STATE OF MINNESOTA

IN SUPREME COURT

A19-0916

Ramsey County

Gildea, C.J.

Bruce Clark, et al.,

Respondents,

vs.

Filed: October 16, 2019
Office of Appellate Courts

City of Saint Paul, et al.,

Appellants.

Gregory J. Joseph, Halper & Joseph, PLLC, Waconia, Minnesota, for respondents.

Lyndsey M. Olson, City Attorney, Megan D. Hafner, Assistant City Attorney, Saint Paul, Minnesota; and

Mark R. Bradford, David E. Camarotto, and Kerri J. Nelson, Bassford Remele, P.A., Minneapolis, Minnesota, for appellants.

Susan L. Naughton, Saint Paul, Minnesota, for amicus curiae League of Minnesota Cities.

S Y L L A B U S

1. A referendum on a Saint Paul ordinance that establishes organized waste collection services does not conflict with the requirements in Minn. Stat. §§ 115A.94–.941 (2018), that municipalities ensure that residents have waste collection services including through appropriate local controls, because ordinances that are not subject to the referendum

fulfill those requirements and the Legislature intended that municipalities have broad authority in the process for establishing organized waste collection.

2. A referendum on an ordinance that establishes organized waste collection services in the City does not impair the City's contract obligations under the Contract Clauses of the United States and Minnesota Constitutions.

Affirmed.

O P I N I O N

GILDEA, Chief Justice.

We must decide whether the district court erred in directing the City of Saint Paul to put a referendum question, regarding the City's ordinance that established organized waste collection in the City, on the ballot for the next municipal election. The district court concluded that doing so would not conflict with state law regarding the process for organized waste collection and would not unconstitutionally impair the City's contract with the haulers that provide that service. In an order filed on August 22, 2019, we affirmed the district court and stated that our opinion on the legal questions presented in this appeal would follow. Because we conclude that holding a referendum on the City's organized waste collection ordinance does not conflict with state law and will not unconstitutionally impair the City's contract with the haulers, we affirm.

FACTS

Saint Paul is a home rule charter city. *See* Minn. Const. art. XII, § 4 (permitting "[a]ny local government unit . . . [to] adopt a home rule charter for its government"); Minn. Stat. § 410.04 (2018) (authorizing "[a]ny city in the state" to "frame a city charter for its

own government in the manner" prescribed by chapter 410). The Saint Paul City Charter confers on City residents "every power which the people of the city might lawfully confer upon themselves." Saint Paul, Minn., City Charter § 1.03. The Saint Paul City Council exercises legislative power and takes actions by ordinance and resolutions. *Id.* §§ 1.04, 4.01, 6.01 ("The council shall exercise the legislative powers," and stating, "All acts of the council shall be by ordinance or resolution . . . ."). The City Charter also confers on residents "the right . . . to require ordinances to be submitted to a vote," which is known as "referendum." *Id.* § 8.01; *see also* Minn. Stat. § 410.20 (2018) (stating that a municipal charter may provide for "repeal of ordinances"). A referendum can be required by a petition signed by at least eight percent of those who voted in the last election for mayor, if the petition is filed within 45 days after an ordinance is published. Saint Paul, Minn., City Charter §§ 8.02(1), 8.05.

The facts of this case, which are undisputed, center on the City's decision to implement organized waste collection services for City residents. *See Jennissen v. City of Bloomington*, 913 N.W.2d 456, 458 (Minn. 2018) (describing organized collection as based on a municipal contract for collection within a defined area). By law, municipalities must ensure that residents have solid waste collection services. *See* Minn. Stat. § 115A.941 (2018). Section 115A.941 authorizes municipalities to use organized collection, city-provided collection, or private collection. Until October 1, 2018, the City used private, also called "open," waste collection for its residents. *See Jennissen*, 913 N.W.2d at 458 (describing open collection as allowing residents to contract individually with collectors "of their choice").

In July 2016, after the City's Public Works Department provided recommended goals and objectives for an organized waste collection system, the Saint Paul City Council embarked on the statutory steps for implementing organized waste collection. *See* Minn. Stat. § 115A.94, subd. 3 (2018) (allowing municipalities to "organize collection as a municipal service or by ordinance, franchise, license, negotiated or bidded contract, or other means"); *Jennissen*, 913 N.W.2d at 460 (explaining that Minn. Stat. § 115A.94 "outlines certain procedures related to the process of implementing organized collection of solid waste"). The City entered into a negotiation period with existing licensed collectors to develop a proposal under which interested collectors would provide organized collection services in the City. *See* Minn. Stat. § 115A.94, subd. 4d (2018). Negotiations officially began in August 2016, and were intended to allow the City and the consortium of collectors to work toward a mutually agreeable proposal for services.

