powers, including for public health and safety. I agree. But the reason they have wide latitude is because, as creatures of the State, the State granted municipalities those powers. In *Alexander*, the business property regulated was *within* the city of Owatonna. *Id.* at 247. The leave policies that Minneapolis regulates here, the records subject to the City's inspection authority, and most im-

The doctrine has roots in early American jurisprudence and is just as relevant today to a representative form of government. *See* Maddox, *supra*, 6–8. It is rooted in the idea of self-governance—that citizens should have the right to elect the officials who pass the laws that govern their conduct.

While it may be "convenient or gratifying to the people within" Minneapolis to "assum[e] . . . power over" the leave-time policies of employers outside its borders, it is not within the powers of the City of Minneapolis to do so. *See Orr*, 132 N.W. at 266. For the foregoing reasons, I respectfully dissent.

GILDEA, Chief Justice (dissenting).

I join in the dissent of Justice Anderson.



STATE of Minnesota, Appellant,

v.

Justin Joseph HUISMAN, Respondent.

A18-1710

Supreme Court of Minnesota.

Filed: June 10, 2020

Background: Defendant was convicted in the District Court, Steele County, of first-degree criminal sexual conduct and third-degree criminal sexual conduct, and he appealed. The Court of Appeals, Slieter, J., 2019 WL 4594082, reversed and remanded.

Holdings: The Supreme Court, Lillehaug, J., held that:

(1) defense counsel's concessions of fewer than all elements of crimes was not concession of guilt entitling defendant to new trial, and

(2) defendant was not denied effective assistance of counsel as result of concessions.

Reversed.

1. Criminal Law ⚿1870

Under Sixth Amendment, right to counsel is right to effective assistance of counsel. U.S. Const. Amend. 6.

2. Criminal Law ⚿1881, 1943

Generally, ineffective assistance of counsel claim requires that defendant show that (1) his attorney's performance fell below objective standard of reasonableness, and (2) reasonable probability exists that outcome would have been different, but for counsel's errors; however, if defense counsel concedes client's guilt without client's consent or acquiescence, counsel's performance is deficient and prejudice is presumed. U.S. Const. Amend. 6.

3. Criminal Law ⚿1166.10(1), 1943

If defense counsel concedes client's guilt without client's consent or acquiescence, defendant is entitled to new trial, regardless of whether he would have been convicted without admission. U.S. Const. Amend. 6.

4. Criminal Law ⚿1166.10(1), 1943

Defense counsel's unconsented-to concession on any single element of crime is not necessarily concession of guilt requiring new trial.

5. Criminal Law ⚿1166.10(1), 1943

Defense counsel's concessions of fewer than all elements of crimes of first- and third-degree criminal sexual conduct—in-

portantly, the businesses Minneapolis seeks to regulate, are all outside of the city.