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June 28, 2022

Northfield Charter Commission
801 Washington Street
Northfield, MN 55057

*Via U.S. Mail and
Via Email to Lance Heisler, Chair, at
lheisler@lampelaw.com*

RE: Legal Opinion
Our File No.: 3170.001

Dear Commission Members:

The Northfield Charter Commission ("Commission") has retained me to provide a legal opinion on the question of how many affirmative city council member votes are required to amend a zoning ordinance in the City of Northfield ("City"). This letter will provide my legal opinion on the question as stated below.

Facts

The Northfield City Council recently approved the rezoning of a parcel of property in the City to allow for a new development. The rezoning did not re-classify residentially zoned property to either commercial or industrial. The rezoning was approved by a vote of 4 to 1, with two members of the seven-member council absent. The City Charter requires such a rezoning to be approved by a two-thirds majority vote (at least five votes), while state law requires only a simple majority (at least four votes).

Question

Does Minnesota Statute Section 462.357, subdivision 2(b), supersede Section 4.5 of the Northfield City Charter to require only a majority vote of all members of the City Council to amend a zoning ordinance?

Answer

Yes. Because the Minnesota legislature has preempted the City's charter authority with respect to the process by which land use controls are adopted or amended, the simple majority requirement in Minn. Stat. § 462.357, subd. 2(b) governs over the two-thirds majority requirement of the City Charter. The City Council's 4-1 vote adopting the rezoning was legally sufficient.

Discussion

As authorized by the Minnesota constitution and state statute, Northfield has adopted a home rule charter for its government. *See* Minn. Const. art. XII, subd. 4; Minn. Stat. § 410.04 (2022). While a charter city such as Northfield has broad governance authority, all charter provisions remain subject to state law and may not be contrary to state public policy. *A.C.E. Equip. Co. v. Erickson*, 152 N.W.2d 739, 741 (Minn. 1967). “[I]n matters of municipal concern, home rule cities have all the legislative power possessed by the legislature of the state, save as such power is expressly or impliedly withheld.” *State ex re. Town of Lowell v. City of Crookston*, 91 N.W.2d 81, 83 (Minn. 1958). On matters of state concern, however, the legislature may preempt charter authority. *Id.* at 83–84.

Section 4.5 of the City Charter provides as follows:

Except as in this Charter otherwise provided, all legislation shall be by ordinance. An ordinance may provide for fixing and changing fees, rates and other charges by resolution of the city council. The aye and no vote on ordinances, resolutions, and motions shall be recorded unless the vote is unanimous. An affirmative vote of a majority of all the members of the council shall be required for the passage of all ordinances and resolutions, *except that adoption of and amendments to the comprehensive plan and the zoning ordinance shall require a two-thirds majority of all members of the council* and except as otherwise provided by this Charter or required by state law.

Charter § 4.5 (emphasis added). State law, however, provides:

[T]he governing body may adopt and amend a zoning ordinance by a majority vote of all its members. The adoption or amendment of any portion of a zoning ordinance which changes all or a part of the existing classification of a zoning district from residential to either commercial or industrial requires a two-thirds majority vote of all members of the governing body.

Minn. Stat. § 462.357, subd. 2(b) (2022). The conflict therefore lies in the number of votes required to amend a zoning ordinance. The Charter requires a two-thirds majority vote of all members of the Council, or at least five votes, while state law requires only a simple majority, or at least four votes.¹ If the Charter governs, the Council’s 4-1 vote was insufficient to adopt the amendment. If state law governs, the amendment was properly adopted.

The question in this instance is whether the legislature has preempted the City’s authority to prescribe a different process for the amendment of a zoning ordinance than the process

¹ Because the vote at issue in Northfield did not involve rezoning property from residential to either commercial or industrial, the exception in the statute that would require a two-thirds majority does not apply.

contained in state law. "The doctrine of preemption is premised on the right of the state to so extensively and intensively occupy a particular field or subject with state laws that there is no reason for municipal regulation." *Nordmarken v. City of Richfield*, 641 N.W.2d 343, 348 (Minn. App. 2002), *review denied* (Minn. June 18, 2002).