After negotiations were completed, the City Council passed a resolution on July 26, 2017, announcing that it wanted to ensure that organized collection could be implemented in the City as soon as possible. City staff was directed to negotiate a final contract with the consortium of trash haulers. On November 8, 2017, the City Council passed a resolution, on a 5-2 vote, authorizing the execution of the final contract with a consortium of trash haulers known as "St. Paul Haulers, LLC."[1]

[1] Respondents have argued in this appeal that the City's process under section 115A.94, subdivision 4d, was less than public, but the record establishes that the City Council's deliberations and decisions occurred at public hearings and in public venues. In addition, no claim has been made that the City did not comply with the statutory requirements.

The contract between the City and St. Paul Haulers, which was signed on November 14, 2017, requires St. Paul Haulers to provide all waste collection services to residents, and confers on that entity the sole and exclusive right to provide waste collection services in the City during the 5-year term of the contract. Provisions of the contract establish the form, manner, and terms for organized collection by identifying permitted hours and days for service, types of collection services, special collection issues, and equipment issues. St. Paul Haulers is responsible for billing and customer service. St. Paul Haulers is not considered in default of the contract if its failure to perform is "due to an event of Force Majeure or for any breach by the City," and its performance is excused if prevented by acts or events beyond its "reasonable control," including "legislative, judicial, or executive acts." Based on staff recommendations, the City Council designated October 1, 2018, as the start of organized trash collection in the City.

Once the contract was signed, the City was required to establish organized collection through "appropriate local controls." Minn. Stat. § 115A.94, subd. 4d. On August 22, 2018, the City Council passed Ordinance No. 18-39, which created chapter 220 of the Legislative Code, to regulate organized collection in the City.[2] The ordinance was effective

[2] The City Council also adopted amendments to existing ordinances in chapters 32, 34, 60, and 357 of the current Code of Ordinances for conformity with newly adopted chapter 220. The amending ordinance for chapter 357, No. 18-40, was repealed by the City Council on October 17, 2018, after a timely referendum petition on that ordinance was filed with the City. *See* Saint Paul, Minn., City Charter § 8.05 (stating that a referendum on an ordinance must be on the ballot unless the ordinance is "entirely repealed" after the petition is filed).

September 5, 2018.[3] The ordinance requires residents to "deposit all trash" for collection at least once every 2 weeks, and all trash collected in the City must be "pursuant to a written contract with the City" that identifies the requirements for that service. "All previous private contracts between solid waste haulers" and residents were deemed "null and void on October 1, 2018," and no "new private contract[s]" between haulers and residents are valid. *Id*.

On October 16, 2018, Saint Paul residents submitted a petition to the Ramsey County Elections Office to authorize a referendum on Ordinance No. 18-39.[4] The elections office certified the petition as containing the minimum number of signatures required by section 8.02 of the City Charter, and on November 14, 2018, the City Council accepted the petition as sufficient to satisfy the signature requirements of the Charter. But, based on the City Attorney's review and legal opinion, the City Council concluded that a referendum on Ordinance No. 18-39 is preempted by state statutes that govern solid waste collection, specifically sections 115A.94 and 443.28 (2018); conflicts with state policy; and would be an unconstitutional interference with the City's contract with St. Paul Haulers. Thus, the City Council directed the City Clerk not to submit the referendum on Ordinance No. 18-39 as a ballot question.

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[3] The first reading of the ordinance was on July 18, 2018. The ordinance was passed on August 22, 2018, and signed by the Mayor on September 5, 2018.

[4] Referendum is the process by which voters compel elected officials to submit legislation to the voters for approval or rejection. *See St. Paul Citizens for Human Rights v. City Council*, 289 N.W.2d 402, 404 n.2 (Minn. 1979).

