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STATE OF MINNESOTA **DISTRICT COURT**

COUNTY OF HENNEPIN **FOURTH JUDCIAL DISTRICT**

Case Type Civil/Other

Minnesota Gun Owners Caucus

Court File No. 62-CV-25-9927

Plaintiff,

Judge Leonardo Castro

v.

City of Saint Paul, Minnesota,

DEFENDANT'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION TO DISMISS PLAINTIFF'S COMPLAINT

Defendant.

INTRODUCTION

The present matter arises out of Plaintiff's attempted challenge of the recently passed Saint Paul City Ordinance 25-65 ("Ordinance"), which the Saint Paul City Council passed in response to ongoing and escalating concerns related to gun violence within the State of Minnesota. The Ordinance seeks to establish a set of new regulations governing certain categories of firearms and firearm modifications within the City. The Ordinance is expressly contingent on a repeal or amendment of current state law that otherwise restrict municipalities' ability to regulate firearms and does not take effect unless and until future action is taken by the State of Minnesota to empower the Ordinance through repeal or amendment of state law. As such, the Ordinance is non-enforceable absent some future State legislative action. Plaintiff's present challenge of the Ordinance is predicated on alleged claims under Minn. Stat. § 471.633, Minn. Stat. § 624.714, and Article I, Section 7 of the Minnesota State Constitution.

Pursuant to Minnesota Rule of Civil Procedure 12.02, Plaintiff's Complaint should be dismissed in its entirety due to lack of subject matter jurisdiction and failure to state a claim. First, the Complaint should be dismissed for lack of subject matter jurisdiction because Plaintiff fails to allege a justiciable controversy ripe for judicial review and fails to allege the requisite injury in

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fact to support standing. Second, the Complaint fails to state a viable cause of action for the following reasons: (1) Minn. Stat. §§ 471.633 and 624.714, do not provide private causes of action to support declaratory judgement; (2) the Ordinance is not unconstitutionally vague; (3) Minn. Stat. § 623.714 does not preempt the Ordinance; (4) the Ordinance is not-self executing and therefore does not violate Minn. Stat. §§ 471.633 and 624.714; and (5) there is no separate cause of action for injunctive relief. For all these reasons, the Complaint should be dismissed with prejudice.

FACTUAL BACKGROUND

On November 12, 2025, in order to address growing concerns related to gun violence across the State and within the City of Saint Paul, Saint Paul Ordinance 25-65 was passed by unanimous vote of the Saint Paul City Council. (Saint Paul Legistar, available at https://stpaul.legistar.com/LegislationDetail.aspx?ID=7704634&GUID=E547DB51-3073-4B0F-AA1B-BE5B30E6951E&FullText=1 (last accessed Dec. 11, 2025).) The Ordinance was subsequently signed by the Saint Paul City Mayor on November 19, 2025. (*Id.*) The Ordinance creates a new Chapter 225A of the City's Legislative Code titled "Firearms Regulations to establish regulations for Assault weapons, Binary triggers, Ghost guns, and Signage." (City of Saint Paul – File #: Ord 25-65.) Under the Ordinance, certain classifications of firearms and firearm modifications are prohibited within the City. (*Id.*) Additionally, the Ordinance provides for a general prohibition on firearms within certain, specified "sensitive places." (*Id.*) "Sensitive places" are defined within the Ordinance as "any City-owned, -leased, or -controlled building or property that is open to the public for governmental, educational, recreational, cultural, or civic purposes, including but not limited to City Hall and City offices, libraries, recreation centers, indoor and outdoor park spaces and park buildings, playgrounds, athletic facilities, arenas, and zoos." (*Id.* at Section 225A.01.) The Ordinance also provides an express contingency provision

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that establishes that the new Chapter 225A and "its constituent Ordinances are contingent and shall not take effect, nor be enforced, unless and until" the repeal of Minn. Stat. § 471.633 or passage of "any Minnesota law that is substantially the same as any part of this ordinance or otherwise affirmatively authorizes municipalities to enact and enforce substantially similar regulations." (*Id.* at Section 225A.02.) The Ordinance also expressly states that it is "designed to take effect only upon the repeal, amendment, or judicial invalidation of state preemption laws that currently prohibit local regulation of firearms." (*Id.* at Section 1.)

Shortly after the City Council's final vote, Plaintiff served the present Complaint on November 12, 2025. (AOS, Index #3.) Plaintiff seeks declaratory and injunctive relief to invalidate the Ordinance based on its alleged violation of state law. (Compl. ¶ 1.) Specifically, Plaintiff alleges that the Ordinance is preempted under Minn. Stat. § 471.633 and violates a purported right to carry a firearm in public conferred under the Minnesota Citizens' Personal Protection Act ("MCPPA), Minn. Stat. § 624.714. (*Id*. ¶¶ 17–28.) Plaintiff further alleges that the Ordinance is unconstitutionally vague as to its date of effectiveness and therefore violates the Due Process Clause of the Minnesota State Constitution. (*Id.* ¶¶ 43–49.) Based on these allegations, Plaintiff contends that its individual members are harmed by the resulting legal uncertainty and due to the alleged general harm of the City passing an unlawful ordinance. (*Id.* ¶¶ 35–42.) Plaintiff does not allege nor submit any evidence of any explicit enforcement threats made by the City or its officers in relation to the Ordinance.

The City filed the present motion to dismiss on December 3, 2025. (Index # 20.)

