**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
CIVIL DIVISION**

FLORIDA GULF COAST CHAPTER
ASSOCIATED BUILDERS &
CONTRACTORS, INC., as an
Organization and Representative
of its Members,

Plaintiff,

CASE NO: 19-0007345-CI

v.

CITY OF ST. PETERSBURG,
a political subdivision of
the State of Florida,

Defendant.

_______________________________________/

ORDER ON PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT, AND FINAL JUDGMENT

THIS CAUSE, having came before the Court on May 6, 2021, June 21, 2021, December 29, 2021, for duly-noticed hearings on *Plaintiff's Motion for Summary Judgment* (including *Plaintiff's Supplement to Plaintiff's Motion for Summary Judgment*), *Plaintiff's Request for Judicial Notice*, and the *Joint Status Report and Plaintiff's Request for Judicial Notice*, and again on May 1, 2024 at a duly-noticed case management conference following the issuance of Fla. Gulf Coast Ch. Associated Builders & Contractors, Inc. v. City of St. Petersburg, 374 So. 3d 946, 946 (Fla. 2d DCA 2023) and the related mandate, and the Court having reviewed the Motion, the summary judgment evidence, the responsive papers submitted by Defendant CITY OF SAINT PETERSBURG (the "Defendant" or the "City"), and the January 17, 2024 *Plaintiff's Unopposed Motion for Case Management Conference* and its exhibits (which includes the opinion, merits briefing of the parties, the amicus brief of the State of Florida, and a link to the oral argument

conducted in Fla. Gulf Coast Ch. Associated Builders & Contractors, Inc. v. City of St. Petersburg, supra), the file, and having heard and considered the arguments of counsel for the City and Plaintiff FLORIDA GULF COAST CHAPTER ASSOCIATED BUILDERS & CONTRACTORS, INC. (the "Plaintiff" or "ABC"), and being otherwise fully advised in the premises, it is hereby **ORDERED AND ADJUDGED** as follows:

UNDISPUTED MATERIAL FACTS

Paragraphs 1 through 24 of following material facts were set forth in *Plaintiff's Motion for Summary Judgment*, and adopted by the City in *Defendant's Response to Plaintiff's Motion for Summary Judgment*:

The City Enacts the "Apprenticeship Ordinance"

1. In 2015, the City enacted Sections 2-296 and 2-297 of the St. Petersburg Code of Ordinances, titled "Major construction project requirements for employing apprentices."

2. In 2019, the City amended that ordinance, relocated it to Sections 2-261 through 2-264 of the St. Petersburg Code of Ordinances, and retitled it "Major Construction Project Requirements for Employing Apprentices" (the "Apprenticeship Ordinance").

3. The Apprenticeship Ordinance provides "[a]t least 15 percent of all hours of work performed on a major construction project shall be performed by apprentices employed by prime contractors or subcontractors." Sec. 2-263(a).

4. The Apprenticeship Ordinance defines a "major construction project" as "a City project with a contract amount of $1,000,000.00 or more, as approved by City Council, which involves building, altering, repairing, improving, demolishing or replacing any public structure, building, or roadway, or other public improvement." Sec. 2-262.

5. The Apprenticeship Ordinance defines "apprentice" as:

> subject to section 2-264, any person who is enrolled in and participating in an apprenticeship program for an apprenticeable occupation registered with the State of Florida Department of Education, as the registered agent for the United States Department of Labor. Subject to section 2-264, if the person or entity responding to a solicitation for a major construction project certifies that, after a search and review of the Florida Department of Education website, there are not any apprentices available from a State of Florida Department of Education approved apprentice program that has geographical jurisdiction in any part of Region 3 to perform the specific work described in the solicitation documents, apprentice means any person who is participating in an industry certification training program, company sponsored training program or an on-the-job training program (such as the Florida Department of Transportation On-the-Job Training Program) to perform the work specified in the major construction project contract documents. Industry certification is a process through which persons are assessed by an independent, third-party certifying entity using predetermined standards for knowledge, skills, and competencies, resulting in the award of a credential that is recognized by the industry. A company sponsored training program shall require that apprentices are employed through a process equivalent to the State of Florida Department of Education, as determined by the POD.

Id.

6. The Apprenticeship Ordinance defines "apprenticeable occupation" as "criteria for apprenticeship occupations set forth in F.S. § 446.092." Id.

7. The Apprenticeship Ordinance defines "[h]ours of work performed" as "actual labor hours worked on a major construction project (including actual labor hours worked by apprentices). Hours of work performed shall not include hours worked by foremen, superintendents, owners and workers who are not subject to the responsible wage required by section 2-277." Id.