On February 7, 2019, respondents filed a petition under Minn. Stat. § 204B.44 (2018), with Ramsey County District Court, challenging the City's refusal to put the referendum question on the ballot. Relying on *Jennissen v. City of Bloomington*, 913 N.W.2d 456 (Minn. 2018), respondents asserted before the district court that residents' charter powers can be exercised to challenge a municipality's waste collection decisions. Respondents also asserted that a referendum vote on the ordinance that establishes organized collection would not impair the City's contract with the haulers, because even if the referendum is successful, the contract would only be terminated, not unconstitutionally impaired.

The City opposed the petition, asserting that the referendum power under a municipal charter is not without limits, particularly here, where the decision to use organized collection had been made, the contract signed, and the services implemented. Further, the City argued, a successful repeal of the ordinance through the referendum would prevent the City from fulfilling its obligations under a 5-year contract that grants the collectors an exclusive right to provide waste collection services and would thus unconstitutionally impair its contract with St. Paul Haulers.

The district court granted the petition.[5] The court first concluded that a municipality's decision to implement organized trash collection under section 115A.94 is

[5] The district court also ordered the suspension of the ordinance as of June 30, 2019, but later stayed that part of its order. In the order filed on August 22, 2019, we continued that stay "until the results of the election on November 5, 2019 are canvassed and declared under Minn. Stat. § 205.185 (2018)." *Clark v. City of Saint Paul*, No. A19-0916, Order at 2 (Minn. filed Aug. 22, 2019).

in addition to authority granted by other law, which includes the referendum power provided by the Saint Paul City Charter. The district court concluded, therefore, that there is no conflict between the statutory procedures that guide a municipality's decision to implement organized waste collection and a referendum on the ordinance that establishes that collection. Then, the district court rejected the City's contract-impairment claim, concluding that the contract's force-majeure clause encompasses a variety of events, including legislation, that could render performance of the contract impossible, and a contract cannot be impaired by the events that are specifically provided for in that contract.

The City appealed to the court of appeals, and we granted the City's petition for accelerated review.

ANALYSIS

The facts are undisputed. It is also undisputed that the City followed the statutory process in Minn. Stat. § 115A.94. And it is undisputed that respondents' referendum petition was in the proper form and had the required signatures. The issues before us in this appeal are, therefore, solely legal and our review is de novo. *See Gretsch v. Vantium Capital, Inc.*, 846 N.W.2d 424, 428 (Minn. 2014) (stating that constitutional questions are reviewed de novo); *City of Morris v. Sax Invs., Inc.*, 749 N.W.2d 1, 5 (Minn. 2008) ("The application of statutes, administrative regulations, and local ordinances to undisputed facts is a legal conclusion and is reviewed de novo.").

I.

We begin with the City's argument that the referendum conflicts with state statutes. Municipalities " 'have no inherent powers' " and can enact regulations only as " 'expressly

conferred by statute or implied as necessary in aid of those powers which have been expressly conferred.' " *State v. Kuhlman*, 729 N.W.2d 577, 580 (Minn. 2007) (quoting *Mangold Midwest Co. v. Vill. of Richfield*, 143 N.W.2d 813, 820 (Minn. 1966)); *see also City of Morris*, 749 N.W.2d at 6 (stating that "state law may limit the power of a city to act in a particular area"). Accordingly, municipal charter provisions "must be consistent with state law and state public policy." *Bicking v. City of Minneapolis*, 891 N.W.2d 304, 312 (Minn. 2017).

We have recognized three ways in which state law will preempt municipal legislative authority: by expressly stating so; where the express or implied terms of the state and local laws are irreconcilable; and by comprehensively addressing the subject matter in a manner that requires uniformity and statewide application. *See Jennissen v. City of Bloomington*, 913 N.W.2d 456, 459, 462 (Minn. 2018) (concluding that the Legislature did not intend to occupy the field of organized waste collection and, thus, section 115A.94 did not preempt a proposed charter amendment on the City of Bloomington's waste collection system); *Bicking*, 891 N.W.2d at 315 (concluding that a proposed charter amendment would add requirements that would "forbid what state law expressly permits" and thus was in conflict with state law); *Kuhlman*, 729 N.W.2d at 580 (explaining that legislation requiring statewide application and uniformity shows an intent to preempt the field of traffic regulation); *Mangold Midwest Co. v. Vill. of Richfield*, 143 N.W.2d 813, 816 (Minn. 1966) (noting that a conflict exists between a statute and a

municipal regulation when both "contain express or implied terms that are irreconcilable with each other").