STANDARD OF REVIEW

The City brings the present motion under both Minnesota Rule of Civil Procedure 12.02(a) for lack of subject matter jurisdiction and Rule 12.02(e) for failure to state a claim.

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A pleading must "contain a short plain statement of the claim showing that the pleader is entitled to relief and a demand for judgment for the relief sought." Minn. R. Civ. P. 8.01. Under Rule 12.02, a pleading may be dismissed "if it appears to a certainty that no facts, which could be introduced consistent with the pleading, exist which would support granting the relief demanded." *Bahr v. Capella Univ.*, 788 N.W.2d 76, 80 (Minn.2010) (quotation omitted) (failure to state a claim; *Brenny v. Bd. Of Regents of Univ. of Minn.*, 813 N.W.2d 417,4200 (Minn. Ct. App. 2012) (subject-matter jurisdiction). On review of a motion under Rule 12.02, the Court considers only the facts alleged in the complaint. *In re Individual 35W Bridge Litig.*, 806 N.W.2d 820, 826–27 (Minn. 2011) (failure to state a claim); *Brenny*, 813 N.W.2d at 420 (subject-matter jurisdiction). Although the Court must accept all facts alleged in the Complaint as true and construe all reasonable inferences in favor of the nonmoving party, "a legal conclusion in the complaint is not binding on [the court]." *Bahr*, 788 N.W.2d at 80. "A plaintiff must provide more than labels and conclusions." *Id.*

ARGUMENT

I. The Complaint must be dismissed for lack of subject matter jurisdiction.

"Subject matter jurisdiction is the court's authority to hear the type of dispute at issue and to grant the type of relief sought." *Musta v. Mendota Heights Dental Ctr.*, 965 N.W.2d 312, 317 (Minn. 2021) (quotation omitted). "[R]egardless of the type of proceeding involved, a justiciable controversy must exist in order for a litigant's claim to be properly before the court." *State v. Colsch*, 284 N.W.2d 839, 841 (Minn. 1979). Similarly, where a party lacks standing, "a court does not have jurisdiction to hear the matter." *Citizens for a Balanced City v. Plymouth Congregational Church*, 672 N.W.2d 13, 18 (Minn. App. 2003).

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In this case, the Complaint fails to state a justiciable controversy and fails to establish the requisite standing required to establish the court's jurisdiction. Accordingly, the Complaint should be dismissed in its entirety.

a. The Complaint fails to establish a justiciable controversy.

Plaintiff's claims should be dismissed for lack of jurisdiction because Plaintiff has failed to establish that any of its claims are ripe for the court's review under the ripeness doctrine.

To establish a justiciable controversy in a declaratory judgment action challenging the constitutionality of a law, a plaintiff "must show a direct and imminent injury" stemming from the allegedly unconstitutional provision. *McCaughtry v. City of Red Wing*, 808 N.W.2d 331, 337 (Minn. 2011). The ripeness doctrine requires a party challenging the constitutionality of a law to "show that the statute is, or is about to be, applied to his disadvantage." *Baertsch v. Minn. Dep't of Revenue*, 518 N.W.2d 21, 25 (Minn. 1994). "Litigants must be able to show that they have sustained or are immediately in danger of sustaining some direct injury." *McCaughtry*, 808 N.W.2d at 338–39. "Issues which have no existence other than in the realm of future possibility are purely hypothetical and are not justiciable." *Id.* at 339.

In the pre-enforcement context, the critical ripeness question is whether the law "is about to be applied" to the disadvantage of the plaintiff. Several Minnesota Supreme Court cases are instructive on this issue and demonstrate the level of evidence needed to establish a credible threat of enforcement. In *Baertsch*, the court cited an explicit letter from the state expressing intent to enforce the challenged statute against plaintiff to determine that the law at issue was "about to be applied" against Plaintiff. *Baertsch*, 518, N.W.2d at 25. In *McCaughtry v. City of Red Wing*, the plaintiff landlord brought a pre-enforcement challenge to a municipal rental property inspection ordinance. *McCaughtry*, 808 N.W.2d at 333. Holding that a judiciable controversy existed, the *McCaughtry* court emphasized that the defendant city was already actively enforcing the ordinance

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against the plaintiffs, having issued three previous administrative warrants against the plaintiffs under the challenged ordinance over a four-year period. *Id.* at 340. The court also noted that the defendant had expressly indicated that it would continue seeking administrative warrants to inspect the plaintiffs' properties under the challenged ordinance. *Id.*

The Minnesota Court of Appeals' decision in *Democratic-Farmer-Lab. Party by Martin v. Simon*, 9070 N.W.2d 689, 691 (Minn. Ct. App. 2022), further illustrates this issue. *Simon* involved a pre-enforcement challenge to a Minnesota law threatening felony punishment for violations of a caucus eligibility voting statute. *Id.* at 691–92. The plaintiffs, who had not been prosecuted under the law nor were threatened with prosecution, alleged that the statute chilled their right to associate as protected by the First Amendment. *Id.* at 691–92, 696. The court first established that speech is "reasonably chilled—at least enough to render a case ripe—when a plaintiff shows an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by the statute, and there exists a *credible threat of prosecution*." *Id.* at 696 (citing *281 Care Comm. v. Arneson*, 638 F.3d 621, 627 (8th Cir. 2011)). As noted by the *Simon* court, even under the relaxed justiciability standard afforded to First Amendment pre-enforcement challenges, ripeness still requires that there be at least a credible threat of prosecution. *Id.* The court in *Simon* proceeded to outline "the constellation of factors courts consider in assessing that threat—or lack thereof." *Id.* at 697–98. These include: the history of the law's enforcement, whether prosecution has ever been threatened, government statements about the law's enforceability, and whether the law involves criminal or civil enforcement, noting that "chilled speech is more likely if there is criminal enforcement." *Id.* Ultimately, the Court of Appeals found that there was no credible threat of prosecution because the law at issue was civil in nature, had not been enforced in 40 years, and the state actor firmly announced they could not, and would not, enforce the law. *Id.* at 697–98.