Minnesota Statutes section 462.357 is part of the state Municipal Planning Act ("MPA"). The stated purpose and policy of the MPA is to "provide municipalities, in a single body of law, with the necessary powers and a uniform procedure for adequately conducting and implementing municipal planning." Minn. Stat. § 462.351.

In a 2002 case involving the City of Richfield, the Minnesota Court of Appeals analyzed whether the MPA preempted a provision in the Richfield city charter that allowed a referendum on certain zoning amendments. *Nordmarken*, 641 N.W.2d 343. Focusing on the "single body of law" language in the MPA, as well as other provisions supporting the need to prevent municipal plans from having an impact on other jurisdictions, the court of appeals concluded that "by 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 of the process by which municipal land use and development laws are finally approved or disapproved." *Id.* at 349. Because the MPA did not include the right of referendum, Richfield's charter provision was unenforceable. *Id.* The *Nordmarken* court's analysis and conclusion on the MPA's preemption of inconsistent charter provisions is controlling in the present case and requires the conclusion that the Northfield Charter provision is preempted by state law.

Other authority also supports this conclusion. While the *Nordmarken* case did not specifically address a conflict between state law and city charter regarding the number of votes needed to adopt a zoning ordinance, a 2002 opinion of the Minnesota Attorney General involving the city of Moorhead directly addressed "whether a home-rule charter city may adopt a more restrictive voting requirement than that required by state statute for adoption or amendment of zoning ordinances." Minn. Op. Atty. Gen. 59A-32 (Jan. 25, 2002). The facts at issue in the opinion are essentially identical to those here: the Moorhead city charter required a two-thirds vote to adopt or amend zoning ordinances, in conflict with Minn. Stat. § 462.357, subd. 2(b), which only requires a simple majority. *Id.* The Attorney General concluded that the state law "prevails over inconsistent municipal ordinances or charter provisions," and that the more restrictive charter provision could not be applied. *Id.*²

Interestingly, the Attorney General's opinion discussed the legislative history of the voting requirement in Minn. Stat. § 462.357, subd. 2(b) and noted that Moorhead's charter provision was inconsistent with a 2001 amendment to the statute. Prior to 2001, the law required a two-thirds vote for the adoption or amendment of any zoning ordinance. Minn. Stat. § 462.357, subd. 2 (2000). In 2001, however, the legislature amended section 462.357, subd. 2 to require only a simple majority vote of all of the members, except for a rezoning that reclassifies property from residential to either commercial or industrial which still requires a two-thirds vote. 2001 Minn. Laws ch. 207, § 13.

² While attorney general opinions are not binding, they are "entitled to careful consideration" by appellate courts. *City of Brainerd v. Brainerd Invs. P'ship*, 812 N.W.2d 885, 891 (Minn. App. 2012).

From the notes in the Northfield Charter, it appears that Section 4.5 was last adopted or amended in 2000, prior to the legislative change. When it was adopted, the two-thirds vote requirement was consistent with state law. After the 2001 legislative amendment, however, the two-thirds requirement for all zoning ordinances is no longer consistent with the MPA and is preempted by the current requirements of section 462.357, subd. 2(b). A charter amendment is likely appropriate to bring Section 4.5 in line with current state law.

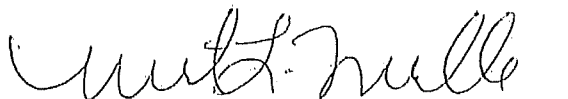
Conclusion

Based on these authorities, it is my opinion that the simple majority requirement in Minn. Stat. § 462.357, subd. 2(b) supersedes and preempts the requirement in the Northfield City Charter requiring a two-thirds vote to amend a zoning ordinance. The City Council's 4-1 vote adopting the rezoning for the proposed development was sufficient to lawfully adopt the ordinance.

Please advise if you have any questions or require clarification regarding this opinion.

Sincerely,

GREGERSON, ROSOW, JOHNSON & NILAN, LTD.


Margaret L. Neuville