

## IN THE IOWA DISTRICT COURT FOR BLACK HAWK COUNTY

|  |  |
|--|--|
| THE IOWA ASSOCIATION OF<br>BUSINESS AND INDUSTRY,<br><br>Plaintiff,  | Case No. EQCV139257                          |
| VS.  | RULING ON<br>MOTIONS FOR<br>SUMMARY JUDGMENT |
| THE CITY OF WATERLOO, THE WATERLOO<br>COMMISSION ON HUMAN RIGHTS, and<br>MARTIN L. PETERSON, in his individual<br>capacity.<br><br>Defendants. |  |

On March 27, 2020, the court held a hearing by telephone conference call on the motions for summary judgment filed by the attorneys for both the plaintiff and all defendants. Attorney Ryan Koopmans represented the plaintiff and attorney Timothy Boller represented the defendants. The hearing was not reported, no testimony was presented, but counsel presented oral argument and requested an additional seven days to file additional documentation. The court took the motions under advisement, has received additional documents from both counsel, and now files its rulings.

### FINDINGS OF FACT

The plaintiff, The Iowa Association of Business and Industry [ABI], is a statewide association of business organizations with more than 1,500 member companies in Iowa, including multiple companies employing more than 15 persons and located in Waterloo, such as Hy-Vee.

The defendant, The City of Waterloo, is a municipal subdivision of the State of Iowa and is located in Black Hawk County.

The defendant, The Waterloo Commission on Human Rights, is a local commission established by the City of Waterloo to protect the rights of the citizens of Waterloo secured by federal, state, and local civil rights laws.

The defendant, Martin L. Peterson, is the Waterloo City Attorney, whose duties include providing legal services to The Waterloo Civil Rights Commission.

The Waterloo Commission on Human Rights and its staff identified a concern about racial discrimination in employment based upon criminal histories of job applicants in Waterloo. This is the most racially/ethnically diverse community in Iowa. Statistical information was secured and analyzed. Additional information was obtained from multiple sources, including the National Employment Law Project, NAACP, Black Hawk County Jail, U.S. Department of Housing & Urban Development, and community members. After completing the review of these materials, the Commission determined

that employer's consideration of criminal history during the hiring process has had a disparate impact upon minorities, including African Americans, and has caused employment discrimination in Waterloo. The federal EEOC came to the same conclusion under the federal civil rights act. The commission then decided to propose a fair chance initiative ordinance to the Waterloo City Council. The Office of the City Attorney was contacted for assistance in drafting an ordinance.

The proposed ordinance was presented to the Waterloo City Council and considered at public meetings in August, September, and October of 2019 prior to being approved in November of 2019. Considerable public input was received during the consideration process. The City council also determined that employer's consideration of criminal history during the hiring process has had a disparate impact upon minorities, including African Americans, and has caused employment discrimination in Waterloo.

On November 4, 2019, the Waterloo City Council adopted Ordinance No. 5522, which is effective July 1, 2020. The new ordinance is codified in the city code at Title 5, Police Regulations, Chapter 3, Human Rights, as Section 15 and is titled "UNFAIR USE OF CRIMINAL RECORD IN HIRING DECISIONS." Paragraph B of Section 15 includes the provisions challenged in this case and it provides as follows:

B. Prohibited use of Criminal Information: In connection with the employment of any person, it shall be an unlawful discriminatory practice for an employer to include a criminal record inquiry on any application. It shall further be an unlawful discriminatory practice for an employer who employs fifteen [15] or more persons, but not in private schools providing a regular course of instruction for any part of kindergarten through high school education, to engage in any of the following activity:

1. To make an any inquiry regarding, or to require any person to disclose or reveal, any convictions, arrests, or pending criminal charges during the application process, including but not limited to any interview. The application process shall begin when the applicant inquires about the employment being sought and shall end when an employer has extended conditional offer of employment to the applicant. If the applicant voluntarily discloses any information regarding his or her criminal record at the interview, the employer may discuss the criminal record disclosed by the applicant.
2. To make an adverse hiring decision solely on the applicant's record of arrests or pending criminal charges that have not yet resulted in a conviction.

