IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

AMERICAN PROMOTIONAL EVENTS, INC.—EAST, Plaintiff, v. CITY OF DES MOINES, Defendant.	**No. 4:17-cv-211-RGE-CFB** **ORDER RE: AMERICAN'S MOTION FOR PRELIMINARY INJUNCTION**

I. INTRODUCTION

On June 27, 1931, the downtown district of Spencer, Iowa, erupted in flames after a small spark ignited fireworks ready for sale. Five years later, the City of Remsen suffered a similar fate. These tragedies prompted Iowa to become one of the first states in the nation to ban the sale or use of consumer fireworks. The ban remained in place until May 2017, when Iowa enacted legislation permitting the sale and use of consumer fireworks for two designated periods each year. Shortly thereafter, the City of Des Moines enacted ordinances restricting firework sales to certain industrial zones. Now, the nation's largest distributor of consumer fireworks, American Promotional Events, Inc.—East, brings this lawsuit against the City, alleging the ordinances are invalid under Iowa and federal law.

American's lawsuit was originally filed in the Iowa District Court for Polk County on June 12, 2017. Compl. 1, Def.'s Ex. A, ECF No. 1-1. Following removal to this Court, American moved for a preliminary injunction. ECF No. 4. The matter came before the Court for hearing on June 23, 2017. Prelim. Inj. Hr'g Mins., ECF No. 11. Attorneys Holly M. Logan and Sarah E. Crane represented American. *Id.* Attorney John O. Haraldson represented the City. *Id.* The Court heard testimony from Charles Walker, a representative of American. *Id.* Both parties argued in support

of their respective positions. *Id.* The issue before the Court is whether American has met its burden to show the necessity of a preliminary injunction under the relevant factors. For the following reasons, the Court denies American's motion for a preliminary injunction. Under the *Dataphase* factors, although American faces some irreparable harm, it is unlikely to succeed on the merits and the remainder of the *Dataphase* factors are neutral. The Court concludes the balance of the factors weighs against issuing a preliminary injunction.

II. BACKGROUND

Given the limited purpose of a preliminary injunction "to preserve the relative positions of the parties until a trial on the merits can be held" and "the haste that is often necessary if those positions are to be preserved," the Court's determination on whether to grant an injunction rests on "procedures that are less formal and evidence that is less complete than in a trial on the merits." *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981). Accordingly, the Court's findings of fact and conclusions of law in this order are not binding at trial. *Id.*

On May 9, 2017, the Governor of Iowa signed into law Senate File 489 (SF 489), amending the Iowa Code to allow for the possession, sale, transfer, purchase, and use of consumer fireworks in the state. 2017 Iowa Legis. Serv. S.F. 489 (West); ECF No. 1-1 ¶ 10. The law regulates the sale and use of consumer fireworks, such as licensing procedures for wholesalers and retailers, limitations on the dates fireworks may be sold and used, and penalties.

Under SF 489, all consumer firework sellers are required to possess a license issued by the state fire marshal. S.F. 489 § 3. Licensing criteria include adherence to national firework-safety standards, possession of specified amounts of insurance, and restrictions on sale times. *Id.* Sales are permitted only during two specific time periods—June 1 to July 8, and December 10 to January 3. *Id.* The same time and date restrictions apply to the public's use of fireworks. *Id.* § 10.

In addition, SF 489 imposes penalties for selling fireworks to a person under eighteen years of age or using fireworks in contravention of an order by the state fire marshal. *Id.* The law recognizes cities may implement their own restrictions on fireworks use, stating "[a] city council may by ordinance or resolution prohibit or limit the use of consumer fireworks, display fireworks, or novelties." *Id.* § 8 (to be codified at Iowa Code § 364.2(6)).

Soon after SF 489's passage in May 2017, fireworks sellers and wholesalers applied for licenses to sell their products during the 2017 Fourth of July season. American Promotional Events, Inc.—East (American) is an Alabama corporation and the nation's largest distributor of consumer fireworks. ECF No. 1-1 ¶ 1. The Court heard testimony at the preliminary injunction hearing as to American's business model. *See* ECF No. 11. Primarily a wholesale distributor, American sells fireworks to "existing large and small retail outlets and to local philanthropic organizations"; both in turn sell the fireworks to consumers. ECF No. 1-1 ¶ 19; Pl.'s Reply Br. Supp. Req. Temp. Inj. 2, ECF No. 9. In other states, American also operates "supercenter" stores where it sells directly to consumers. American received its Iowa Wholesale Consumer Fireworks Registration license from the state fire marshal on June 5, 2017, allowing it to sell fireworks to commercial retailers. *Id.* at 2–3. In regards to American's sales in the City of Des Moines, American obtained Iowa Retail Consumer Fireworks Registration licenses on behalf of four commercial retailers located in the City—Walmart, Big Lots, and two Target locations. *Id.* at 2–3; Pl.'s Ex. 8, ECF No. 9-2. American asserts these retailers are exclusively in commercially zoned districts in Des Moines. American also intended to sell fireworks to non-profit and philanthropic organizations in the City, but has not provided the Court any evidence as to the identity of these groups. American indicated it does not intend to open "supercenter" direct-consumer stores in Iowa.

