STATE OF MINNESOTA

COUNTY OF HENNEPIN

DISTRICT COURT

FOURTH JUDICIAL DISTRICT

Joel Jennissen, Russell Burnison, Mark Vanick, William Reichert, and Sunil Lachhiramani,

Plaintiffs,

vs.

City of Bloomington,

Defendant.

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

File No. 27-CV-16-10786

Judge Daniel C. Moreno

The above-entitled matter came before the Court on August 24, 2016, with Defendant's motion for summary judgment. On September 7, 2016, Plaintiffs filed a cross motion for summary judgment and a memorandum in support thereof. On September 28, 2016, Defendant submitted a memorandum in support of its motion for summary judgment. On October 6, 2016 and October 12, 2016, Plaintiffs and Defendant filed their respective reply memorandums. On October 17, 2016, a hearing was held on the cross motions for summary judgment. The Court subsequently took the matter under advisement.

APPEARANCES

Michael R. Drysdale, Esq., appeared on behalf of Plaintiffs Joel Jennissen, Russell Burnison, Mark Vanick, William Reichert, and Sunil Lachhiramani.

Shelley M. Ryan, Esq., and George C. Hoff, Esq., appeared on behalf of Defendant City of Bloomington.

Based upon all the files, records, and arguments of the parties, and the Court being fully advised in the premises,

IT IS HEREBY ORDERED THAT

1.) Defendant City of Bloomington's motion for summary judgment is GRANTED;
2.) Plaintiffs Joel Jennissen, Russell Burnison, Mark Vanick, William Reichert, and Sunil Lachhiramani's motion for summary judgment is DENIED; and
3.) The attached memorandum is incorporated herein by reference.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Date: JAN. 11, 2017

BY THE COURT:

Daniel C. Moreno
Judge of District Court

MEMORANDUM OF LAW

Plaintiffs Joel Jennissen, Russell Burnison, Mark Vanick, William Reichert, and Sunil Lachhiramani have filed a complaint seeking declaratory judgment and an order of mandamus compelling Defendant City of Bloomington ("the City") to put a charter amendment on the next general election ballot regarding the City's transition to organized waste collection. The parties have filed cross motions for summary judgment. Because Plaintiffs' proposed charter amendment is preempted by the Minnesota Waste Management Act, the Court grants the City's motion for summary judgment and denies Plaintiffs' motion for the same.

STATEMENT OF FACTS

The facts in this matter are undisputed and arise out of the Bloomington City Council's decision to move from an "open system" method of garbage removal to an "organized collection" method. Prior to December 2015, the City had an open system of garbage collection. The open system involved property owners contracting with city-licensed haulers of their choice to organize their garbage collection. *Jennissen I* at 3.[1]

In late 2014, the City began a lengthy process to shift to organized collection. *Jennissen I* at 3; Affidavit of Shelly M. Ryan ("Ryan Aff."), Ex. 1. Organized collection involves a specified hauler, selected by the municipality, collecting all of the waste generated within a geographic location. Minn. Stat. § 115A.94, subd. 1. The move to organized collection was spurred by the Bloomington Department of Public Works, which requested the city council to take action on the switch in October 2014. Ryan Aff., Ex. 1. The department cited several potential social, environmental, and economic benefits in switching to organized collection. *Id.*

[1] "*Jennissen I*" refers to the Order Granting Defendant's Motion for Summary Judgment and Denying Plaintiffs' Motion for Summary Judgment, issued by Judge James Moore, on April 25, 2016. The order can be found at exhibit J of the Affidavit of Michael Drysdale.