3. To make an adverse hiring decision based on any criminal records which have been lawfully erased or expunged, which are the subject of an executive pardon, or which are otherwise legally nullified.
4. To make an adverse hiring decision based on an applicant's criminal record without a legitimate business reason.

On January 2, 2020, ABI as plaintiff filed its petition for declaratory and injunctive relief, asking the court to enjoin all of the defendants from enforcing Ordinance No. 5522 and declare that the ordinance is invalid. Original notice was served and timely answers were filed disputing all material allegations and asserting affirmative defenses.

Both parties filed motions for summary judgment. The undersigned senior judge was assigned by the Chief Judge of the First Judicial District to handle this case.

Counsel for both parties confirmed in oral argument that the facts of this case are not disputed in any material part and that the case is appropriate for resolution without a trial, provided that the legal issues raised by all parties have been decided by the court.

## CONCLUSIONS OF LAW

### 1. DECLARATORY JUDGMENTS

Suits for declaratory judgment are authorized by Division XI of the Iowa Rule of Civil Procedure.

Rule 1.1101 - Declaratory judgments permitted, provides as follows:

Courts of record within their respective jurisdictions shall declare rights, status, and other legal relations whether or not further relief is or could be claimed. It shall be no objection that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form or effect, and such declarations shall have the force and effect of a final decree. The existence of another remedy does not preclude a judgment for declaratory relief in cases where it is appropriate.

Rule 1.1109 - "Person.", states as follows:

For purposes of this division, "person" shall include any individual or entity capable of suing or being sued under the laws of Iowa.

## 2. MOTIONS FOR SUMMARY JUDGMENT

A motion for summary judgment is used to avoid useless trials and to streamline the litigation process. *AMCO Ins. Co. v Stammer*, 411 N.W.2d 709 [Iowa Ct. of App. 1987]. The motion is authorized by Iowa Rule of Civil Procedure 1.981[3]. The rule provides, in part, that:

The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Both parties have filed motions for summary judgment and each side resists the motion filed by its opponent. Rule 1.981[3] requires a party resisting a motion for summary judgment to file supporting affidavits or other supporting materials, together with submission of a statement of undisputed facts and a memorandum of law. Both attorneys have submitted all required materials to the court.

The moving party bears the burden of showing the nonexistence of an issue of material fact. *Cent. Nat'l Ins. Co. of Omaha v Ins. Co. of N.Am.*, 522 N.W.2d 39 [Iowa 1994]. After that, the burden then shifts to the resisting party to present specific facts showing that there is a genuine fact issue. *James v. Swiss Valley Ag Serv.*, 449 N.W.2d 886 [Iowa Ct.App. 1989].

The evidence must be viewed in the light most favorable to the resisting party. *Scheckel v. Jackson County, Iowa*, 467 N.W.2d 286 [Iowa Capp. 1991].

It is up to the fact finder, which is the jury in a case at law, or the trial judge if an equity or another type of case, to decide credibility, weigh the evidence and draw appropriate inferences from the facts of the case. *Car v Bankers Trust Co.*, 546 N.W.2d 901 [Iowa 1996].

Facts are not material unless their proof is necessary to affect the outcome of a case. If the governing law is clear without the need to litigate and decide the facts of the case, summary judgment is appropriate. *Parish v. Jumping, Inc.*, 719 N.W.2d 540 [Iowa 2006].

## 3. HOME RULE – AUTHORITY OF CITIES TO LEGISLATE

Prior to the adoption of Section 38A by amendment to the Constitution of the State of Iowa, our state constitution and statutory law limited the authority to cities to exercising only those powers expressly granted to them by the constitution or the acts of the Iowa legislature. In recent years, the legislature and Iowa voters both determined that cities should be given broader authority to provide services to their citizens.