8. Under the Apprenticeship Ordinance, a contractor bidding on a major City construction project must:

> submit a description of their proposed apprentice usage with their bid, proposal, or statement of qualifications. The description must include, but is not limited to, total work hours estimated for the major construction project, a demonstration of 15 percent of the total work hours proposed to be performed by apprentices, construction trades, program sponsors or sources (including any certification if there are no apprentices from a Region 3 State of Florida Department of Education

approved apprenticeship program), subcontractor opportunities and estimated duration of the employment of apprentices.

Sec. 2-263(b).

9. Under the Apprenticeship Ordinance, "[t]he prime contractor shall pay apprentices it employs for a major construction project, and shall require its subcontractors who employ apprentices for a major construction project to pay such apprentices, at the hourly rates set forth in section 2-277." Sec. 2-263(c).

10. The Apprenticeship Ordinance also provides: "[t]he contract for a major construction project between the City and the prime contractor shall include a provision requiring the prime contractor to comply with the requirements of this division and shall provide that the failure of the prime contractor to comply with such requirements may result in consequences for noncompliance." Sec. 2-263(g).

11. The Apprenticeship Ordinance also provides that a contractor who fails to comply these requirements will receive a penalty of increasing severity, as follows:

a. For the first failure to comply with the requirements of this division and associated contractual requirements-the prime contractor will forfeit from the retainage the dollar value of the difference between (i) 15 percent of the dollar value of the hours of work performed, and (ii) the dollar value of the labor hours actually performed by apprentices during the major construction project.

b. For the second failure to comply with the requirements of this division and associated contractual requirements-the prime contractor will be debarred from responding to solicitations for all City contracts for one year.

c. For the third failure to comply with the requirements of this division and associated contractual requirements-the prime contractor will be debarred from responding to solicitations for all City contracts for three years.

Sec. 2-263(k)(2)(a)-(c).

The City Enacts the "Disadvantaged Worker Ordinance"

12. The City enacted Section 2-298.5 of the St. Petersburg Code of Ordinances, titled

"Major construction project requirements for disadvantaged workers," in 2015.

13. In 2019, the City amended that ordinance, relocated it to Sections 2-268 through 2-270 of the St. Petersburg Code of Ordinances, and retitled it "Major Construction Project Requirements for Employing Disadvantaged Workers" (the "Disadvantaged Worker Ordinance").

14. Under the Disadvantaged Worker Ordinance, "[a]t least 15 percent of all hours of work performed on a major construction project shall be performed by disadvantaged workers employed by prime contractors or subcontractors." Sec. 2-270(a).

15. The Disadvantaged Worker Ordinance defines a "major construction project" as "a City project with a contract amount of $1,000,000.00 or more, as approved by City Council, which involves building, altering, repairing, improving, demolishing or replacing any public structure, building, or roadway, or other public improvement." Sec. 2-269.

16. The Disadvantaged Worker Ordinance defines a "[d]isadvantaged worker" as "(i) a person who has a criminal record, (ii) a veteran, (iii) a Southside Community Redevelopment Area resident, (iv) a person who is homeless, (v) a person without a GED or high school diploma, (vi) a person who is a custodial single parent, (vii) a person who is emancipated from the foster care system, or (viii) a person who has received public assistance benefits within the 12 months preceding employment by the prime contractor or subcontractor." Sec. 2-269.

17. The Disadvantaged Worker Ordinance defines "[p]ublic assistance benefits" as "unemployment benefits, Medicare or Medicaid benefits, or food assistance benefits as administered by the federal government or State of Florida." Id.

18. The Disadvantaged Worker Ordinance defines "[h]ours of work performed" as the "actual labor hours worked on a major construction project (including actual labor hours worked by disadvantaged workers). Hours of work performed shall not include hours worked by foremen,

superintendents, owners and workers who are not subject to the responsible wage required by section 2-277." Id.

19. Under the Disadvantaged Worker Ordinance, a contractor bidding on a major City construction project must:

> [Provide] a list of the resources which will be used to identify disadvantaged workers, a list of subcontractors proposed to be used for the project, total work hours estimated for the major construction project, a demonstration of 15 percent of the total work hours proposed to be performed by disadvantaged workers, and a description of the work to be performed by the disadvantaged workers.
>
> Sec. 2-270(b).

20. Under of the Disadvantaged Worker Ordinance, "[t]he prime contractor shall pay disadvantaged workers it employs for a major construction project, and shall require its subcontractors who employ apprentices for a major construction project to pay such disadvantaged workers, at the hourly rates set forth in section 2-277." Sec. 2-270(c).