On June 1, 2015, a public hearing was held on the matter. *See* Ryan Aff., Ex. 2. The meeting was attended by over 500 residents, 90 of whom addressed the city council with questions and comments. *Id.* Finally, on June 22, 2015, the city council voted 6-1 to adopt Resolution 2015-71, which adopted organized collection in the city. Ryan Aff., Ex. 3. The resolution explained the lengthy process the City followed in reaching its decision to make the switch, including the formation of the Organized Collections Options Committee (OCOC), which researched and produced a report on the issue. *Id.*

On March 24, 2015, Plaintiffs submitted an initiative petition to the City, which proposed an ordinance requiring the city council "to first seek voter approval prior to making changes in the solid waste collection system." Ryan Aff., Ex. 4. On March 27, 2015, the Bloomington City Attorney informed Plaintiffs via letter that the subject matter of their proposed ordinance was preempted by the Minnesota Waste Management Act (WMA). Affidavit of Michael R. Drysdale ("Drysdale Aff."), Ex. A. Specifically, the city attorney noted that the WMA contains "very detailed procedures by which municipalities can implement" organized collection, and that Plaintiffs' proposed ordinance would prevent city officials from following the procedures set out by the legislature. *Id.* Plaintiffs, through counsel, subsequently asked the city attorney to reconsider her decision, which she declined to do on June 4, 2015. *See* Drysdale Aff., Ex. B, C.

On June 16, 2015, Plaintiffs filed a lawsuit in Hennepin County District Court seeking declaratory judgment that the city attorney's refusal to approve their ballot initiative was contrary to law, and asking for an order of mandamus compelling the city attorney to approve the initiative so it could be placed on the ballot. Drysdale Aff., Ex. 5. The parties subsequently brought cross motions for summary judgment, and a hearing on the motions was held on October 21, 2015 before Judge James Moore. Drysdale Aff., Ex. 6.

While the lawsuit was pending, the City entered a contract with Bloomington Haulers for waste collection ("the hauler contract"), which was approved in December 2015. *See* Drysdale Aff., Ex. G; Ryan Aff., Ex. 10. The hauler contract called for an initial term of five years, and the City reserved the right to extend the contract an additional five years after the initial term. Drysdale Aff., Ex. G, ¶ 35. The contract was specific with dates and times of collection, the types of waste covered under the contract, and the rights and responsibilities of each party. *See id.* The City also reserved the right to terminate the contract at any time in the event of a material default by the haulers. *Id.* at ¶ 12.1.1. Finally, the contract addressed the matter pending before Judge Moore, and provided contingencies for three different outcomes to the lawsuit. *Id.* at ¶ 12.2.3. It provided:

> An action has been commenced against the City entitled Jennissen, et. al. vs. City of Bloomington (Hennepin County District Court File No. 27-CV-15-11494) seeking, among other things, declaratory relief and an injunction which is currently pending and awaiting the Court's decision on cross summary judgment motions. In the event a court determines that the City's process of organizing Solid Waste Collection was proper and authorized by Minnesota Statute 115A.94(a), on or before February 29, 2016, the Agreement shall proceed as written. In the event the court determines that the City's process of organizing Solid Waste Collection was improper or not authorized by Minnesota Statute 115A.94(a), this Agreement shall immediately terminate upon written notice by either party. In the event the court does not either rule that the process is proper or improper, or authorized or unauthorized by February 29, 2016, the parties agree to suspend all efforts to organize and perform under this Agreement for up to twelve (12) months, at which time the Agreement will automatically terminate. During the twelve (12) month suspension period, if the court rules that the process is proper and authorized, the Agreement shall proceed as written. During the twelve (12) month suspension period, if the court rules that the process is improper or not authorized, this Agreement shall immediately terminate upon written notice by either party.

Id.

On April 25, 2016, Judge Moore issued an order granting the City's motion for summary judgment and denying Plaintiffs' motion for the same. *Id.* However, Judge Moore did not

determine whether the City's process of instituting organized collection was proper and authorized under section 115A.94. Rather, Judge Moore concluded that Plaintiffs' proposed initiative was not a proper ordinance, and noted that if Plaintiffs wanted to re-define the powers of the city council, they should do so by amending the city charter. *Id.* In other words, Judge Moore granted summary judgment to the City based on a threshold issue, and did not reach the motions' merits. Judge Moore subsequently ordered judgment entered in favor of the City, and dismissed Plaintiffs' complaint. *Id.*

Prior to Judge Moore issuing his order, Plaintiffs submitted a referendum petition to the City, seeking a referendum on Ordinance 2015-45, which had amended the city code to implement organized collection. Drysdale Aff., Ex. H. However, on January 20, 2016, the city clerk concluded that the petition was insufficient due to procedural deficiencies.[2] *Id.* The city attorney issued an opinion on January 22 that agreed with the city clerk's conclusion, and also noted that the proposed referendum was preempted by the WMA. Drysdale Aff., Ex. I.