The City relies on only the second type of preemption—conflict—in arguing that the referendum respondents seek is irreconcilable with state statutes. For its theory of conflict preemption, the City relies primarily on the requirements imposed by two statutes: the statutory mandate to ensure that all residents have waste collection services, Minn. Stat. § 115A.941, and the statutory mandate to establish the City Council's decision to implement organized collection through "appropriate local controls," Minn. Stat. § 115A.94, subd. 4d. The City contends that conflict preemption precludes a post-contract, post-ordinance vote by referendum on the City Council's decision to implement organized waste collection services because, once that decision was made and the contract for that service was signed, the City is required by law to establish that decision through appropriate local controls, namely, ordinances. Minn. Stat. § 115A.94, subd. 4d. A successful referendum on Ordinance No. 18-39, the City argues, would prohibit the City from complying with this statutory mandate. Further, the City argues, a successful referendum on the City Council's ordinance that establishes organized waste collection would leave the City unable to "ensure that every residential household and business in the city . . . has solid waste collection service." Minn. Stat. § 115A.941(a). Thus, the City argues, exercise of the referendum authority provided in the City Charter on a post-contract, post-implementation decision would prohibit what the statute permits—the City Council's decision to implement

organized collection—or would permit what the statute prohibits—organized collection without an implementing ordinance. *See Mangold Midwest Co.*, 143 N.W.2d at 816.

Respondents assert that the plain language of section 115A.94 reflects a legislative intent to preserve charter powers, including a referendum on the implementing ordinance, in the statutory process for organized waste collection. Specifically, respondents note, subdivision 6 of this statute allows a city to "exercise any authority granted by any other law, including a home rule charter, to govern collection of solid waste." Minn. Stat. § 115A.94, subd. 6(c). Asserting that the City's obligation to follow its decision to implement organized collection by enacting an ordinance under section 115A.94, subdivision 4d, can be read in harmony with the exercise of the authority granted to its residents by the City Charter, respondents argue that there is no conflict between the statutory process for implementing organized collection and a referendum on the ordinance that effectuates that decision.

A.

We consider first the potential conflict between a referendum on Ordinance No. 18-39 and the legislative direction in section 115A.941, which requires Saint Paul to "ensure that every residential household and business in the city . . . has solid waste collection service." Minn. Stat. § 115A.941(a). A city can do so through organized collection, providing collection, or "requir[ing] by ordinance that every household and business has a contract for collection services." *Id.* The ordinance "must provide for enforcement." *Id.*

The plain terms of this statute allow for considerable municipal flexibility in deciding how to ensure that every resident has solid waste collection services. *See City of Morris v. Sax Invs., Inc.*, 749 N.W.2d 1, 7 (Minn. 2008) (stating that the "focus is on the

language of the statute" when the statute has "specific language as to the extent of permissible municipal regulation"). Ordinance No. 18-39, which codified chapter 220 of the City's Legislative Code and is the subject of the referendum petition, requires residents to "deposit all trash in approved containers" at least once every 14 days. Saint Paul, Minn., Legis. Code § 220.02. "All trash collected, conveyed and disposed of" must be "pursuant to a written contract with the city" that specifies the "details relating to" collection services. *Id.* § 220.03. The ordinance declares that private contracts in place on October 1, 2018, are deemed "null and void," and no new private contracts are allowed. *Id.*

But, assuming the referendum is successful and Ordinance No. 18-39 is thereby repealed, other ordinances that are not subject to the referendum require Saint Paul residents to have waste collection services. For example, chapter 32 of the City's Legislative Code states the City Council's intent "to require garbage services," requires building owners to "provide for the collection of" waste, and allows the City to "collect the costs associated with garbage services" from residents. Saint Paul, Minn., Legis. Code §§ 32.01, 32.03, 32.06. Building owners are responsible for providing waste collection services "whether or not the said owner occupies or resides in the building." *Id.* § 32.03. Chapter 32 allows the City to issue violation notices, even to initiate collection services if necessary, and to "collect the city costs for [that] service[]." *Id.* § 32.04(a)–(b). The City can collect "actual fees charged by licensed haulers for garbage collection" when the City initiates collection services, including administrative costs associated with providing that service. *Id.* §§ 32.05–.06(a). Chapter 34 requires residents to maintain the exterior of residential property "in a clean, safe and sanitary condition, free from any accumulation of

garbage." *Id.* § 34.08(1). Chapter 34 also identifies the "basic facilities" required for residential properties, which includes the collection of solid waste "at least every other week" by a licensed hauler, the availability of "an adequate number of approved containers" for waste collection, and a direction to place waste "in approved refuse and garbage containers." *Id.* §§ 34.11(7)–(8), 34.16(2).[6]