21. Under the Disadvantaged Worker Ordinance, "[t]he contract for a major construction project between the City and the prime contractor shall include a provision requiring the prime contractor to comply with the requirements of this division and shall provide that the failure of the prime contractor to comply with such requirements may result in consequences for noncompliance." Sec. 2-270(g).

22. The Disadvantaged Worker Ordinance also provides that a contractor who fails to comply these requirements will receive a penalty of increasing severity, as follows:

a. For the first failure to comply with the requirements of this division and associated contractual requirements - the prime contractor will forfeit from the retainage the dollar value of the difference between (i) 15 percent of the dollar value of the hours of work performed and (ii) the dollar value of the labor hours actually performed by disadvantaged workers during the major construction project.

b. For the second failure to comply with the requirements of this division and associated contractual requirements - the prime contractor will be debarred from responding to solicitations for all City contracts for one year.

c. For the third failure to comply with the requirements of this division and associated contractual requirements - the prime contractor will be debarred from responding to solicitations for all City contracts for three years.

Section 2-270(k)(2)(a)-(c).

The City Incorporates the "Wage" Ordinance into both of the challenged Ordinances

23. In Section 2-277, the City enacted an ordinance entitled "Responsible wage for certain construction contracts" which requires that:

> Every contractor shall pay, and shall ensure that all subcontractors pay, no less than the hourly wage for each craft or trade under the most recent Davis-Bacon Act wage rates listed for Pinellas County to each employee for each hour of covered work performed by that employee. In the event that a craft or trade does not have an hourly wage, the contractor shall submit a request for a wage determination to the United States Department of Labor. Prior to receiving a response from the United States Department of Labor, the contractor shall pay or ensure that all subcontractors pay each employee for each hour of covered work at the hourly wage for a comparable craft or trade that currently exists as determined by the POD. In the event that the hourly wage for a craft or trade under the most recent Davis-Bacon Act wage rates listed for Pinellas County is less than the living wage set forth in this division, then every contractor shall pay, and shall ensure that all subcontractors pay no less than living wage set forth in this division to each employee for each hour of covered work performed by that employee.

Sec. 2-277(a) (the "Wage Ordinance").

24. The Wage Ordinance is incorporated into both the Apprentice Ordinance and the Disadvantaged Worker Ordinance.

25. In light of the parties' agreement that the Court may take judicial notice of the matters set forth in the requests for judicial notice submitted by the Plaintiff, the Court has taken judicial notice of the following, which applies to this matter:

a. The text of HB 53 (2021), which is attached to Plaintiff's Request for Judicial Notice;

b. The Legislature's 2021 passage of HB 53 (2001); and

c. Governor Ron DeSantis approved HB 53 (2021), which amends Fla. Stat. Sec. 255.0992, and delivered that act to Florida Secretary of State Laurel Lee for filing on June 29, 2021.

APPLICABLE SUMMARY JUDGMENT STANDARD

On May 1, 2021, the Florida Supreme Court amended Fla. R. Civ. P. 1.510. The amended rule applies to this case and this motion. In re Amends. to Fla. Rule of Civ. Proc. 1.510, 317 So. 3d 72, 77 (Fla. 2021); ("the new rule must govern the adjudication of any summary judgment motion decided on or after [May 1, 2021], including in pending cases."). The updated rule provides, in relevant part:

> **(a) Motion for Summary Judgment or Partial Summary Judgment.** A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court shall state on the record the reasons for granting or denying the motion. The summary judgment standard provided for in this rule shall be construed and applied in accordance with the federal summary judgment standard.
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> **(c) Procedures.**
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> **(1) Supporting Factual Positions.** A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:
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> (A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or
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> (B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

Fla. R. Civ. P. 1.510(a), (c)(1).

When announcing the rule change, the Florida Supreme Court made clear that it was adopting the "federal summary judgment standard," along with the "old soil" of case law interpreting that rule. In re Amends. to Fla. Rule of Civ. Proc. 1.510, 317 So. 3d at 76 (internal quotes and brackets omitted).

ANALYSIS

Article VIII, § 2(b) of the Florida Constitution and the Municipal Home Rule Powers Act, § 166.021, *et seq.*, Fla. Stat., provide municipalities with power to, among other things, "conduct municipal government, perform municipal functions and render municipal services[.]" Art. VIII, § 2(b), Fla. Const.; §166.021(1), Fla. Stat. But, Fla. Stat. Chap. 166 expressly imposes limitations on municipalities, and prohibits them from exercising any power that is expressly prohibited by law, the Constitution, or preempted to the State or county. Specifically, Fla. Stat. Sec.166.021(3) provides, in relevant part:

> The Legislature recognizes that pursuant to the grant of power set forth in s. 2(b), Art. VIII of the State Constitution, the legislative body of each municipality has the power to enact legislation concerning any subject matter upon which the state Legislature may act, except:
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> . . .
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> (b) Any subject expressly prohibited by the constitution;
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> (c) Any subject expressly preempted to state or county government by the constitution or by general law; and
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> (d) Any subject preempted to a county pursuant to a county charter adopted under the authority of ss. 1(g), 3, and 6(e), Art. VIII of the State Constitution.
>
> §166.021(3), Fla. Stat.