On May 18, 2016, after Judge Moore had issued his order, Plaintiffs filed a ballot question petition for a charter amendment with the charter commission, the receipt of which was acknowledged by the commission on June 9, 2016. Ryan Aff., Ex. 7. The proposed charter amendment read as follows:

> Unless first approved by a majority of voters in a state general election, the City shall not replace the competitive market in solid waste collection with a system in which solid waste services are provided by government-chosen collectors or in government-designed districts. The adoption of this charter amendment shall supersede any ordinances, ordinance amendments, or charter amendments related to solid waste adopted by the City Council in 2015-2016.

[2] Specifically, the city clerk found that the ordinance's full text was not attached to each signature page, and that the person circulating the petition paper did not make an affidavit that the signatures thereon were genuine. Drysdale Aff., Ex. H. Both of these deficiencies were in violation of the city charter. *Id.*

Ryan Aff., Ex. 9. The city clerk subsequently concluded that the charter amendment petition was sufficient under state law and satisfied all procedural requirements thereunder. *Id.*

However, on June 27, 2016, the city council passed Resolution No. 2016-62, which rejected the charter amendment petition as "manifestly unconstitutional." Ryan Aff., Ex. 10. The resolution noted that the charter amendment "would invalidate a lengthy and thoughtful legislative process" that moved the City to organized collection, and "would violate the constitutional protections of due process by its retroactive application to, and invalidation of" the rights and responsibilities of the parties to the hauler contract. *Id.* The resolution also found that the proposed charter amendment went "beyond the statutory authorization of Minnesota Statutes Section 410.12 by its application to a broad range of official actions" by the city council, namely by requiring the council's actions to receive "after-the-fact approval of the electorate." *Id.* Finally, the resolution found that the charter amendment was preempted by the WMA. *Id.* The city council approved the resolution by a 6-0 vote. *Id.*

On July 19, 2016, Plaintiffs filed the present matter in Hennepin County District Court. Plaintiffs first seek declaratory judgment that the city council's refusal to authorize Plaintiffs' charter amendment was arbitrary, capricious, and contrary to law. Second, Plaintiffs seek a mandatory injunction compelling the city council to place the charter amendment on the next general election ballot. On August 24, 2016, the City moved for summary judgment and on September 7, 2016, Plaintiffs moved for summary judgment. On October 17, 2016, a hearing was held on the motions and the Court took the matter under advisement.

STANDARD OF REVIEW

Summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits . . . show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law." Minn. R. Civ. P. 56.03; *see also Stringer v. Minn. Vikings Football Club, LLC*, 705 N.W.2d 746, 754 (Minn. 2005). A genuine issue of fact exists if there is sufficient evidence that a jury could reasonably return a verdict for either party. *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986)). All evidence in the record before the Court is to be construed in the light most favorable to the nonmoving party. *Odenthal v. Minn. Conference of Seventh-Day Adventists*, 649 N.W.2d 426, 429 (Minn. 2002); *Nord v. Herreid*, 305 N.W.2d 337, 339 (Minn. 1981) (noting that all justifiable inferences are to be drawn in favor of the nonmoving party). The court is to "solely determine whether genuine factual issues exist," not to weigh the evidence or make factual determinations. *DHL, Inc.* 566 N.W.2d at 70.

ANALYSIS

I. PLAINTIFF'S CHARTER AMENDMENT IS NOT MANIFESTLY UNCONSTITUTIONAL.

The City argues that the proposed charter amendment is manifestly unconstitutional because it impairs the City's contract with Bloomington Haulers, and thus should not be placed on the ballot. The Court disagrees.