On May 26, 2017, and as directed by the legislature in SF 489, the state fire marshal adopted rules to regulate fireworks in Iowa. Pl.'s Ex. 3, ECF No. 1-4. The emergency rules became effective on May 31, 2017. *Id.* at 2. Among other provisions, the emergency rules establish the permitted selling periods, requirements for consumer fireworks retailers, applicable licensing fees, and possible penalties for violations. *See id.*

In response to SF 489, the Des Moines City Council approved Ordinance 15,585 and Ordinance 15,586. *See* ECF No. 1-1 ¶ 14; Des Moines, Iowa, Ordinance 15,585 (June 8, 2017), Def.'s Am. Ex. 1, ECF No. 6; Des Moines, Iowa, Ordinance 15,586 (June 12, 2017), Def.'s Ex. 1, ECF No. 5-1. Ordinance 15,585 amends the Des Moines Municipal Code to limit the retail sale of consumer fireworks as defined by SF 489 to M-1 light industrial districts and M-2 heavy industrial districts. ECF No. 6 § 1. It also expressly prohibits the sale of consumer fireworks in the City's Downtown Overlay District. *Id.*; *see also* Def.'s Ex. 3, ECF No. 5-1 (map of Des Moines highlighting the Downtown Overlay, M-1, and M-2 districts). Ordinance 15,586 in turn amends the Municipal Code to regulate the sale and use of fireworks in the City. Def.'s Ex. 1, ECF No. 5-1. Ordinance 15,586 reiterates consumer fireworks may only be sold "in zoning districts permitted by this code." *Id.*

Following the City's enactment of the Ordinances, on June 12, 2017, American sued the City in the Iowa District Court for Polk County. ECF No. 1-1 at 1. American asserts the City has "restricted the sale of fireworks to the outskirt industrial-zoned sections of town, which acts as a de facto ban on the sale of fireworks in the City," in violation of Iowa and federal law. *Id.* ¶ 6. American argues the Ordinances prevent its customers, which are located "almost exclusively" in Des Moines's commercial districts, from being able to sell fireworks and utilize the retail licenses American obtained on their behalf. ECF No. 9 at 3–4. American's claims include preemption by

Iowa law (Counts I and II), substantive due process (Count III), temporary and permanent injunctive relief (Count IV), declaratory judgment (Count V), and writ of certiorari (Count VI). *Id.* at 5–11.

American argues the Ordinances are not only preempted by SF 489, but also by House File 295 (HF 295). 2017 Iowa Legis. Serv. H.F. 295 (West); ECF No. 1-1 ¶¶ 37–46. Enacted March 30, 2017, HF 295 restricts counties' and cities' regulation of "consumer merchandise." *Id.* ¶ 7. It is not fireworks specific. *Id.* ¶¶ 37–46. House File 295 provides in pertinent part: "A city [or county] shall not adopt an ordinance, motion, resolution, or amendment that sets standards or requirements regarding the sale or marketing of consumer merchandise that are different from, or in addition to, any requirement established by state law." H.F. 295 (to be codified at Iowa Code § 364.3(3)).

The City removed the case to this Court on June 16, 2017, based upon federal question jurisdiction arising under American's substantive-due-process claim. Notice Removal, ECF No. 1. Following removal to federal court, American filed a motion for a preliminary injunction prohibiting the City from enforcing the Ordinances. ECF No. 4. Because Iowa law only allows summer fireworks sales between June 1 and July 8, American seeks immediate relief and argues it is injured "[f]or every day in which [it] cannot sell its consumer fireworks and novelties within the City of Des Moines in the short time period." ECF No. 9 at 3.

III. LEGAL STANDARD

Federal Rule of Civil Procedure 65 provides for preliminary injunctions. When contemplating such an order, the court considers the four *Dataphase* factors: "(1) the threat of irreparable harm to the moving party; (2) the weight of this harm as compared to any injury an injunction would inflict on other interested parties; (3) the probability that the moving party will

succeed on the merits; and (4) the public interest."[1] *Gen. Motors Corp. v. Harry Brown's, LLC*, 563 F.3d 312, 316 (8th Cir. 2009) (citing *Dataphase Sys., Inc. v. C L Sys., Inc.*, 640 F.2d 109, 113 (8th Cir. 1981) (en banc)). "The party seeking a preliminary injunction bears the burden of establishing the necessity of this equitable remedy." *Id.* Also, "[t]he court may issue a preliminary injunction . . . only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongly enjoined or restrained." Fed. R. Civ. P. 65(c).