In light of these municipal regulations, we cannot conclude that a successful referendum on one ordinance, No. 18-39, will prohibit the City from ensuring that every resident has waste collection services. Ordinances that are not subject to the referendum plainly impose that requirement and expressly provide for enforcement. *See Mangold Midwest Co. v. Vill. of Richfield*, 143 N.W.2d 813, 819 (Minn. 1966) (stating that the "terms of the statute and ordinance are not irreconcilable").[7] The City's enactment of these ordinances, none of which are subject to the referendum petition, demonstrates that it is reasonably possible for the City to comply with the statutory mandate to ensure that residents have waste collection services even if Ordinance No. 18-39 is subject to a referendum petition.[8] *See Power v. Nordstrom*, 184 N.W. 967, 969 (Minn. 1921) (finding

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[6] Non-residential building owners must also "ensure that an adequate number of approved containers" for garbage are available for use by building occupants. *Id.* § 34.35(4).

[7] We need not decide whether a successful referendum on Ordinance No. 18-39 prohibits the City from ensuring that residents have solid waste collection services by using organized collection. *See, e.g.*, *In re Megnella*, 157 N.W. 991, 992 (Minn. 1916) (explaining the circumstances under which a city council can enact an ordinance following a successful referendum vote).

[8] The City also asserts that a repeal of Ordinance No. 18-39 would leave it without a

no conflict between a statute and local ordinance where the ordinance was a reasonable regulation in harmony with the statute).

B.

Next, we consider whether permitting a referendum on Ordinance No. 18-39 conflicts with the City's obligation to "establish organized collection through appropriate local controls." Minn. Stat. § 115A.94, subd. 4d. We have said that section 115A.94 provides "the process a city must follow before it can organize waste collection." *Jennissen v. City of Bloomington*, 913 N.W.2d 456, 460 (Minn. 2018). The statute does not require or prevent a municipality from adopting organized collection; it simply provides "detailed procedures" for the decision-making process. 913 N.W.2d at 461. Among those procedures is a requirement to establish organized collection through "appropriate local controls." Minn. Stat. § 115A.94, subd. 4d.

The City argues that Ordinance No. 18-39 is the "appropriate local control" the statute requires and that submitting that ordinance to referendum conflicts with the statute. We disagree.

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regulation that imposes waste collection rates, noting that it is required to establish the rates for "rubbish disposal . . . by ordinance," Minn. Stat. § 443.28. But the Legislature plainly said that this statute must be "construed as an addition to existing charter . . . powers." Minn. Stat. § 443.34 (2018). In addition, other ordinances allow the City to "impose and collect the costs associated with garbage service" from property owners if necessary, *e.g.*, Saint Paul, Minn. Legis. Code §§ 32.01, 32.06, and the City does not contend that it would be prohibited from enacting an ordinance to establish "rubbish disposal" rates if necessary due to the repeal of Ordinance No. 18-39. We therefore see no conflict between Minn. Stat. § 443.28, and a referendum on Ordinance No. 18-39.

A review of our decisions confirms that we have found a conflict when a statute and a municipal act cannot be reconciled because compliance with both is not reasonably possible. *See Power v. Nordstrom*, 184 N.W. 967, 969 (Minn. 1921) (explaining that "an ordinance must not be repugnant to, but in harmony with" statutes). For example, in *Bicking v. City of Minneapolis*, we considered a proposed charter amendment that would require municipal police officers to secure, and provide proof of, primary professional liability insurance coverage, while also limiting the municipality's reimbursement and indemnification liability. 891 N.W.2d 304, 307 (Minn. 2017). We concluded that the proposed charter amendment conflicted with state law because the proposed charter amendment added requirements to the municipality's statutory obligations, and by restricting the extent of the municipality's indemnification obligation and right to procure additional insurance coverage for its employees, "forbid[s] what the statute" permits. *Id.* at 314–15; *see also State v. Kuhlman*, 729 N.W.2d 577, 583 (Minn. 2007) (noting that a municipal traffic ordinance conflicted with state law because the ordinance added requirements that were not part of the statute and thus imposed liability that was "more general, not more specific" than that imposed by statute); *Anderson v. City of Two Harbors*, 70 N.W.2d 414, 418 (Minn. 1955) (concluding that an ordinance adopted by initiative that required the municipality to appropriate a fixed amount to a hospital conflicted with state law because permissive language in a statute conferred discretion on the municipality to appropriate funds to the community hospital).