"[W]hen a proposed charter amendment is manifestly unconstitutional, the city council may refuse to place the proposal on the ballot." *Minneapolis Term Limits Coalition v. Keefe*, 535 N.W.2d 306, 308 (Minn. 1995). This is because "adoption of any charter provision contrary to the public policy of the state, as disclosed by general laws," is forbidden. *State ex rel Town of Lowell v. City of Crookston*, 91 N.W.2d 81, 83 (Minn. 1958). This prohibition extends to proposed laws

that contravene constitutional provisions. *State ex rel. Andrews v. Beach*, 191 N.W. 1012, 113 (Minn. 1923). Indeed, "[t]he power conferred upon cities to frame and adopt home rule charters is limited by the provision that such charter shall always be in harmony with and subject to the constitution and laws of the state." *Town of Lowell*, 91 N.W.2d at 83. Of relevance to this case, the Minnesota Constitution expressly forbids "any law impairing the obligation of contracts." Minn. Const. Art. I, sec. 11.

Both parties rely on *Davies v. City of Minneapolis* to support their arguments. 316 N.W.2d 498 (Minn. 1982). *Davies* involved a challenge to the funding mechanisms for the Metrodome's construction. To pay for construction, the state issued revenue bonds, which were to be funded by a new hotel-motel liquor tax. The levying of such a tax was a statutory prerequisite for any municipality that sought to build a stadium within its borders. On October 15, 1979, the state issued revenue bonds, and on November 1, 1979, a group of residents introduced a proposed charter amendment that sought to repeal the hotel-motel liquor tax. The city council refused to place the proposed charter amendment on the ballot, and the residents sued. The supreme court affirmed the city's decision not to place the proposed amendment on the ballot, noting that it would "unconstitutionally impair the contractual rights of stadium bondholders." *Id.* at 502. Specifically, the court noted that state law required the tax to be used to pay debt service on the bonds, and that the tax agreement "constituted a contract with and for the security of all bondholders of the bonds and revenue anticipation certificates secured by the tax." *Id.* at 502 (internal quotations omitted). As such, the amendment, if passed, would impair that contract "by totally eliminating an important security provision" therein. *Id.*

The City argues that the charter amendment is manifestly unconstitutional because it impairs the hauler contract. The Court disagrees. The parties both point to the contract provision

addressing the Judge Moore matter and the contingencies that the contract provided for three different outcomes to that litigation. The City argues that because it prevailed in the litigation, the contract proceeded as written and the proposed charter amendment would materially impair the parties' contractual obligations.

While the City is correct that it prevailed in the Judge Moore matter, the hauler contract's provision was not predicated on who prevailed in the matter. Rather, the contract provision was predicated on a determination that "the City's process of organizing Solid Waste Collection was *proper and authorized by Minnesota Statute 115A.94(a).*" Drysdale Aff., Ex. G, ¶ 12.2.3 (emphasis added). Judge Moore did not reach a determination as to whether the process was proper and authorized under the WMA. Rather, he concluded that the proposed initiative was not a proper ordinance, and that Plaintiffs' goals were most appropriately accomplished by a charter amendment. In other words, Judge Moore granted summary judgment to the City based on a threshold issue without reaching the merits. Because there was no determination as to whether the City's process for implementing organized collection was proper under the statute, the Court interprets Judge Moore's order as an indeterminate outcome.

An indeterminate outcome was anticipated by the hauler contract, specifically a scenario where Judge Moore failed to rule whether the process was "proper or improper, or authorized or unauthorized" under the WMA. In such an event, the parties agreed to

> suspend all efforts to organize and perform under this Agreement for up to twelve (12) months, at which time the Agreement will automatically terminate. During the twelve (12) month suspension period, if the court rules that the process is proper and authorized, the Agreement shall proceed as written. During the twelve (12) month suspension period, if the court rules that the process is improper or not authorized, this Agreement shall immediately terminate upon written notice by either party.

In light of the hauler contract specifically anticipating a scenario where Judge Moore did not reach the motions' merits, and in light of Judge Moore in fact not reaching the merits, the Court cannot find that Plaintiffs' proposed charter amendment would materially impair the hauler contract.

Because the Court concludes that the charter amendment does not impair the hauler contract, it cannot find that the proposed amendment is manifestly unconstitutional on those grounds.

II. PLAINTIFFS' CHARTER AMENDMENT IS PREEMPTED BY THE MINNESOTA WASTE MANAGEMENT ACT.

The parties also dispute whether Plaintiffs' charter amendment is preempted by the Minnesota Waste Management Act. The City argues that the WMA dictates the exclusive process by which a municipality can implement organized collection, and Plaintiffs' attempt to add a voter approval requirement to this process is not permitted. Plaintiffs argue that the WMA only sets out the minimum requirements for implementing organized collection, and that they merely seek to add one additional step to the process.