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Unlike *Baertsch* or *McCaughtry*, there is no credible threat of enforcement in the present matter. Plaintiff identifies no express threat from the City that Ordinance 25-65 will be enforced against Plaintiff or its individual members. Nor can Plaintiff point to any actual enforcement of the subject ordinance against Plaintiff or its members, or indeed anyone else. Like the statements in *Simon* disavowing enforceability of the challenged statute, the language of the Ordinance itself expressly states the City's intent and understanding that the Ordinance will *not* be enforced absent some further express action by the Minnesota state legislature. *See* City of Saint Paul – File #: Ord 25-65 (stating that Ordinance 25-65 "is designed to take effect only upon the repeal, amendment, or judicial invalidation of state preemption laws that currently prohibit local regulation of firearms"). The contingency provision in the Ordinance underscores the fact the Ordinance is not enforceable absent further state action at some point in the future. *See id.* at Section 225A.02.

Furthermore, there is no present threat of enforcement in any capacity because the Ordinance's contingency provision renders it non-self-executing and therefore non-enforceable. The Ordinance is not self-executing because it is not enforceable absent further legislative action by the State. *See In re Molly*, 712 N.W.2d 567, 570 (Minn. 2006) (noting that when a provision is not self-executing, "legislation is essential" for its enforcement (citing *Davis v. Burke*, 179 U.S. 399, 403 (1900)). As such, any alleged harm arising from the Ordinance is purely speculative and rests entirely on a hypothetical future scenario that presents no substantive immediate harm that would establish a justiciable controversy in this matter.

There is no actual or imminent threat of enforcement under the subject Ordinance that would support Plaintiff's present claims and therefore dismissal is proper.

b. Plaintiff lacks Standing to sustain its present claims.

"Standing is a legal requirement that a party have a sufficient stake in a justiciable controversy to seek relief from a court." *Lorix v. Crompton Corp.;*, 736 N.W.2d 619, 624 (Minn.

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2007). When, as here, no statute confers standing, a party has standing if it "has suffered 'injury-in-fact.'" *Metro. Stability*, 671 N.W.2d at 913. "To satisfy the 'injury-in-fact' requirement, [a party] must demonstrate that they have suffered actual, concrete injuries caused by the challenged conduct." *Id.* (footnote omitted); *see also Lee v. Delmont*, 36 N.W.2d 5320, 537 (Minn. 1949) ("Issues which have no existence other than in the realm of future possibility are purely hypothetical and are not justiciable. Neither the ripe nor the ripening seeds of a controversy are present.") If a plaintiff alleges future harm, it must show that the injury is "imminent." *Lujan v. Defs. Of Wildlife*, 504 U.S. 555, 560 (1992); *see also, e.g., In re Custody of D.T.R.*, 796 N.W.2d 509, 512–13 (Minn. 2011) (applying *Lujan*). "[S]ome day" intentions—without any description of concrete plans, or indeed even any specification of when the some day will be—do not support a finding of the 'actual or imminent' injury" required for standing. *Lujan*, 504 U.S. at 564. Plaintiff's claims fail because they have not sufficiently alleged either a past harm or an imminent injury-in-fact. Plaintiff has not alleged that it has been harmed in the past and the allegations of potential future harm are subjective and hypothetical.

The United States Supreme Court has stated that "the mere existence of a state penal statute" is insufficient to support standing "if real threat of enforcement is wanting." *Poe v. Ullman*, 367 U.S. 497, 507 (1961). While the Court in *Poe* found lack of standing to support a constitutional challenge to an older statute that had not been enforced for decades, the holding of the *Poe* court is nonetheless instructive here in that the mere existence of the Ordinance is not sufficient to satisfy standing where there is no real threat of enforcement. Where in *Poe* the lack of threat arose from the previous period of non-enforcement of the statute, a similar lack of enforcement threat is evident in the present case because the Ordinance has no enforceability under its own provisions absent additional express action by the State Legislature. The Ordinance has no threat of

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enforcement at present and the Complaint identifies no potential risk of imminent future enforcement.

Plaintiff's own allegations underscore the non-self-executing nature of the Ordinance and the hypothetical nature of their claimed harm. (*See* Compl. ¶¶ 39–40 (implicitly acknowledging need for future legislative action by State before any enforceability of Ordinance possible).) Plaintiff bases its claims only on subjective fear and belief that the Ordinance will cause them harm. (*Id.* ¶¶ 11–12, 39–40.) Plaintiff's claimed harm raises only speculative concerns of future harm or possible enforcement that has neither been threatened nor actively encountered. Vague concerns that Saint Paul police officers or prosecutors may at some unspecified point in the future may "misapply" the Ordinance or its provisions are entirely too far removed from an actual or imminent harm to support standing in this case. Particularly when the Ordinance itself requires express action by the State Legislature before any question of enforceability may arise.