IV. DISCUSSION

"A preliminary injunction is an extraordinary remedy never awarded as of right." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). "[T]he burden on the movant is heavy, in particular where, as here, 'granting the preliminary injunction will give [the movant] substantially the relief it would obtain after a trial on the merits.'" *United Indus. Corp. v. Clorox Co.*, 140 F.3d 1175, 1179 (8th Cir. 1998) (second alteration in original) (quoting *Sanborn Mfg. Co. v. Campbell Hausfeld/Scott Fetzer Co.*, 997 F.2d 484, 486 (8th Cir. 1993)). Ultimately, the court "has broad discretion when ruling on requests for preliminary injunctions." *Id.*

Application of the *Dataphase* factors is not a "rigid formula." *Bandag, Inc. v. Jack's Tire & Oil, Inc.*, 190 F.3d 924, 926 (8th Cir. 1999). "No single factor in itself is dispositive; in each case all the factors must be considered to determine whether on balance they weigh towards granting the injunction." *Calvin Klein Cosmetics Corp. v. Lenox Labs.*, 815 F.2d 500, 503 (8th Cir. 1987). The Court first considers the likelihood of success on the merits of American's claims.

[1] The parties apply different preliminary injunction standards in their filings, *compare* Pl.'s Reply 3, ECF No. 9 (applying the Eighth Circuit standard), *with* Def.'s Resist. 3 & 9, ECF No. 5 (applying the Iowa standard), but agreed at the preliminary injunction hearing the Court should apply the Eighth Circuit's *Dataphase* factors.

A. Likelihood of Success on the Merits

Under the likelihood of success on the merits prong, the court assesses whether the plaintiff has a "substantial likelihood" of prevailing. *Planned Parenthood Minn., N.D., S.D. v. Rounds*, 530 F.3d 724, 731 (8th Cir. 2008) (en banc) (citing *Richenberg v. Perry*, 73 F.3d 172, 172–73 (8th Cir. 1995)). In other words, "a court should flexibly weigh the case's particular circumstances to determine whether the balance of equities so favors the movant that justice requires the court to intervene to preserve the status quo until the merits are determined." *United Indus. Corp.*, 140 F.3d at 1179 (quoting *Calvin Klein*, 815 F.2d at 503 (quoting *Dataphase*, 640 F.2d at 113)). This factor "must be considered and balanced with the comparative injuries of the parties." 11A Charles Alan Wright & Arthur Miller, Federal Practice & Procedure § 2948.3 (3d ed. 2017) (citing, e.g., *Fennell v. Butler*, 570 F.2d 263 (8th Cir. 1978)). The likelihood of success on the merits prong is considered "the most significant" factor, though "no single factor is determinative." *Home Instead, Inc. v. Florance*, 721 F.3d 494, 497 (8th Cir. 2013) (second quote quoting *Dataphase*, 640 F.2d at 113).

At the hearing, American agreed the claims for consideration under the likelihood of success on the merits prong are Counts I, II, and III: American's preemption and substantive due process claims. These are the substantive claims relating to American's request for injunctive relief. *See Mid-Am. Real Estate Co. v. Iowa Realty Co.*, 406 F.3d 969, 976 (8th Cir. 2005) (granting and denying an injunction based on the success of the underlying claim linked to the activity sought to be enjoined).

1. Preemption (Counts I & II)

American argues SF 489 and HF 295 preempt the City of Des Moines's ability to regulate the sale of fireworks. ECF No. 1-1 ¶¶ 27–46. In considering whether American is likely to succeed on the merits of its preemption claims, the Court must determine whether the Iowa legislature has

expressly or impliedly preempted local action. *See Madden v. City of Iowa City*, 848 N.W.2d 40, 49 (Iowa 2014).

The home rule amendment of the Iowa Constitution states:

> 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 . . . . 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.