In *Mangold Midwest Co. v. Village of Richfield*, however, we concluded that a municipal ordinance that did not "permit, authorize, or encourage violation" of a statute

that prohibited certain sales on Sunday was a "complementary regulation" and thus "not irreconcilable" with the terms of the statute. 143 N.W.2d 813, 818–19 (Minn. 1966); *see also St. Paul Citizens for Human Rights v. City Council*, 289 N.W.2d 402, 406 (Minn. 1979) (noting that neither a statute nor an ordinance could be construed to permit discrimination on the basis of race, sex, or another protected classification, and thus finding no "inconsistency" between the two because the ordinance did not have terms that are "irreconcilable" with the statute). As in *Mangold Midwest Co.*, the Saint Paul City Charter's referendum requirement is complementary with the terms of section 115A.94, subdivision 4d. This is so because the legislative language leaves it to the municipality to determine what type of local control is "appropriate" to establish organized collection.

The Legislature did not define "appropriate local control" in the statute. But the dictionary defines "appropriate" broadly as meaning something that is "especially suitable or compatible." *Merriam-Webster's Collegiate Dictionary* 57 (10th ed. 1993); *see also In re Restorff*, 932 N.W.2d 12, 21 (Minn. 2019) (explaining that "appropriate" supervision, in the context of arrangements at a childcare facility, requires consideration of the relevant circumstances). And certainly, an appropriate local control can include an ordinance, but this phrase also sweeps within its ambit a broader array of authorized municipal actions. *See* 4 Eugene McQuillin, *The Law of Municipal Corporations* § 13:4 (3d ed. rev. 2011) (noting that a municipality's governing body enacts bylaws, ordinances, local laws, resolutions, "and so forth").

In Saint Paul, all ordinances are subject to referendum as long as certain requirements are met. Saint Paul, Minn., City Charter § 8.01. Consistent with this charter

authority, an ordinance subject to referendum is an "appropriate local control" in Saint Paul. The City cites to no language in the statute that restricts the referendum power the Charter vests in Saint Paul residents.[9] And we cannot read limits into otherwise broad statutory language. *See City of Brainerd v. Brainerd Invs. P'ship*, 827 N.W.2d 752, 756 (Minn. 2013) ("We cannot add words of qualification to the statute that the Legislature has omitted.").

Moreover, the surrounding context of the permitted legislative procedures and process for organized waste collection confirms that the Legislature intended for municipalities to have broad authority in this area. *See City of Saint Paul v. Eldredge*, 800 N.W.2d 643, 648 (Minn. 2011) (stating that "we read the statute as a whole" and "give effect to all statutory provisions"). In contrast to other provisions of section 115A.94, which speak to the municipality's authority to organize collection "by ordinance, franchise, license, . . . contract, or other means," Minn. Stat. § 115A.94, subd. 3(a), in subdivision 4d the Legislature allowed the governing body to establish organized collection by "appropriate local controls."

Given the breadth of the phrase "appropriate local controls," we cannot identify a legislative intent to exclude the exercise of referendum authority over an ordinance used as the local control; indeed, a referendum simply acts as a vote on an ordinance by a broader group—local residents—similar to the vote by elected officials. *See St. Paul Citizens for*

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[9] *See, e.g.*, *Municipality of Anchorage v. Holleman*, 321 P.3d 378, 383 (Alaska 2014) (noting that the power of a municipality's legislative body to "make laws does not mean that its authority to make laws is *exclusive* of the citizens' correlative right of direct legislation, absent some express limitation").