The Court will begin its analysis with an overview of the WMA and the process it sets out for implementing organized collection. The Court will then determine whether it operates to preempt Plaintiffs' charter amendment.

A. The Minnesota Waste Management Act

The Waste Management Act aims to address environmental protection at a statewide level. The Act's declaration of policy notes that it was passed "to protect the state's land, air, water, and other natural resources and the public health by improving waste management in the state." Minn. Stat. § 115A.02(a). The WMA seeks to improve waste management by reducing the amount of waste generated, separating recycling from waste, reducing "indiscriminate dependence on disposal of waste," and "coordinat[ing] . . . solid waste management among political subdivisions."

Id. The Act's declaration of policy further notes that the state's waste management goal is to "foster an integrated waste management system in a manner appropriate to the characteristics of the waste stream and thereby protect the state's land, air, water, and other natural resources and the public health." Minn. Stat. § 115A.02(b). The WMA's concern for statewide environmental protection has been echoed by courts when discussing the Act. *See, e.g., County of Winona v. City of Winona*, 453 N.W.2d 710, 713 (Minn. Ct. App. 1990) ("It is . . . in the public interest to protect Minnesota's environment."). Courts have also recognized the WMA as part of the state's overall environmental protection scheme. *See Zenith/Kremer Waste Systems, Inc. v. Western Lake Superior Sanitary Dist.*, 572 N.W.2d 300, 306 (Minn. 1997).

Among its many functions, the WMA lays out the elaborate process that a municipality must follow in order to implement organized collection. It first requires establishment of a committee, which must undertake several tasks. Minn. Stat. § 115A.94, subd. 4a, 4b. The committee is required to develop a list of criteria to evaluate organized collection methods, which can include costs to residents, impact on the municipality's streets, operating costs, incentives for waste reduction, and "other physical, economic, fiscal, social, environmental, and aesthetic impacts." Minn. Stat. § 115A.94, subd. 4b(2). The committee is also required to "collect information regarding the operation and efficacy of existing methods of organized collection in other cities and towns." Minn. Stat. § 115A.94, subd. 4b(3). The committee is also required to seek input from, at minimum, the town's governing body, the local official responsible for solid waste issues, the municipality's currently licensed solid waste collectors, and the town's residents. Minn. Stat. § 115A.94, subd. 4b(4). Finally, with the information gained from these inquiries, the committee must issue a report based on its research and findings and provide a recommendation to the town's governing body, which subsequently decides whether to implement organized

collection. Minn. Stat. § 115A.94, subd. 4b(5). There is no evidence or allegation that the City or the OCOC failed to undertake any of these steps in this case.

With the WMA's goals and policies in mind, the Court next turns to whether Plaintiffs' charter amendment is preempted by the Minn. Stat. § 115A.94.

B. Plaintiffs' Charter Amendment is Preempted by the WMA.

The Court finds that Plaintiffs' proposed charter amendment is preempted by the WMA, and that the WMA sets out the exclusive process for implementing organized collection.

Municipalities are creations of the state and have no inherent power. *Mangold Midwest Co. v. Village of Richfield*, 143 N.W.2d 813, 820 (Minn. 1966); *Altenburg v. Board of Sup'rs of Pleasant Mound Tp.*, 615 N.W.2d 874, 880 (Minn. Ct. App. 2000). Rather, a municipality's powers are limited to those conferred upon it by the state. *Altenburg*, 615 N.W.2d at 880. Accordingly, while a city has "broad power to legislate" municipal affairs, state law can limit this power in certain areas. *City of Morris v. Sax Investments, Inc.*, 749 N.W.2d 1, 6 (Minn. 2008) (internal quotations omitted). Indeed, "[t]he grant to a municipality of the power to govern itself through a home rule charter and to include in the charter the right of referendum does not preclude the legislature from preempting charter authority on matters of state concern." *Nordmarken v. City of Richfield*, 641 N.W.2d 343, 348 (Minn. Ct. App. 2002).