Plaintiff's vague future concerns do not evidence the requisite injury-in-fact required for standing, particularly where, as here, the Ordinance requires an explicit future action by the Minnesota State Legislature that has not been taken. It is apparent on the face of the Ordinance that it remains inert until some additional action is taken by the State. There is no credible threat of prosecution under the ordinance and the Complaint identifies no State action that would presently raise a credible concern that the Ordinance is likely to come into effect or otherwise incite reasonable confusion as to the Ordinance's present inert status. Accordingly, Plaintiff's claims fail on the separate issue of standing and are subject to dismissal on that independent basis.

II. The Complaint must be dismissed for failure to state a claim.

a. There is no private cause of action under Minn. Stat. §§ 471.633 and 624.714, and therefore Plaintiff's statutory claims cannot sustain declaratory judgment.

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Plaintiff has brought this action as a declaratory judgment and injunctive action seeking a declaration invalidating the City's newly passed Ordinance 25-65. Plaintiff specifically claims that the City's ordinance violates Minn. Stat. § 471.633 and Minn. Stat. § 624.714, and seeks a corresponding declaratory judgment based on those statutes. However, neither statute creates a private right of action and, accordingly, Plaintiff cannot prevail on the merits on either of its statutory claims.

"A complaint requesting declaratory relief must present a substantive cause of action that would be cognizable in a non-declaratory suit." *Weavewood, Inc. v. S. & P Home Investment, LLC*, 821 N.W.2d 576, 579 (Minn. 2012); *see also Hoeft v. Hennepin Cnty.*, 754 N.W.2d 717, 722 (Minn. Ct. App. 2008) (noting that MUDJA "cannot create a cause of action that does not otherwise exist"). "A party seeking a declaratory judgment must have an independent, underlying cause of action based on a common-law or statutory right." *Alliance for Metro. Stability v. Metro. Council*, 671 N.W.2d 905, 916 (Minn. Ct. App. 2003). "The Uniform Declaratory Judgments Act . . . is not an express independent source of jurisdiction." *Id.* at 915.

Under Minnesota's Uniform Declaratory Judgments Act ("MUDJA"), courts may only grant declaratory judgment where an actual justiciable controversy exists." *Weavewood*, 821 N.W.2d at 579. The Minnesota Supreme Court has stated that an actual controversy arises where a claim: "(1) involves definite and concrete assertions of right that emanate from a legal source, (2) involves a genuine conflict in tangible interests between parties with adverse interests, and (3) is capable of specific resolution by judgment rather than presenting hypothetical facts that would form an advisory opinion." *McCaughtry v. City of Red Wing*, 808 N.W.2d 331, 336 (Minn. 2011).

Under Minnesota law, a statute does not provide the basis for "a civil cause of action unless the language of the statute is explicit or it can be determined by clear implication." *Halva v. Minnesota State Colls. & Univs.*, 953 N.W.2d 496, 504 (Minn. 2021). To determine whether a

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statute implies a private cause of action, courts consider: "(1) whether the [Plaintiff] belongs to a special class of persons for whose benefit the statute was enacted, (2) whether the legislature indicated an intent to create or deny a private remedy, and (3) whether inferring a private remedy would be consistent with the underlying purpose of the legislation." *All for Metro. Stability v. Metro. Council*, 671 N.W.2d 905, 915 (Minn. Ct. App. 2003). Courts are "reluctant to recognize causes of action when the language of the statute does not expressly provide one." *Halva*, 953 N.W.2d 496, 504 (internal quotations omitted).

As to the two specific statutes at issue here, sections 471.633 and 624.714, the Minnesota federal district court's decision in *Christopher v. Ramsey County*, 621 F. Supp. 3d 972 (D. Minn. 2022), is directly applicable and instructive on this issue.[1] In *Christopher*, Plaintiff Minnesota Gun Owners Caucus, alongside two individual named plaintiffs, challenged a rule promulgated by the State Agricultural Society that prohibited fairgoers from carrying firearms on the State Fairgrounds during the State Fair. 621 F. Supp. 3d at 976. State law authorized the Society to make "bylaws, ordinances, and rules" necessary or proper for the government of the fairgrounds. *Id.* Violating the Society's rules, bylaws, or ordinances is a misdemeanor. *Id.* The plaintiffs alleged several different claims, including a request for declaratory judgement seeking to declare the disputed rule to be preempted by Minnesota Statutes Sections 471.633 and 624.714. *Id.* at 978. Addressing the plaintiffs' declaratory judgment claims, the court held that neither statute created a private right of action and therefore the plaintiffs "failed to allege a substantive cause of action sufficient to support Declaratory Judgment under Minnesota law." *Id.*at 979.

[1] While a federal court's interpretation of Minnesota law is not binding on this court, it may still have persuasive value. *TCI Business Capital, Inc. v. Five Star Am. Die Casting, LLC*, 890 N.W.2d 423, 431 (Minn. Ct. App. 2017); *see also Blehr v. Anderson*, 955 N.W.2d 613, 620 (Minn. Ct. App. 2021) (applying federal court's interpretation of state statute to determine meaning of undefined statutory term).

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Much like the present case, Plaintiff's previous declaratory judgment claims in *Christopher* involved a facial challenge to the validity of the Society's promulgated rule. Per state law, violation of the Society's rule constituted a criminal misdemeanor. *Id.* at 976. Plaintiff's present declaratory judgment claims are identical to and rely upon the same statutory theories addressed and dismissed by the court in *Christopher*. Just as in *Christopher*, Plaintiff's present claims under the subject statutes cannot sustain a declaratory judgment because the statutes do not provide for a private cause of action.