The Florida Supreme Court has recognized that municipal powers may be preempted expressly or impliedly:

> Relevant here, a local government enactment may be inconsistent with state law where the Legislature has preempted a particular subject area. Florida law recognizes both express preemption and implied preemption. On one hand, express

> preemption requires a specific legislative statement—it cannot be implied or inferred—and the preemption of a field is accomplished by clear language. On the other hand, implied preemption occurs when the state legislative scheme is pervasive and the local legislation would present a danger of conflict with that pervasive scheme. In other words, preemption is implied when the legislative scheme is so pervasive as to virtually evidence an intent to preempt the particular area or field of operation, and where strong public policy reasons exist for finding such an area or field to be preempted by the Legislature. Thus, preemption does not require explicit words so long as it is clear from the language utilized that the Legislature has clearly preempted local regulation of the subject. The test for implied preemption requires that we look to the provisions of the whole law, and to its object and policy. Further, the nature of the power exerted by the Legislature, the object sought to be attained by the statute at issue, and the character of the obligations imposed by the statute are all vital to this determination. . . .
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> Nevertheless, as we reemphasized in City of Palm Bay, because the Legislature is ultimately superior to local government under the Florida Constitution, preemption can arise even where there is no specifically preclusive language.
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> D'Agastino v. City of Miami, 220 So. 3d 410, 420-21 (Fla. 2017) (internal quotes, brackets, and citations omitted).

Also, municipalities cannot enact ordinances that conflict with statutes. "Under Florida law, a separate and distinct way for a local enactment to be inconsistent with state law is where the local enactment conflicts with a state statute." D'Agastino, 220 So. 3d at 421 n.8 (citing Sarasota All. For Fair Elections, Inc. v. Browning, 28 So. 3d 880, 885-86 (Fla. 2010)). Even though the Florida Legislature and municipalities may have concurrent power to legislate in certain areas, "concurrent power does not mean equal power." City of Palm Bay v. Wells Fargo Bank, N.A., 114 So. 3d 924, 929 (Fla. 2013). "The critical phrase of article VIII, section 2(b) [of the Florida Constitution] —'except as otherwise provided by law'— establishes the constitutional superiority of the Legislature's power over municipal power. Accordingly, municipal ordinances are inferior to laws of the state and must not conflict with any controlling provision of a statute." Id. at 928 (internal quotation marks and brackets omitted); see also, D'Agastino, 220 So. 3d at 421 ("We further reaffirmed in City of Palm Bay that the language 'except as otherwise provided by law'

contained in the constitutional provision "establishes the constitutional superiority of the Legislature's power over municipal power.").

The Florida Supreme Court has long "recognized that where concurrent state and municipal regulation is permitted, 'a municipality's concurrent legislation must not conflict with state law.'" City of Palm Bay, 114 So. 3d at 928 (quoting Thomas v. State, 614 So. 2d at 470 (Fla. 1993)). In other words, "[a] municipality cannot forbid what the legislature has expressly licensed, authorized or required, nor may it authorize what the legislature has expressly forbidden." Rinzler v. Carson, 262 So. 2d 661, 668 (Fla. 1972).

"Such 'conflict preemption' comes into play 'where the local enactment irreconcilably conflicts with or stands as an obstacle to the execution of the full purposes of the statute.'" City of Palm Bay, 114 So. 3d at 928 (quoting 5 McQuillin Mun. Corp. § 15:16 (3d ed. 2012)). An ordinance impermissibly conflicts with a state statute where "the local ordinance cannot coexist with the state statute." Orange County v. Singh, 268 So. 3d 668, 674 (Fla. 2019) (quoting Phantom of Brevard, 3 So. 3d at 314). In short, "[t]he test of conflict between a local government enactment and state law is whether one must violate one provision in order to comply with the other." *Browning*, 28 So. 3d at 888 (internal quotations and citations omitted); see also, City of Orlando v. Udowychenko, 98 So. 3d 589, 597 (Fla. 5th DCA 2012).