Of relevance to this motion, a city cannot enact a regulation in a field that state law fully occupies. *Id.* In such cases, the municipal ordinance is considered preempted by the state law, and cannot be given effect. *Canadian Connection v. New Prairie Tp.*, 581 N.W.2d 391, 394 (Minn. Ct. App. 1998). Further, an attempt to impose an additional regulation in a preempted field is void even if the ordinance "does not duplicate or directly conflict with an explicit provision in state law." *Canadian Connection*, 581 N.W.2d at 394; *Nordmarken*, 641 N.W.2d at 348. That is, under

the preemption doctrine, "it does not matter whether the regulation coincides with, is complimentary to, or opposes the state law." *Minnesota Agr. Aircraft Ass'n v. Township of Mantrap*, 498 N.W.2d 40, 42 (Minn. Ct. App. 1993).

Preemption does not need to be expressly stated by the legislature, and can be implied by state law. *Altenburg*, 615 N.W.2d at 880. Implied preemption exists when a state law "occupies the field" of an area that a municipal ordinance seeks to regulate. *City of Birchwood v. Simes*, 576 N.W.2d 458, 460 (Minn. Ct. App. 1998). Whether a state law occupies a field, and thus preempts a municipal ordinance, depends on the facts and circumstances of each case. *Nordmarken*, 641 N.W.2d at 348. To this end, courts review four questions related to the subject implicated by the state and local laws in determining whether a municipal ordinance is preempted:

> (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?

Mangold, 143 N.W.2d at 820. For purposes of the second and third factors, determining whether a subject matter has become solely a matter of state concern can be informed by legislation passed on the issue, or by "extensive regulations" promulgated by the state. *See Northwest Residence, Inc. v. City of Brooklyn Center*, 352 N.W.2d 764, 772-73 (Minn. Ct. App. 1984).

In *Nordmarken v. City of Richfield*, a case relied upon by both parties, the city of Richfield approved an amendment to its comprehensive land use plan that permitted construction of an office building in a residentially zoned area. 641 N.W.2d at 343. Residents subsequently filed petitions for a referendum on the amendment and the rezoning of the property, which were rejected by the city council on preemption grounds. The court of appeals agreed with the city and found that the

proposed referendum was preempted by the state's Municipal Planning Act (MPA) and the Metropolitan Land Planning Act (MLPA). *Id.* at 348.

In reaching its conclusion, the court looked at the laws' statements of policy and purpose, as well as the laws' procedural structures. *Id.* at 349. The court noted that the "detailed and elaborate structure of procedural authority and processes" laid out by the MPA and MLPA was indicative of a state intent to occupy the field. *Id.* The court pointed out that "urbanization and land development transcend local boundaries" and that the procedures established by the MPA and MLPA insured a consistent and orderly approach to development. *Id.* Ultimately, the court noted that "[l]ocal regulation by referendum of the process for land use planning and zoning is sufficiently antithetical to the avowed purposes of creating that single body of law and uniform procedure that it has substantial potential for adverse effect on the population." *Id.* Indeed, the court noted that to permit a referendum to override the process provided by the MPA and MLPA would lead to development "without an overriding concept of current and future development and land use needs of the community and of neighboring communities," and would lead to land use decisions made "without the benefit of the expertise of land use professionals." *Id.*

Evaluating the present issue in light of this case law, the Court concludes that Plaintiffs' proposed charter amendment is preempted by the WMA. With regard to the first factor, the Court finds that the subject matter being regulated is the process a municipality must follow in order to implement organized collection.

With regard to the second and third factors, while the legislature has not expressly stated that the charter amendment is preempted, the Court finds that the process established by the legislature in the WMA is so extensive and so fully covers the implementation of organized collection that it is solely a matter of state concern. As discussed, the WMA lays out a complex

list of requirements that a municipality must undertake prior to switching to organized collection. It requires input from a variety of professionals and experts, as well as research on environmental, social, and economic issues. Further, the WMA's numerous references to statewide environmental concerns, its stated intent to foster "an integrated waste management system," and its stated intent to coordinate "solid waste management among political subdivisions" indicates a desire for consistency and uniformity with regard to the laws and processes under the Act. To allow municipalities to create additional requirements to the implementation process, such as voter approval, would eliminate this uniformity.