Specific analysis of each statute further reinforces this outcome and supports dismissal of both statutory claims based on failure to state a claim.

First, section 471.633 does not imply a private cause of action. The statute does not contain *any* language that hints at a private cause of action. *Cf. Hamline-Midway Neighborhood Stability Coal. v. Saint Paul City Council*, No. C6-94-2135, 1995 WL 238931, at *1 (Minn. Ct. App. Apr. 25, 1995), *rev. denied* (Minn. June 23, 1995) (vacating judgment on claim under Minn. Stat. §§ 471.633–635 because "there [was] no statutory authority" for claim to be heard by district court). Plaintiff, and its members, are not part of a special class of persons for whose benefit the statute was enacted. Section 471.633 speaks exclusively in terms of what local governmental agencies may or may not do. It makes no reference at all to any individual's right to possess firearms. This demonstrates a lack of legislative intent to create a private cause of action under the statute. *See El Paso Nat. Gas Co. v. United States*, 750 F.3d 863, 871 (D.C. Cir. 2014) (no private right of action implied when statute "creates agency obligations, but it does not focus on the rights of protected parties"). Plaintiff does not have a private cause of action under Minn. Stat. § 471.633.

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Second, there is no implied private right of action under the MCPPA.[2] The Minnesota Supreme Court's decision in *Halva v. Minnesota State Colleges & Universities* is instructive on this issue. There, the Court held that the Official Records Act does not imply a private right of action for three main reasons. First, there were other remedies within the Official Records Act but not a private cause of action. *Halva*, 953 N.W.2d at 504–05. Second, the plain text of the statute did not allow for an inference that the statute creates a private cause of action and the Court had "customarily concluded that statutory silence on the topic of a private remedy does not make a statute ambiguous." *Id*. Third, other sections of the same statute created criminal and civil causes of action, showing that the Legislature considered remedies but chose not to create a civil cause of action for the Official Records Act. *Id. Halva*'s reasoning applies here.

As in *Halva*, there are remedies expressly provided by the MCPPA, but not a private cause of action of the type asserted here. The MCPPA criminalizes possession of a pistol without first obtaining a permit and various other related offenses, such as refusing to display a permit upon a lawful demand by a peace officer and making false representations on an application for a permit. *See* Minn. Stat. §§ 624.714, subds. 1a, 1b, 7a, 8, 10, 17, 24. It also provides for judicial review of the denial or revocation of a permit. Minn. Stat. § 624.714, subd. 12. There is no indication in the text of the statute that the Legislature intended to create a private cause of action for a permitholder to enforce a claimed right to carry firearms in a public place. Moreover, the MCPPA is a criminal statute. This fact weights against implying a private cause of action. *See AT&T Co. v. M/V/ Cape*

[2] One unpublished Minnesota appellate decision assumed, without analysis, that the MCPPA provided a private cause of action. In *Minnesota Police and Peace Officers Association v. National Football League*, the Minnesota Court of Appeals determined that the NFL's policy of prohibiting off-duty peace officers from carrying firearms in its stadiums did not implicate the MCPPA. *Minn. Police & Peace Officers Ass'n*, No. A15-0317, 2015 WL 4877998 (Minn. Ct. App. Aug. 17, 2015). No party in that case raised whether a private cause of action exists under the MCPPA and the case pre-dates *Halva*.

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Fear, 967 F.2d 864, 867 (3d Cir. 1992) (Statute that is "primarily criminal in nature" does not imply a private cause of action under federal law).

There is no private right or cause of action permitting Plaintiff to challenge the validity of the Ordinance by enforcing the terms of Minn. Stat. § 471.633 or Minn. Stat. § 624.713. Neither statute provides any private mechanism for Plaintiff to enforce said statutes against a municipality, whether in the context of an ordinance challenge or in terms of municipal conduct.[3] Absent an underlying cause of action under either statute, Plaintiff cannot sustain an independent declaratory judgment claim.

Because there is no substantive cause of action underlying Plaintiff's declaratory judgment claims based on sections 471.633 and 624.714, those claims must be dismissed with prejudice.

b. The Complaint fails to state a claim based on unconstitutional vagueness.

Plaintiff alleges that Ordinance 25-65 is void for vagueness under the Minnesota Constitution's Due Process Clause. (*See* Compl. ¶¶ 43–49, 73–87 (citing Minn. Const. art. I., Sec. 7).) However, the plain text of Ordinance 25-65 is not unconstitutionally vague, and the Complaint therefore fails to state a cause of action based on unconstitutional vagueness.

"Ordinances, like statutes, are presumed valid and may not be found unconstitutional unless clearly invalid or shown beyond a reasonable doubt to violate the constitution." *Press v. City of Minneapolis*, 553 N.W.2d 80, 84 (Minn. Ct. App. 1996) (citing *Essling v. Markman*, 335 N.W.2d 237, 239 (Minn. 1983). The party challenging an ordinance's constitutionality has the

[3] Notably, Minn. Stat. § 555.02 does not distinguish between these two different types of declaratory actions, i.e. ordinance challenge v. challenging municipal action. Thus, the relevant case law establishing the necessity of an underlying cause of action to support a declaratory judgment claim is not distinguishable merely because the present case involves an ordinance challenge. Regardless of whether Plaintiff may raise a separate constitutional challenge to the Ordinance, Plaintiff has no right of action to enforce state statutes regarding the Ordinance when the statutes in question provide no mechanism for a private entity such as Plaintiff to enforce them via civil action.