Iowa Const. art. III, § 38A. This amendment reversed an earlier power structure between municipalities and the legislature. Iowa previously followed the "Dillon Rule," named after Iowa Chief Justice John F. Dillon, "declar[ing] that municipalities were creatures of the legislature and had only those powers expressly granted by the legislature." *City of Davenport v. Seymour*, 755 N.W.2d 533, 538 n.1 (Iowa 2008). "The purpose of the home rule amendment was to give local government the power to pass legislation over its local affairs subject to the superior authority of the legislature." *Mall Real Estate, L.L.C. v. City of Hamburg*, 818 N.W.2d 190, 195 (Iowa 2012) (quoting *Hensler v. City of Davenport*, 790 N.W.2d 569, 584 (Iowa 2010)). The Iowa Code reaffirms the principle announced in the home rule amendment, stating: "The enumeration of a specific power of a city does not limit or restrict the general grant of home rule power conferred by the Constitution of the State of Iowa. A city may exercise its general powers subject only to limitations expressly imposed by a state or city law." Iowa Code § 364.2(2). Thus, in Iowa, "municipalities ordinarily have the power to determine local affairs as they see fit unless the [Iowa] legislature has provided otherwise." *Madden*, 848 N.W.2d at 49.

The legislature may "provide[] otherwise" by enacting laws that "preempt" municipalities' authority over certain matters. *Id.* "The preemption doctrine dictates that municipalities cannot act if the legislature has directed otherwise." *Hensler*, 790 N.W.2d at 585; *accord Mall Real Estate*, 818 N.W.2d at 195 ("[U]nder legislative home rule, the legislature retains the unfettered power to

prohibit a municipality from exercising police powers, even over matters traditionally thought to involve local affairs." (quoting *Seymour*, 755 N.W.2d at 538)). When the legislature preempts municipal power—and thus asserts its sovereignty—the "legislative power trumps the authority of local government to do the same." *Hensler*, 790 N.W.2d at 585. Yet although "[a] city may not set standards and requirements which are lower or less stringent than those imposed by state law, [it] may set standards and requirements which are higher or more stringent than those imposed by state law, unless a state law provides otherwise." Iowa Code § 364.3. Simply put, municipalities retain authority to impose laws stricter than those imposed by the state, except where the legislature has preempted such action.

The Iowa Supreme Court has recognized different forms of preemption: express preemption and implied preemption, which includes conflict preemption and field preemption. *Mall Real Estate*, 818 N.W.2d at 195; *Madden*, 848 N.W.2d at 48. When analyzing Iowa law and municipal ordinances under any of the above preemption doctrines, the "determination of whether a local ordinance is preempted by state law is a matter of statutory construction." *Seymour*, 755 N.W.2d at 537. If state law includes preemption language in multiple sections, a court is to "look at these statutes together to determine whether state law preempts the [city's] ordinance." *Mall Real Estate*, 818 N.W.2d at 194. American asserts SF 489 and HF 295 both expressly and impliedly preempt the City's Ordinances.

a. Express preemption

"Express preemption applies when the legislature has explicitly prohibited local action in a given area." *Mall Real Estate*, 818 N.W.2d at 195 (quoting *Hensler*, 790 N.W.2d at 585). This "is consistent with the notion that '[l]imitations on a municipality's power over local affairs are not implied; they must be imposed by the legislature.'" *Id.* (alteration in original) (quoting

Seymour, 755 N.W.2d at 558). "In cases involving express preemption, the specific language used by the legislature ordinarily provides the courts with the tools necessary to resolve any remaining marginal or mechanical problems in statutory interpretation." *Seymour*, 755 N.W.2d at 538. "Where the legislature seeks to prohibit municipal action in a particular subject area, express preemption offers the highest degree of certainty with the added benefit of discouraging unseemly internecine power struggles between state and local governments." *Id.* The Iowa Supreme Court has analyzed express preemption on several occasions. For example, in *Mall Real Estate, L.L.C. v. City of Hamburg*, the court found a statute which expressly barred municipalities from enacting ordinances regulating obscene material acted to expressly preempt a local ordinance regulating nude and seminude dance performances and associated businesses. 818 N.W.2d at 195–96. The court reached the opposite conclusion in *Hensler v. City of Davenport*, where the court found a local parental responsibility ordinance was not expressly preempted because the jurisdictional statute "[b]y its terms . . . does not explicitly prohibit the imposition of sanctions by a city on a parent based on a child's alleged delinquency." 790 N.W.2d at 585.

American centers its express preemption argument on the language of HF 295 amending Iowa Code section 364.3. House File 295 states: "A city shall not adopt an ordinance, motion, resolution, or amendment that sets standards or requirements regarding the sale or marketing of consumer merchandise[2] that are different from, or in addition to, any requirement established by state law." American acknowledges the City may regulate the use of buildings, structures, or land under Iowa Code section 414.1, but states the City of Des Moines's Ordinances are not zoning

[2] House File 295, amending Iowa Code section 364.3, defines "Consumer merchandise" as "merchandise offered for sale or lease, or provided with a sale or lease, primarily but not exclusively for personal, family, or household purposes, and includes any container used for consuming, carrying, or transporting such merchandise." The parties agreed at the hearing that consumer fireworks are consumer merchandise under this definition.