Finally, the subject matter is of a nature where local regulation could have unreasonable adverse effects on the general populace of the state. Allowing town residents to add requirements to this implementation process, or to other aspects of the WMA, would create a patchwork system of procedures throughout the state and make it difficult for municipalities to make environmentally conscious decisions. Most problematically, it could lead to a town's residents overriding a decision made to benefit the environment and public health out of concerns for their own personal convenience.

For instance, in this case, Plaintiffs' objections to implementing organized collection appear to be primarily economic in nature. *See* Pl. Reply Memo (noting that concerns of transitioning from open system to organized collection include whether residents will get "fair value for their solid waste service payments" and the City's possible exposure to "excess legal liability"). However, the economic impact of implementing organized collection is just one of several factors that the OCOC investigated, and the city council considered, when determining whether to implement organized collection. To allow residents, many of whom are presumably not

privy to the information compiled by the OCOC,[3] to overrule a city council's decision based solely on personal economic cost or political philosophy[4] would go against both the letter and the spirit of the WMA and Minn. Stat. § 115A.94. While the Court is sympathetic to residents' economic concerns, a decision based on this factor minimizes the expert input received and disregards the physical, social, environmental, and aesthetic considerations that must be considered under the WMA. Ultimately, adding processes and granting a city's residents de facto veto power could very plausibly undermine the WMA's purpose and statewide scope, and have an adverse effect on the state's environment and public health. *See Board of Sup'rs of Crooks Tp., Renville County v. ValAdCo*, 504 N.W.2d 267, 269 (Minn. Ct. App. 1993) (noting that "pollution by its very nature is difficult to confine to particular geographical areas").

Because of the WMA's purpose of protecting the environment and public health at a statewide level, and because the complex statutorily-required implementation process ensures consistency and uniformity among the state's municipalities, the Court finds that the legislature intended the state to fully occupy the process of implementing organized collection. Accordingly, the Court finds that Plaintiffs' proposed charter amendment is preempted, and the City's motion for summary judgment is granted.[5]

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[3] Plaintiffs argue that it condescends the City's residents to suggest that they would be unable to understand the nuances of this issue. However, the Court does not suggest that the residents are unable to understand the nuances; it simply points out that most residents do not have the time to research the nuances. Citizens elect representatives to consider complex and difficult decisions such as this one. Most residents do not have the time to research, hear testimony, and consider evidence on issues such as this, and a representative is elected in large part to take on that responsibility. As a result, a representative will naturally have a greater breadth of information from which to make a decision than the average resident, and thus will be able to make a more informed decision. The Court also notes that residents have the ability to make known their disagreement with their representative's decisions by exercising their right to remove or replace the representative via the ballot.

[4] The Court notes the politically-loaded wording of the charter amendment, namely its reference to collection services being provided by "government-chosen collectors" in "government-designed districts."

[5] Plaintiffs also cite to Minn. Stat. § 115A.94, subd. 6, which clarifies that organized collection is optional

CONCLUSION

Because Plaintiffs' proposed charter amendment is preempted by the Minnesota Waste Management Act, the City's motion for summary judgment is granted and Plaintiffs' motion for the same is denied.[6]

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and that a municipality "may exercise any authority granted by any other law, including a home rule charter, to govern collection of solid waste." Plaintiffs argue that this provision explicitly allows their charter amendment, because such amendments are permitted under the city charter. However, subdivision 6 specifically addresses a city's ability to *govern* waste collection, whereas subdivisions 4a, 4b, and 4c, deal specifically with *implementation*. The language to this effect is notable, as subdivisions 4a, 4b, and 4c make repeated references to "implementation," while subdivision 6 omits the word and uses "govern" in its stead. In other words, while subdivision 6 permits a city to use any mechanism in its charter to address the administration of organized collection, it does not extend to the implementation of organized collection itself.

[6] The City raises two additional arguments—(1) that the charter amendment is an improper referendum and (2) that the City is not authorized to put the proposed amendment's language in the charter. The Court need not address these issues in light of its findings, and also notes that the City's briefing on the issues were inadequate.