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burden of proof. *Id.* Courts have a duty to uphold legislative enactments as reasonably certain when possible and should "resort to all acceptable rules of construction to discover a competent and efficient expression of the legislative will." *State v. Suess*, 236 Minn. 174, 180, 52 N.W.2d 409, 414 (1952). The courts' power to declare a statute unconstitutional should be exercised "with extreme caution and only when absolutely necessary." *State v. Fingal*, 666 N.W.2d 420, 423 (Minn.App.2003), *review denied* (Minn. Oct. 21, 2003).

The void-for-vagueness doctrine requires that statutes define an offense (1) with sufficient definiteness and certainty that persons of ordinary intelligence can understand what conduct is prohibited or mandated, and (2) in a manner that does not encourage arbitrary and discriminatory enforcement. *Kolender v. Lawson*, 461 U.S. 352, 357, 103 S.Ct. 1855, 1858, 75 L.Ed.2d 903 (1983); *State v. Newstrom*, 371 N.W.2d 525, 528 (Minn.1985). The doctrine is based on fairness and is not designed to "convert into a constitutional dilemma the practical difficulties in drawing criminal statutes both general enough to take into account a variety of human conduct and sufficiently specific to provide fair warning that certain kinds of conduct are prohibited." *Colten v. Kentucky*, 407 U.S. 104, 110, 92 S.Ct. 1953, 1957, 32 L.Ed.2d 584 (1972) (quoted in *State v. Willenbring*, 454 N.W.2d 268, 270–71 (Minn.App.1990), review denied (Minn. May 30, 1990)). The vagueness doctrine does not preclude the use of broad, flexible standards that require persons subject to an ordinance to exercise judgment. *State v. Kuluvar*, 266 Minn. 408, 417, 123 N.W.2d 699, 706 (1963). Specificity will always be limited by the necessity to draft statutes that are general enough to address the diversity of human conduct and specific enough to provide adequate notice. *See Colten*, 407 U.S. at 110, 92 S.Ct. at 1957.

"An ordinance that is flexible and reasonably broad will be upheld if it is clear what the ordinance, as a whole, prohibits." *State v. Reha*, 483 N.W.2d 688, 691 (Minn.1992). Specific sections of the ordinance cannot be viewed in isolation, but rather, the ordinance "must be read as

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a whole and considered in light of both its intent and its application by the city." *Id.* at 693. A criminal statute need not be drafted with absolute certainty or mathematical precision. *See, e.g.*, *Suess*, 236 Minn. at 180, 52 N.W.2d at 414. "It need only furnish criteria that persons of common intelligence who come in contact with the statute may use with reasonable safety in determining its command." *Dunham v. Roer*, 708 N.W.2d 552, 568 (Minn. Ct. App. 2006) (quotations omitted). "To succeed in a facial challenge to vagueness outside the context of the First Amendment, a complainant must demonstrate that the law is impermissibly vague in all its applications." *State v. Enyeart*, 676 N.W.2d 311, 320 (Minn. Ct. App. 2004) (quoting *Vill. of Hoffman Estates v. Flipside*, 455 U.S. 489, 497 (1982)). The rationale for requiring complete vagueness is that "[a] 'facial' challenge ... means a claim that the law is 'invalid *in toto*—and therefore incapable of any valid application.' " *Dunham*, 708 N.W.2d at 568 (quoting *Flipside* 455 U.S. at 495 n. 5 (citation omitted)).

Here, Plaintiff must demonstrate that the law is vague in all its applications because the statute does not implicate any First Amendment concerns. While Plaintiff briefly implies in passing that the Ordinance may have an alleged chilling effect upon rights under the Second Amendment of the United States Constitution, (*see* Compl. ¶ 38), the Complaint raises no express claim that the Ordinance otherwise substantively violates the Second Amendment. Rather, Plaintiff's *only* constitutional claim is that the Ordinance is improperly vague under the due process clause of the Minnesota State Constitution.[4] Given that position, the Complaint fails to state a viable facial challenge of the Ordinance because Plaintiff wholly fails to demonstrate that the law is vague in all its applications.

[4] Plaintiff has notably omitted any claims based on the Federal Constitution or any related federal question. Opting instead to rest its present claims solely upon the Minnesota Constitution and two state statutes. (*See* Compl. ¶¶ 56–93 (asserting substantive claims based on Minn. Stat. §§ 471.633, 624.714; and Minnesota Constitution art. I, sec. 7).)

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Plaintiff's vagueness claims center entirely upon section 225A.02 of the Ordinance, which provides that no provision of the Ordinance shall take effect or be enforceable unless the Minnesota State legislature first repeals Minn. Stat. § 471.633 or otherwise passes a state law that is "substantially the same" as any part of the Ordinance. *See* City of Saint Paul – File #: Ord 25-65, sec. 225A.02. Furthermore, section 225A.02 provides that if a substantially similar state law triggers the contingency condition, then the Ordinance's language "must be deemed conformed to the substantially similar state law to the extent required for consistency." *Id.* Plaintiff does not allege that any other provision of the Ordinance is improperly vague or unclear regarding the substantive conduct prohibited. The Complaint does not dispute that the specific substantive conduct prohibited under the Ordinance is clearly identifiable nor does it present any allegations that the substantive provisions encourage arbitrary or discriminatory enforcement as to the prohibited conduct. In other words, the Complaint does not allege that the Ordinance is in any way unclear or vague as to *what* conduct is prohibited. Rather, Plaintiff's only contentions of vagueness are an alleged uncertainty on when the Ordinance takes effect and an alleged uncertainty of the criteria for a "substantially similar" state law to trigger the contingency provision. (*See* Compl. ¶¶ 43–48, 78–82.)