regulations. American argues the Ordinances instead regulate the sale of specific consumer merchandise and amount to a "near ban" to the sale of fireworks in Des Moines. ECF No. 9 at 10–11. American cites *Mall Real Estate* and *Worth County Friends of Agriculture v. Worth County* as examples where the Iowa Supreme Court looks to the effect of an ordinance to determine whether it is preempted, parsing the language of the ordinance to ascertain whether the ordinance regulates an activity mentioned by the legislature's express preemption language. ECF No. 9 at 10–11 (citing *Mall Real Estate*, 818 N.W.2d at 194–96; *Worth Cty. Friends of Agric.*, 688 N.W.2d 257, 262 (Iowa 2004)).

American also asserts the portion of SF 489 amending Iowa Code section 364.2 expressly preempts local action by directing: "A city council may by ordinance or resolution prohibit or limit the use of consumer fireworks, display fireworks, or novelties, as described in section 727.2." American argues this express language prevents a city council from enacting an ordinance or resolution relating to anything other than use. American argues the City's Ordinances "attempt to establish requirements on the sale of consumer merchandise 'that are different from, or in addition to' those requirements set by" SF 489. ECF No. 9 at 7.

In response, the City asserts neither SF 489 nor HF 295 restrict the City's zoning power. The City relies on the language in Iowa Code chapter 414, which provides for municipal zoning authority, and draws attention to the fact that in neither bill did the legislature amend Iowa Code chapter 414. *See* Def.'s Resp. Pl.'s Req. Temporary Inj. 4–5, ECF No. 5. The City states the Ordinances merely exercise the City's zoning power—a restriction on where fireworks can be sold rather than if fireworks can be sold—which is not restricted by the broad pronouncement in HF 295. *Id.* The City equates the power to zone where fireworks are sold to the power to zone where liquor and adult materials are sold. *Id.* at 5.

Zoning is a well-established municipal function. *See* Iowa Code ch. 414; *accord Residential & Agric. Advisory Comm., LLC v. Dyersville City Council*, 888 N.W.2d 24, 40 (Iowa 2016) (citing 101A C.J.S. *Zoning and Land Planning* § 2, at 18–19 (2016)). Iowa Code section 414.1(1) "empower[s]" cities to "regulate and restrict . . . the location and use of buildings, structures, and land for trade, industry, residence, or other purpose." The Iowa Supreme Court has repeatedly recognized, "[z]oning decisions are an exercise of the police power to promote the health, safety, order and morals of society." *Residential & Agric. Advisory Comm.*, 888 N.W.2d at 40 (alteration in original) (quoting *Montgomery v. Bremer Cty. Bd. of Supervisors*, 299 N.W.2d 687, 692 (Iowa 1980)); *see* Iowa Code § 414.3(1). "Zoning regulations carry a strong presumption of validity" and in light of this presumption, courts "decline to substitute [their] judgment for that of [a] city council" in judging a zoning ordinance. *Residential & Agric. Advisory Comm.*, 888 N.W.2d at 43.

By its terms, neither SF 489 nor HF 295 likely expressly preempt the City's Ordinances as they relate to zoning. The laws do not expressly prohibit or limit the City's zoning power. Senate File 489 authorizes local action regulating the use of fireworks and contains no express preemption language prohibiting municipal zoning powers.

American urges the Court to apply the statutory interpretation doctrine *expressio unius est exclusio alterius*, meaning the expression of one is the exclusion of another, to SF 489's inclusion of language allowing a municipality to enact an ordinance or resolution as to the *use* of fireworks, with no permission granted for local action as to *zoning*. *See Homan v. Branstad*, 887 N.W.2d 153, 166 (Iowa 2016). But the Iowa Supreme Court has refused to apply this statutory canon in implied preemption cases, noting "[u]nless the long-deceased Dillon Rule is resurrected, the notion that the mere failure of the legislature to authorize [municipal action] invalidates municipal action is

without merit. . . . In the context of state-local preemption, the silence of the legislature is not prohibitory but permissive." *Seymour*, 755 N.W.2d at 543 (citing *Cameron v. City of Waco*, 8 S.W.2d 249, 254 (Tex. Civ. App. 1928) (holding the statutory interpretation rule *expressio unius est exclusio alterius* does not apply when determining the scope of a municipality's powers under the home rule doctrine)). "While legislative silence on [an] issue may be a powerful indicator that the legislature has not [regulated on an issue] *under the statute*, [the Iowa Supreme Court] do[es] not think legislative silence can be interpreted as a *prohibition of local action* under home rule in light of [the] obligation to harmonize and reconcile a statute with an ordinance whenever possible." *Madden*, 848 N.W.2d at 50.