Human Rights, 289 N.W.2d at 404 n.2. Put another way, we cannot discern a conflict between section 115A.94, subdivision 4d, and the exercise of local charter powers without a more specific indication of legislative intent. *See, e.g.*, *A.C.E. Equip. Co. v. Erickson*, 152 N.W.2d 739, 740–41 (Minn. 1967) (concluding that a statute that permitted local zoning regulation "by ordinance" did not "displace the manner in which ordinances are passed" as provided in a city charter because the Legislature did "not dictate the method that the local body should utilize"); *see also Power*, 184 N.W. at 969 (noting, in rejecting a conflict challenge, that a statute did not prohibit nor expressly permit the conduct prohibited by a municipal ordinance).

The broad language of section 115A.94, subdivision 6(c), reinforces this conclusion. Here, the Legislature authorized the exercise of "any authority," including "home rule charter" authority. Minn. Stat. § 115A.94, subd. 6(c). Our reading of the breadth of the "appropriate local controls" authorized by section 115A.94, subdivision 4d, is consistent with the broad language used in this separate grant of authority. *See State v. Struzyk*, 869 N.W.2d 280, 287 (Minn. 2015) ("We read and construe a statute as a whole and interpret each section in light of the surrounding sections to avoid conflicting interpretations.").[10]

Here, there is no dispute that the City followed the procedures outlined in section 115A.94, and there is no dispute that the City Council decided to implement organized

[10] The City contends that we must read section 115A.94, subdivision 6(c), in a more limited fashion, by excluding the exercise of home rule charter authority in the context of the post-decision, post-contract, post-ordinance enactment process. Our conclusion that

collection in the city. Similarly, there is no dispute that the residents' referendum petition was timely and met the charter signature requirements. Given the breadth of the legislative language used to describe the local controls that establish organized collection, we conclude that there is no conflict in proceeding with a proper referendum on the ordinance enacted as directed in section 115A.94, subdivision 4(d).

II.

We turn next to the contract-impairment claim. States are prohibited from passing laws that impair contractual obligations. U.S. Const. art. I, § 10; Minn. Const. art. I, § 11. *See Gretsch v. Vantium Capital, Inc.*, 846 N.W.2d 424, 435 (Minn. 2014) (stating that a law "impairs the obligations of a contract when it renders those obligations invalid or releases or extinguishes them" and noting that "retroactive impairment" is prohibited). The party that asserts a constitutional challenge to the exercise of legislative authority bears a heavy burden to prevail on that claim. *See, e.g.*, *In re Individual 35W Bridge Litig.*, 806 N.W.2d 820, 829 (Minn. 2011) (stating that the party challenging the constitutionality of legislation bears the burden of showing unconstitutionality).

The City asserts that a successful referendum on Ordinance No. 18-39 would substantially and unconstitutionally impair its contract with St. Paul Haulers because both parties would be prevented from performing the meaningful obligations of that contract

section 115A.94, subdivision 4d, does not reflect a legislative intent sufficient to find a conflict with the exercise of referendum power makes it unnecessary to address this argument.

and both parties would thereby be deprived of the substantial benefits conferred by the contract.

Respondents assert that a successful repeal of Ordinance No. 18-39 does not result in an unconstitutional impairment because the contract will only be, in simple terms, void. That is, respondents contend, the repeal of the ordinance would effectively excuse the parties' performance under the contract, which is not an impairment. Further, respondents assert that the balance of interests in this constitutional challenge tips decidedly in favor of preserving the exercise of democratic processes. They urge the court to preserve the right of residents to weigh in on the City's ordinance that establishes organized collection.

We use a three-part test to analyze a contract-impairment claim. *See Christensen v. Minneapolis Mun. Emps. Ret. Bd.*, 331 N.W.2d 740, 750–51 (Minn. 1983) (adopting the three-part test announced in *Energy Reserves Group, Inc. v. Kansas Power & Light Co*., 459 U.S. 400 (1983)). First, we consider whether the challenged legislation operates "as a substantial impairment of a contractual obligation." *Id.* at 750. Second, if a substantial impairment is found, we consider whether there is "a significant and legitimate public purpose behind the legislation." *Jacobsen v. Anheuser-Busch, Inc.*, 392 N.W.2d 868, 872 (Minn. 1986). Finally, we review the legislation in light of the identified public purpose "to see whether the adjustment of the rights and liabilities of the contracting parties is based upon reasonable conditions and is of a character appropriate to the public purpose justifying the law's adoption." *Id.*; *see also W. States Utils. Co. v. City of Waseca*, 65 N.W.2d 255, 261 (Minn. 1954) (noting a reluctance to impose a "literalism" on the constitutional prohibition of impairment when to do so would be "destructive of the public interest").