Regarding the first alleged uncertainty, Plaintiff contends that the Ordinance is improperly vague as to its date of effectiveness because the contingency provision in section 225A.02 allegedly conflicts with section 3 of the Ordinance, which states that the Ordinance "shall take effect and be in force thirty (30) days following its passage, approval and publication." *See* City of Saint Paul – File #: Ord 25-65, Section 3. This professed confusion is misplaced, however, and Plaintiff's isolated reading of these provisions misstates and deliberately misunderstands the clear provisions of the Ordinance. The Ordinance, and these provisions in particular, "must be read as a whole and considered in light of both its intent and its application by the city." *Reha*, 483 N.W.2d

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at 693. With that obligation in mind, the effective date of the statute is not ambiguous on the face of the Ordinance. Per Section 3, the provisions of the Ordinance, including the contingency provision that limits the Ordinance's effect and enforceability absent further state action, will not take effect until 30 days after passage, approval, and publication of the Ordinance. Once the thirty days have passed, the contingency provision takes effect and limits the subsequent effectiveness and enforceability of the remaining provisions in the Ordinance. Viewed in another way, Section 3 establishes a minimum of thirty days before the Ordinance can take effect regardless of whether the contingency provision has been triggered. Thus, even if a state action triggered the contingency provision within less than thirty days of the Ordinance's passage, neither the contingency provision nor the rest of the Ordinance that it would contingently trigger would be able to take effect until after the minimum 30 days have passed. This is consistent with the Saint Paul City Charter, which requires that any ordinance other than an emergency ordinance "shall become effective thirty (30) days after passage, approval, and publication" unless a later date is specified. Saint Paul Code of Ordinances, Part I, Sec. 6.11.

Regarding the second alleged uncertainty, Plaintiff alleges that the Ordinance is vague because it does not provide a definition of what qualifies as a "substantially the same" law under the second triggering condition and does not identify an explicit authority or procedure for determining when the condition is triggered and how notice should be provided of the triggering event. (*See* Compl. ¶ 48.) On the first point, the mere fact that the Ordinance applies a qualitative standard of "substantially the same" to identify a state law that triggers the contingency provision does not render it unconstitutionally vague. *See Sessions v. Dimaya*, 584 U.S. 148, 160 (2018) (noting that such "non-numeric," "qualitative standards" are not so inherently problematic as to independently render a statute void for vagueness); *cf. U.S. v. Demott*, 906 F.3d 231, 237 (2018) (holding that Analogue Act's use of "substantial similarity" standard for identifying prohibited

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substances did not render statute unconstitutionally vague). The substantive conduct prohibited under the Ordinance (none of which has been disputed by Plaintiff as improperly vague or unclear) is clearly defined and provides a ready and clear comparator to hold up against any subsequently passed State law to determine any substantial similarity for purposes of the contingency provision. There is no improper vagueness as to the qualitative standard of comparison because the terms and provisions that are subject to the substantial similarity comparison are clearly defined within the Ordinance.

As to Plaintiff's secondary vagueness contentions alleging that the Ordinance is vague because it does not explicitly define who would provide notice or how notice would be issued if the substantially similar state law condition is triggered, such arguments fail on their face because there is no such provisions are specifically required to satisfy due process. Furthermore, any triggering action under the contingency provision would necessarily require an explicit legislative act by the State Legislature (either repealing Minn. Stat. § 471.633, passing a state law enacting substantially similar prohibitions as the Ordinance, or otherwise authorizing municipalities to enact and enforce substantially similar regulations), which would itself provide substantial notice of its own passage and publication. Coupled with the fact that the language of the Ordinance "must be deemed conformed to the substantially similar state law [that triggers the contingency provision] to the extent required for consistency," the resulting effect would be that the Ordinance merely reflects the triggering state law and accordingly no unconstitutional vagueness or enforcement of the Ordinance would arise because it could only be enforced to the extent it conforms to the substantially similar state law that triggered the Ordinance.[5]

[5] This would be consistent with the current text of Minn. Stat. § 471.633, which provides that a municipality "may adopt regulations identical to state law."

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The broad language of the Ordinance providing for a "substantially similar" triggering condition is necessary because the City cannot predict every possible future action the State Legislature could take in the future that may empower the municipality to enforce provisions of Ordinance 25-65. The language of the ordinance is therefore necessarily broad enough to encompass potential Legislative action beyond just a direct repeal of Minn. Stat. § 471.633. Nor is a direct repeal of Section 471.633 the only means by which the State could authorize the City's potential enforcement of the Ordinance. The State Legislature is well within its powers to establish additional exceptions to the limitations of Section 471.633 without necessarily repealing it wholesale. *See, e.g.,* Minn. Stat. § 471.633(a) and (b) (providing two exceptions to exclusivity provision for municipalities to "regulate the discharge of firearms" and to "adopt regulations identical to state law"), Thus, the Ordinance provides for a broader "substantially similar" triggering condition to encompass other potential actions the State may choose to take short of repealing Section 471.633 entirely.