In SF 489, the legislature chose to include language allowing municipalities to regulate the use of fireworks. In SF 489 or in HF 295, the legislature could have, but chose not to, include express language as to zoning. The Court will not read into these statutes what the legislature has not provided. The Court therefore concludes neither SF 489 nor HF 295 includes language preempting municipalities from exercising their zoning power.

The Iowa Supreme Court's opinion in *Mall Real Estate* is consistent with this conclusion. 818 N.W.2d 190. In *Mall Real Estate*, the scope of the express preemption language at issue was "broad." *Id.* at 196. First, it contained a uniformity provision, indicating the state statutes are intended to be "the sole and only regulation of obscene material." *Id.* at 194 (quoting Iowa Code § 728.11 (2009)). Neither SF 489 nor HF 295 contains such a statement. Second, section 728.11 prohibited any local regulation "relating to the availability of obscene materials." *Id.* While similar, the language in HF 295 is significantly narrower. It forecloses only local regulations setting "standards and requirements," not any local regulation. *See* H.F. 295. And, the prohibited "standards and requirements" must be "regarding the sale or marketing" of consumer fireworks,

not merely "related to" the "availability of" consumer fireworks. *Compare* H.F. 295 *with* Iowa Code § 728.11. These differences in breadth undermine the significance, if any, of the inclusion of an express provision reserving zoning authority to local governments in the statute at issue in *Mall Real Estate* and the omission of one in HF 295. *See also Worth Cty. Friends of Agric.*, 688 N.W.2d at 262–63 (finding preemption applied where a statute "broadly preempt[ed] the regulation of a 'condition or activity occurring on land used for the production, care, feeding or housing of animals'" (emphasis removed)).

Based on the text of SF 489, the Court concludes there is no express preemption language prohibiting municipalities from implementing the contested zoning ordinances. *See Mall Real Estate*, 818 N.W.2d at 195–97; *see also Worth Cty. Friends of Agric.*, 688 N.W.2d at 262–63 (examining a statute preempting regulation to a condition or activity occurring on agricultural land and finding the local action impliedly preempted); *Goodell v. Humboldt Cty.*, 575 N.W.2d 486, 494–97 (Iowa 1998) (examining a statute regulating livestock feeding operations and finding local action was preempted in part).

Likewise, the broad language in HF 295 likely does not operate to expressly preempt the City's ability to exercise its zoning power. House File 295 prohibits "standards or requirements regarding the sale or marketing of" fireworks. A zoning ordinance is not a "standard[] or requirement[] regarding the sale or marketing of consumer merchandise." Zoning concerns the use of a building, not the sale of a good, and thus falls outside the prohibition of HF 295. *See* Iowa Code ch. 414. Zoning is not expressly preempted under HF 295. The record before the Court demonstrates the Ordinances set forth general zoning regulations allowing the sale of fireworks in Des Moines's industrial zones, and should not be read as regulations "regarding the sale or marketing" of fireworks as prohibited under HF 295. The City's Ordinances regulate the use of

buildings, structures, and land to promote health and safety, as provided for under Iowa Code section 414.1.

Because of the absence of express preemption language prohibiting the City's municipal zoning power, American is unlikely to succeed on the merits of its express-preemption claim. This weighs against the issuance of a preliminary injunction.

b. Implied conflict preemption

The Iowa Supreme Court has held conflict preemption applies only "where a local ordinance prohibits what a state statute allows or allows what a state statute prohibits." *Seymour*, 755 N.W.2d at 542; *accord Hensler*, 790 N.W.2d at 585. For conflict preemption to apply, an "ordinance must be 'irreconcilable' with state law." *Madden*, 848 N.W.2d at 49 (quoting *Hensler*, 790 N.W.2d at 585). In determining whether state law and a municipal ordinance are "irreconcilable," a court must consider whether "the ordinance cannot exist harmoniously with a state statute because the ordinance is diametrically in opposition to it." *Seymour*, 755 N.W.2d at 538. Similarly stated, the Iowa Supreme Court has interpreted "irreconcilable" as meaning "the conflict must be unresolvable short of choosing one enactment over the other." *Id.* at 541. "[T]he conflict must be obvious, unavoidable, and not a matter of reasonable debate." *Id.* at 539.