The following “home rule” amendment to our constitution was adopted:

Sec. 38A. Municipal home rule. Municipal corporations are granted home rule power and authority, not inconsistent with the laws of the general assembly, to determine their local affairs and government, except that they shall not have power to levy any tax unless expressly authorized by the general assembly.  
The rule or proposition of law that a municipal corporation possesses and can exercise only those powers granted in express words is not a part of the law of this state.

Chapter 384 of the 2019 Code of Iowa contains the statutes adopted by the Iowa legislature to implement the municipal “home rule” provisions of the Iowa constitution. This chapter also places certain limits on the power of cities. Those limits include the provision listed below:

384.3 Limitation of powers. The following are limitations upon the powers of a city:

12. *a.* **A city shall not adopt, enforce, or otherwise administer an ordinance, motion, resolution, or amendment providing for any terms or conditions of employment that exceed or conflict with the requirements of federal or state law relating to a minimum or living wage rate, any form of employment leave, hiring practices, employment benefits, scheduling practices, or other terms or conditions of employment.** *[emphasis added]*

#### 4. PROTECTION OF CIVIL RIGHTS

Chapter 216 of the 2019 Code of Iowa is cited as the “*Iowa Civil Rights Act of 1965*”. It includes state laws for enforcement of civil rights and the following provisions authorizing cities to adopt their own civil rights laws to supplement federal and state civil rights law enforcement:

216.19 Local laws implementing this chapter.

1. All cities shall, to the extent possible, protect the rights of the citizens of this state secured by the Iowa civil rights Act. **Nothing in this chapter shall be construed as indicating** any of the following:  
*a.* An intent on the part of the general assembly to occupy the field in which this chapter operates to **the exclusion of local laws** not inconsistent with this chapter that deal with the same subject matter.  
*b.* An intent to prohibit an agency or commission of local government having as its purpose the investigation and resolution of violations of this

chapter from developing procedures and remedies necessary to insure the protection of rights secured by this chapter.

c. **Limiting a city or local government from enacting any ordinance or other law which prohibits broader or different categories of unfair or discriminatory practices.** [emphasis added]

## 5. STANDING TO SUE

Standing to sue means that the plaintiff must have a sufficient stake in the dispute to obtain the aid of the court in deciding the case; or more bluntly put, must have “a dog in the fight.”

In *Baker v. City of Iowa City*, 750 N.W.2d 93 [Iowa 2008], it was held that businesses regulated by an ordinance have a specific interest in whether the ordinances are valid and the businesses are constrained by the restrictions imposed.

The case of *Teamsters Local Union No. 421 v. City of Dubuque*, 690 N.W.2d 464 [Iowa Ct. App.2004] approved a three prong test for standing in that an association must have one member who would have standing on its own; the interests at stake are relevant to the purpose of the association; and neither the claim or the relief requested needs participation from the individual member of the association to resolve the case.

The court concludes that the plaintiff has standing to sue in this case based upon its members doing business in Waterloo and the ordinance regulates their hiring practices.

## 6. PREEMPTION

“Preemption” is the fighting issue in this case and it is question of law and not of fact which must be decided by the court.

ABI claims that the limitations on city powers contained in Section 364.3[12][a] of the 2019 Code of Iowa specifically preempt the authority of the City of Waterloo to adopt any regulations regarding the information about a prospective employee’s criminal history that the employer can request, collect, and use in making a decision whether to hire a job applicant. It also claims that an ordinance seeking to do so is invalid and that an injunction should be issued to prevent the City from enforcing Ordinance No. 5522.

For a superior level of government to preempt the right to regulate or act on some subject means that it has retained the exclusive authority on that subject, thus prohibiting an inferior level of government from regulating or acting on that subject; or alternatively, the superior level has placed limits on the authority of the inferior body.

ABI asserts that the provisions of Section 364.3[12][a] are an express “preemption” of the City’s authority to regulate hiring practices in any way which conflict with federal or state laws on the

subject. See part 3. - HOME RULE – AUTHORITY OF CITIES TO LEGISLATE.