As a separate basis for dismissing Plaintiff's claim, Plaintiff does not allege any ambiguity or vagueness as to the first possible triggering condition for the Ordinance, i.e. repeal of Minn. Stat. § 471.633. That omission separately renders Plaintiff's facial challenge nonviable because the Ordinance is not vague in all its applications as required under the prevailing case law. *See Enyeart*, 676 N.W.2d at 320 ("To succeed in a facial challenge to vagueness outside the context of the First Amendment, a complainant must demonstrate that the law is impermissibly vague in all its applications."). Regardless of whether Plaintiff's vagueness contentions as to the second triggering condition are correct, Plaintiff's facial challenge still fails because the Ordinance may still be applied under the first condition without raising any vagueness concerns.

For these reasons, Plaintiff's void-for-vagueness claim should be dismissed with prejudice as the Ordinance is not unconstitutionally vague.

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c. Minn. Stat. § 624.714 does not preempt Ordinance 25-65.

Plaintiff alleges, without citation or support, that the Ordinance's prohibition on possession of firearms within specified "sensitive places" violates Minn. Stat. § 24.714, subd. 23, a portion of the MCPPA. (Pl.'s Mem. at 11.) Plaintiff misunderstands and overstates the effect of Subdivision 23. That subdivision provides for the "[e]xclusivity" of the MCPPA's *regulation of permits* to carry firearms. It states:

> **Exclusivity.** This section [Minn. Stat. § 624.714 sets forth the complete and exclusive criteria and procedures for the issuance of permits to carry and establishes their nature and scope. No sheriff, police chief, governmental unit, governmental official, government employee , or other person or body acting under color of law or governmental authority may change, modify, or supplement these criteria or procedures, or limit the exercise of a permit to carry.

Minn. Stat. § 624.714, subd. 23. The Ordinance's prohibition does not change, modify, or supplement the permitting criteria established in the MCPPA. In fact, the City's Ordinance does not address permits at all. Nor does the Ordinance's prohibition on firearms in specified "sensitive places" "limit the exercise of a permit to carry."

Plaintiff assumes, without analysis, that the MCPPA not only created a defense to a criminal possession of a firearm charge but further created an affirmative right for permit holders to carry a firearm in any public place in Minnesota. (Compl. ¶¶ 23–25.) The statute does no such thing. Rather than creating a "right" for permitholders to carry pistols in public, Subdivision 1a of the MCPPA makes it a crime for a "person, other than a peace officer, . . . [to] carr[y], hold[], or possess[] a pistol in . . . on or about the person's clothes or the person, or otherwise in possession or control in a public place[.]" Minn. Stat. § 624.714, subd. 1a. The statute carves out of the scope of this crime those who have "first obtained a permit to carry the pistol" under the MCPPA. *Id.* There is no language whatsoever in the MCPPA that creates an express and affirmative right for permitholders to carry a firearm in public.

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If the Legislature had intended to create an affirmative right, it could have done so. Indeed, other state legislatures have done just that. *See, e.g.*, Wis. Stat. § 175.60(2g)(a) ("A licensee or an out-of-state licensee may carry a concealed weapon anywhere in this state[.]"). In other words, the effect of holding a valid permit to carry a pistol in Minnesota is that the person will not be held criminally liable under Minn. Stat. § 624.714, subd. 1a or the few other Minnesota statutes which establish a similar defense to criminal liability for permitholders. *See, e.g.,* Minn. Stat. § 609.66 (carrying firearms in certain government buildings). The Ordinance's prohibition on firearms in "sensitive places" does not nullify or obviate this defense to the crime created by Minn. Stat. § 624.714, subd. 1a or any other criminal statute that exempts permitholders.

d. Ordinance 25-65 is not self-executing and therefore does not violate Minn. Stat. § 471.633 or Minn. Stat. § 624.714.

Ordinance 25-65 expressly provides in its contingency provision that it is not enforceable or effective absent repeal of Section 471.633 or some other State governmental action that would authorize the City to enforce its provisions. As such, the Ordinance is not self-executing because it is not enforceable absent further legislative action by the State. *See In re Molly*, 712 N.W.2d 567, 570 (Minn. 2006) (noting that when a provision is not self-executing, "legislation is essential" for its enforcement (citing *Davis v. Burke*, 179 U.S. 399, 403 (1900)). Because the Ordinance is not self-executing and therefore non-enforceable, it does not violate Minn. Stat. § 471.633 because it does not occupy the field of regulation of firearms, ammunition, or their respective components. *Cf. Molly*, 712 N.W.2d at 570 (holding non-self-executing state dangerous dog statute was unenforceable by municipality absent implementing ordinance). Similarly, the Ordinance does not violate Minn. Stat. § 624.714 because it is non-self-executing and therefore does not occupy any related regulated field.

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e. Injunctive relief is not a separate cause of action.

Plaintiff's final claim for injunctive relief also fails to establish a substantive cause of action. "Injunctive relief is a remedy and not, in itself, a cause of action, and a cause of action must exist before injunctive relief may be granted." *Ryan v. Hennepin Cnty*., 224 Minn. 444, 29 N.W.2d 385, 387 (1947); *see also Jama v. Mayo Clinic, et. al.*, No. A16-1445, 2017 WL 1842840, at *4 (Minn. Ct. App. May 8, 2017) ("Declaratory relief and injunctive relief are remedies, not causes of action, and a cause of action must exist before injunctive relief."). As such, Plaintiff's separate claim for injunctive relief should be dismissed because it is not a viable cause of action.

CONCLUSION

For all the reasons stated, Defendant's motion to dismiss should be granted and the Complaint dismissed in its entirety.

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