"The legal standard for [conflict preemption's] application is demanding." *Id.* The Iowa Supreme Court's conflict preemption doctrine is well established. *See, e.g.*, *Madden*, 848 N.W.2d at 49–51 (holding an Iowa statute, permitting municipalities to enact regulations regulating the maintenance of sidewalks, did not impliedly preempt—under conflict preemption—a municipal ordinance imposing liability on certain property owners for damages arising from the property owner failing to maintain the sidewalks); *Iowa Grocery Indus. Ass'n v. City of Des Moines*, 712 N.W.2d 675, 680 (Iowa 2006) (holding an Iowa statute providing that a state governmental

agency shall establish certain administrative fees that local authorities will assess impliedly preempted—under conflict preemption—a municipal ordinance authorizing the municipality to charge an additional administrative fee); *James Enters., Inc. v. City of Ames*, 661 N.W.2d 150, 153–54 (Iowa 2003) (holding that an Iowa law allowing designated smoking areas in restaurants impliedly preempted—under conflict preemption—a municipal ordinance prohibiting smoking areas in restaurants). When considering whether conflict preemption applies, a court "presume[s] that the municipal ordinance is valid." *Id.* And a court should make "every effort . . . to harmonize a local ordinance with a state statute." *Id.* at 542.

American argues SF 489 demonstrates the legislature's intent "for the state fire marshal, not city councils and zoning boards, to determine who can sell consumer fireworks, where, and in what types of structures" and in enacting the Ordinances, the City imposes requirements that are irreconcilable with SF 489. ECF No. 9 at 13. American cites *Iowa Grocery Industrial Association v. City of Des Moines* for the premise that "[t]he City's additional zoning requirements are impermissible even if they only increase the quantum of regulation provided by the legislature." *Id.*

The City argues the Ordinances are not irreconcilable with SF 489 and HF 295. To bolster this interpretation of the text of SF 489 and HF 295, the City points to the debate on the Iowa Senate floor from March 21, 2017, as demonstrating the legislature's intent for SF 489 to keep intact municipal zoning rights. *See* ECF No. 5 at 6–8 (citing *Senate Video (2017-03-21): SF 489 Ways & Means*, Iowa Legislature (Mar. 21, 2017, 4:54 PM), http://www.legis.state.ia.us/dashboard?view=video&chamber=S&clip=s20170321144351570&offset=7825&bill=SF%20489&dt=2017-03-21). The City summarizes various interactions from the Iowa Senate floor discussion and concludes it was the legislative intent for cities and counties to

"continue to use their zoning restrictions to appropriately restrict fireworks sales." *Id.* at 7 (emphasis removed). American rebuts the City's recitation of the legislative floor history by citing the use of the term "standard zoning requirements" during the floor debate, which American says demonstrates the legislature's intent to allow only "standard and existing zoning, such as through [the use of] commercial zones." ECF No. 7-1 at 11–12. The City concludes the Ordinances and SF 489 are not irreconcilable because "[w]hile cities clearly cannot redefine in defiance of the legislature the types of fireworks that can be sold, they have it within their power to determine the zoning districts in which the fireworks can be sold." ECF No. 5 at 8. The City states SF 489 and HF 295 do not conflict with the City's zoning ordinance and can coexist.

The Iowa Supreme Court cautions courts not to consider what the legislature "should or might have said"—a difficulty posed when relying upon legislative history to determine what the legislature intended a statute to mean. *Homan*, 887 N.W.2d at 166 (quoting *State v. Dohlman*, 725 N.W.2d 428, 431 (Iowa 2006)). A court should instead look first to the text to determine legislative intent. *See Mall Real Estate*, 818 N.W.2d at 194 (directing that the goal when construing a statute is to ascertain legislative intent, first looking to the language the legislature used); *see also* A. Scalia & B. Garner, *Reading Law: The Interpretation of Legal Texts* 291 (2012) ("In our view," intent for the purposes of federal preemption "must derive from the text of the federal laws and not from such extraneous sources as legislative history."). Without wading into the muddy waters of legislative history, the text of the statute leads the Court to conclude American is unlikely to succeed on the merits of its conflict-preemption claim.

The City's Ordinances limiting the sale of fireworks to certain industrial zones are likely not "irreconcilable" with SF 489 and HF 295. Under the City's Ordinances, a retailer, community group, or wholesaler may sell fireworks in the City of Des Moines in industrial zones, pursuant to

the other requirements set forth in SF 489 and under the state fire marshal's emergency rules. *See* Iowa Code §§ 100.19, 100.19A (2017); Iowa Admin. Code ch. 661-265 (2017). Senate File 489 does not dictate fireworks must be sold in a city's commercial zones; it allows for sale of consumer fireworks and contains no language expressly or impliedly limiting a city's zoning power under Iowa Code chapter 414. The Ordinances and SF 489 and HF 295 can exist harmoniously. The text of the statute demonstrates the Ordinances and the statutory law are likely reconcilable.

