

State Preemption of Local Law

State law governs what a local government may regulate. Local government only has authority granted to it by state law. This grant of authority is either express or necessarily implied from another grant of power. In some instances, state law expressly authorizes or even directs local regulation. In some instances, state law expressly forbids local regulation. In many instances, local governments rely on authority implied from a grant of power. For example, local governments adopt many ordinances under their authority to protect the health, safety, and welfare of their citizens. When state law is silent on how it relates to local regulation, local governments must determine if local regulation that is otherwise within their scope of authority may conflict with or be preempted by state law. “Conflict” and “preemption” are separate legal concepts and are looked at on a case-by-case basis.

Conflict A local ordinance conflicts with state law, and therefore is invalid, if:

- the ordinance and the statute contain express or implied terms that are irreconcilable;
- the ordinance permits what the statute forbids; or
- the ordinance forbids what the statute expressly permits.

Courts have held that there is no conflict where the ordinance, though different, is merely additional and complementary to or in aid and furtherance of the statute. *Hannan v. City of Minneapolis*, 623 N.W.2d 281, 284 (Minn. App. 2001) (citing *Mangold Midwest Co. v. Village of Richfield*, 274 Minn. 347, 352, 143 N.W.2d 813, 816-17 (1966)).

Preemption Some statutes expressly preempt local regulation. For example, Minnesota Statutes, section 471.633, states that it preempts local regulation of firearms, except regulations relating to the discharge of a firearm. Another section expressly allows local zoning of firearms shops.

If the state law is silent on preemption, then the question is whether the state law preempts local regulation by “occupying the field.” Local regulation will be preempted when:

- the legislature has fully and completely covered the subject matter,
- the legislature has clearly indicated that the subject matter is solely of state concern, or
- the subject matter itself is of such a nature that local regulation would have unreasonably adverse effects on the general populace.

Hannan v. City of Minneapolis, 623 N.W.2d 281, 285 (Minn. App. 2001) (citing *Mangold Midwest Co. v. Village of Richfield*, 274 Minn. 347, 357-360, 143 N.W.2d 813, 820-821 (1966)).