The City disagrees with ABI's interpretation of Section 364.3[12][a] and points to the specific provisions of the Iowa Civil Rights Act, Section 216.19[1][a] and 216.19[12][c] of the 2019 Code of Iowa. See part 4. - PROTECTION OF CIVIL RIGHTS.

In order to resolve the dispute and harmonize the alleged differences or inconsistencies between the two statutes, this court must interpret the statutes in accordance with established principles of statutory construction.

The purpose of the Home Rule provisions of the amended constitution is to allow cities to legislate over their own affairs subject to the superior authority of the State. *Hensler v. City of Davenport*, 790 N.W.2d 569 [Iowa 2010].

Any limits on the authority of a city must be clearly imposed, not implied. *Police Officers Ass'n v. Sioux City*, 495 N.W.2d 687 [Iowa 1993].

City ordinances are presumed to be constitutional and the burden of proof to establish invalidity is on the party who challenges the ordinance. *Wettach v. Iowa Board of Dental Examiners*, 524 N.W.2d 168 [Iowa 1994].

ABI asserts that the Iowa legislature has specifically prohibited cities from regulating hiring practices in the manner provided by Ordinance 5522. This is referred to as the legal doctrine of express preemption. *Mall Real Estate v. City of Hamburg*, 818 N.W.2d 190 [Iowa 2012].

ABI's preemption argument brings Section 364.3[12] into a direct conflict with the provisions of Section 216.19[1][a] and 216.19[1][c]. Section 4.7 of the 2019 Code of Iowa requires courts to attempt to harmonize two conflicting state statutes before finding a statute to be invalid. *Kelly v. State*, 525 N.W.2d 409 [Iowa 1994].

The Iowa Supreme Court has focused on two principal ways to prove the existence of employment discrimination under the Iowa Civil Rights Act. They are disparate impact and disparate treatment. See *Hy-Vee Food Stores, Inc. v. Iowa Civil Rights Comm.*, 453 N.W.2s 512 [Iowa 1990]. Criminal history considerations have been shown to have a disparate impact on minority groups, especially African Americans, as disclosed by the studies presented to the Waterloo City Counsel when Ordinance No. 5522 was proposed. These findings support the conclusion that the ordinance does not conflict with state employment law as expressed in the Iowa Civil Rights Act. The ordinance is consistent with the authority given to cities by Section 216.19[1][c] to provide "broader or different categories of unfair or discriminatory practices." Likewise, the court finds no material conflict with federal civil rights legislation and administrative practice which substantially comports with the Iowa act and Iowa case law.

Accordingly, the court concludes that Ordinance No. 5522 is not an invalid and unconstitutional

exercise of authority by the City of Waterloo.

RULING AND ORDER

The motion for judgment filed by the plaintiff, The Iowa Association of Business and Industry, is denied.

The motion for summary judgment filed by the defendants The City of Waterloo, The Waterloo Commission on Human Rights, and Martin L. Peterson, is granted.

The court declares and determines that Ordinance No. 5522 adopted by the City of Waterloo has been properly adopted by the City of Waterloo, pursuant to its “home rule” power and authority as a municipal subdivision, as authorized by Article III, Section 38A of the Iowa Constitution as amended.

The court also declares and determines that Ordinance No. 5522 does not contravene or violate Section 384.3[12][a] of the 2019 Code of Iowa.

The court further declares and determines that Ordinance No. 5522 is fully compatible with and in compliance with Section 216.19[1][c] of the 2019 Code of Iowa.

The court has no authority to award attorney fees to the successful party in this case.

Court costs provided by statute and court rules are to be taxed by the clerk of court and are assessed to plaintiff, The Iowa Association of Business and Industry.

The clerk of court shall furnish copies of this ruling to counsel of record:

COPIES TO:

Ryan Koopmans

Timothy Boller





State of Iowa Courts

**Type:** OTHER ORDER

**Case Number**      **Case Title**  
EQCV139257      IA ASSOC OF BUSINESS & IND VS CITY OF WATERLOO ET AL

So Ordered

  
\_\_\_\_\_  
John Bauercamper, Senior Judge