We have previously considered a claim asserting that the exercise of citizen legislative authority would unconstitutionally impair a contract on one other occasion, in the context of a proposed charter amendment. In *Davies v. City of Minneapolis*, we considered whether a charter amendment that would have repealed a tax enacted by the City of Minneapolis to finance the construction of a sports facility would impair the city's contract with the bondholders who provided that financing. 316 N.W.2d 498, 499–500 (Minn. 1982). Through a series of legislative steps at the state and municipal levels, the city had agreed to levy the tax "to produce revenue to assist in the debt service on revenue bonds" issued by the Metropolitan Council, with the tax proceeds serving as the security for the bond obligations. *Id*. at 499, 501 (explaining that Minn. Stat. § 473.592 "authorize[d]" the municipality chosen as the stadium location "to enter into an agreement with the Commission and the Council, the effect of which is to obligate the municipality to impose a sales tax"). Other legislation prohibited Minneapolis "from later impairing, revoking, or amending the tax until the bonds [were] fully discharged." *Id*. at 501.

After $55 million in revenue bonds were sold, Minneapolis residents petitioned for a charter amendment to be put on the ballot for the next election. The proposed charter amendment would have prohibited the City Council from imposing a tax "for the construction or operation" of a sports facility. *Id*. at 499. The City Council refused to put the proposed charter amendment on the ballot, concluding that it would "result in an unconstitutional impairment of contractual rights." *Id*. at 500. We agreed, concluding that the proposed charter amendment would "supersede[] the stadium legislation by prohibiting further levy of a sales tax." This result, we stated, would "work an impairment by totally

eliminating an important security provision in the bondholders' contract." *Id*. at 502.

The City relies on *Davies* to contend that the referendum will result in an unconstitutional impairment of its contract. But *Davies* is distinguishable. The statute at issue in that case required the City of Minneapolis "to impose a sales tax," the proceeds of which were used to pay the bond obligations. 316 N.W.2d at 501. The proposed charter amendment was focused directly on that contractual obligation, expressly prohibiting Minneapolis from imposing a tax or using tax proceeds to pay the bond obligations.

Here, whatever the result of the referendum, the City's contract obligations are not impaired. The City is contractually obligated to allow St. Paul Haulers the exclusive right to provide waste collection services. The outcome of a referendum on an ordinance that establishes waste collection will not terminate the contract and does not rise to the level of a constitutional impairment of a contractual obligation. Indeed, the City concedes that its contract will not be terminated by a successful repeal of the ordinance.[11]

We recognize that a successful repeal of the ordinance may leave the City with substantial gaps in the enforcement mechanisms placed in the ordinance to implement the terms of the City's contract with the haulers. And the extent to which the City can enforce the terms of its contract with St. Paul Haulers in the event of a successful repeal may depend on the extent to which other ordinances fill those gaps. But these possibilities, while

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[11] The district court concluded that there was no unconstitutional impairment because the force-majeure clause in the City's contract with St. Paul Haulers was a negotiated term that "contemplated the impairment of the contract due to a legislative, judicial, or executive act." We resolve the City's contract-impairment claim on different grounds and, therefore, we do not address the district court's basis for rejecting this claim.

potentially in the realm of contract breach, do not demonstrate that the City's contractual obligation is impaired. *See Jackson Sawmills Co. v. United States*, 580 F.2d 302, 311 (8th Cir. 1978) (noting that "impairment of performance of a contract" is not the same as "impairment of the obligation of the contract"); *see also Timmer v. Hardwick State Bank*, 261 N.W. 456, 458–59 (Minn. 1935) (noting that a contract breach may impair the obligor's promise, but that "does not run afoul [of] the constitutional prohibition against 'impairment of contracts' ").

Because we conclude that the City has not demonstrated that a substantial impairment of its contractual obligation will occur with a referendum vote on Ordinance No. 18-39, we need not address the other two factors. *See Acton Constr. Co. v. Comm'r of Revenue*, 391 N.W.2d 828, 833–34 (Minn. 1986) (declining to address remaining factors of *Energy Reserves* test after concluding that no substantial impairment of contractual obligation was shown).

CONCLUSION

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

Affirmed.