When a municipal "ordinance flies in the face of state law" or cannot be reconciled with state law, the ordinance "cannot be sustained." Barragan v. City of Miami, 545 So. 2d 252, 255 (Fla. 1989). Where such an inconsistent ordinance has been enacted, it "must be declared null and void." Hillsborough Cty. v. Fla. Rest. Ass'n, Inc., 603 So. 2d 587, 591 (Fla. 2d DCA 1992).

Furthermore, the following four-factor severability analysis must be applied in the context of unconstitutional provisions:

> (1) the unconstitutional provisions can be separated from the remaining valid provisions, (2) the legislative purpose expressed in the valid provisions can be accomplished independently of those which are void, (3) the good and the bad features are not so inseparable in substance that it can be said that the Legislature would have passed the one without the other and, (4) an act complete in itself remains after the invalid provisions are stricken.
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> Emerson v. Hillsborough County, 312 So. 3d 451, 460 (Fla. 2021) (quoting Cramp v. Bd. of Pub. Instruction of Orange Cnty., 137 So. 2d 828, 830 (Fla. 1962)).

ABC contends that the Apprenticeship Ordinance, the Disadvantaged Worker Ordinance, and the Wage Ordinance are unconstitutional, and preempted by: (i) Fla Stat. Sec. 255.0992 as amended by HB 53 (2021); (ii) Fla. Stat. Sec. 255.20(1); (iii) Fla. Stat. Sec. 218.077; and (iv) Fla. Stat. Sec. 218.735.

In addition, ABC contends that the Apprenticeship Ordinance and the Wage Ordinance, as applicable to the Apprenticeship Ordinance, is preempted by Fla Stat. Chap. 446.

Based on a careful review and analysis of the authorities cited and the summary judgment evidence, this Court finds that the Apprenticeship Ordinance, the Disadvantaged Worker Ordinance, and the Wage Ordinance are unconstitutional and preempted, and must be declared null and void, and stricken. They impermissibly control, limit, or expand staffing, and require recruitment, training or wiring of employees from a designated, restricted, or single source on "Major Construction Projects". They permit the permanent deprivation of statutorily-required retainage for improper reasons. They permit contracts to be awarded to parties that are not the lowest qualified bidder, and do not provide sufficient clarity on bidding or qualification criteria. They require wages in excess of the minimum wage for reasons not permitted by statute. They improperly impact apprenticeship programs. They are unduly vague and burden the construction industry, and only the construction industry, without an appropriate basis to do so.

Furthermore, even if any portion of the Apprenticeship Ordinance, the Disadvantaged Worker Ordinance, and the Wage Ordinance were not preempted or unconstitutional. this Court finds that they still must be stricken in their entirety for a number of reasons, including:

- Any potentially "constitutional" or non-preempted portions of the challenged City ordinances cannot be separated out from the clearly preempted or unconstitutional part;
- No complete act remains after striking the clearly preempted or unconstitutional parts of the challenged City ordinances;
- The potentially "constitutional" or non-preempted portions of the challenged City ordinances are inseparable from the clearly preempted or unconstitutional parts of those ordinances;
- Once the clearly unconstitutional portions of the challenged City ordinances are removed, any remaining portions of the challenged City ordinances would be insufficient to advance those challenged ordinances' stated objectives or purposes.

Accordingly, it is hereby

ORDERED AND ADJUDGED:

1. *Plaintiff's Motion for Summary Judgment* (including *Plaintiff's Supplement to Plaintiff's Motion for Summary Judgment*) is **GRANTED**.
2. Final Judgment is hereby entered in favor of Plaintiff FLORIDA GULF COAST CHAPTER ASSOCIATED BUILDERS & CONTRACTORS, INC. against Defendant CITY OF SAINT PETERSBURG, for which let execution issue.
3. Sections 2-261 through 2-264 of the St. Petersburg Code of Ordinances (2019) are preempted, and are hereby declared **NULL, VOID, AND STRICKEN**.
4. Sections 2-268 through 2-270 of the St. Petersburg Code of Ordinances (2019) are preempted, and are hereby declared **NULL, VOID, AND STRICKEN**.

5. The Court retains jurisdiction to enter further orders that are proper to adjudicate any post-judgment matters, including entitlement to and reasonable amount of any attorneys' fees and taxable costs.

6. The Court further reserves jurisdiction to 86.061 and 86.011, Florida Statutes, to grant additional, subsequent, or supplemental relief in this action as a result of the Court's ruling and declarations herein.

DONE and ORDERED in chambers at Saint Petersburg, Pinellas County, Florida, on July 8th, 2024.

THE HONORABLE CYNTHIA J. NEWTON
Circuit Judge

cc: All counsel of record