The Court finds the high bar for conflict preemption is not met based on the text of SF 489 and HF 295 because the state law and the municipal law can coexist and American may comply with both laws harmoniously. *See Seymour*, 755 N.W.2d at 541–42. Thus, American is unlikely to succeed on the merits of its conflict preemption claim. This weighs against the issuance of a preliminary injunction.

c. Implied field preemption

American also argues the Ordinances are preempted by SF 489 and HF 295 under the doctrine of implied field preemption. The doctrine of field preemption "occurs when the legislature has 'so covered a subject by statute as to demonstrate a legislative intent that regulation in the field is preempted by state law.'" *Hensler*, 790 N.W.2d at 585 (quoting *Seymour*, 755 N.W.2d at 539).

"[T]he test for field preemption is stringent. Extensive regulation of [an] area alone is not sufficient." *Seymour*, 755 N.W.2d at 539; *accord Hensler*, 790 N.W.2d at 585–86. Instead, "there must be some clear expression of legislative intent to preempt a field from regulation by local authorities, or a statement of the legislature's desire to have uniform regulations statewide." *Hensler*, 790 N.W.2d at 586 (quoting *Seymour*, 755 N.W.2d at 539). The Iowa Supreme Court has further declared: "The notion behind field preemption is that the legislature need not employ 'magic words' to close the door on municipal authority. Yet, courts are not to speculate on

legislative intent, even in a highly regulated field. There must be persuasive concrete evidence of an intent to preempt the field in the language that the legislature actually chose to employ." *Seymour*, 755 N.W.2d at 539; *accord Hensler*, 790 N.W.2d at 586.

American relies upon the emergency agency rules, as ordered in Iowa Code section 100.19, as evidence of the legislature's intent to preempt the field of firework regulation. American highlights SF 489 "set[s] out the dates in which consumer fireworks may be sold, provide[s] for a licensure scheme through the state fire marshal, set[s] minimum commercial general liability coverage requirements, and provide[s] for rule-making authority in the state fire marshal." ECF No. 9 at 14; *see also* Iowa Code §§ 100.19, 100.19A (2017). Specifically, American points to Iowa Code section 100.19(4)(c) which states consumer fireworks licensees may "sell consumer fireworks . . . at the following locations as specified." ECF No. 9 at 14. American states this posture broadly allowing sale, disregarding a municipality's authority, demonstrates the legislature's intent to occupy the field of fireworks sale. *Id.* at 15.

The City responds by stating the legislature did not intend to occupy the field and did not include an amendment to Iowa Code section 414. The City states the Ordinances control where fireworks can be sold, not "what" is sold. ECF No. 5 at 8.

As discussed above, field preemption applies "when the legislature has so covered a *subject* by statute as to demonstrate a legislative intent that regulation in the field is preempted by state law." *Seymour*, 755 N.W.2d at 539 (emphasis added). Here, the Court finds no "persuasive concrete evidence of an intent to preempt the field in the language that the legislature actually chose to employ." *Id.* American's argument references HF 295 and this language does not appear to indicate the legislature intended to so cover the field of "consumer merchandise"—or consumer fireworks—as to preempt the field of regulation over this subject. In cases where the Iowa Supreme

Court concluded field preemption applied, the legislature spoke far more clearly regarding its intent to occupy a field of regulation. For example, in *Iowa Grocery Industry Association v. City of Des Moines*, the Iowa Supreme Court held the legislature "reserved to itself the general authority to regulate the alcoholic beverage industry in Iowa," while nonetheless "g[iving] limited regulatory powers to local authorities." 712 N.W.2d at 679. There, the relevant section of the Iowa Code provided:

> This chapter shall . . . be deemed *an exercise of the police power of the state*, for the protection of the welfare, health, peace, morals, and safety of the *people of the state*, and all its provisions shall be liberally construed for the accomplishment of that purpose. It is declared to be public policy that the traffic in alcoholic liquors is so affected with a public interest that it should be regulated to the extent of prohibiting all traffic in them, *except as provided in this chapter*."

Id. at 679 (quoting Iowa Code § 123.1 (2003)). The Iowa Code chapter then listed a number of exceptions where municipalities retained their home rule powers. *See id.* at 679–80 (quoting and citing Iowa Code ch. 123). In contrast, the Iowa Supreme Court in *Seymour* found Iowa's traffic regulations and enforcement not sufficiently comprehensive so as to occupy the field. 755 N.W.2d at 543–44. The court found municipalities were thus not preempted from enacting traffic ordinances that do not conflict with state law. *Id.*

The language of HF 295 does not demonstrate a likelihood the legislature intended to occupy the entire field of regulation regarding consumer merchandise. This language is not as sweeping and comprehensive as the language the Iowa Supreme Court analyzed in *Iowa Grocery*. Moreover, the text of HF 295 regarding consumer merchandise—or of SF 489 or the emergency rules regarding consumer fireworks—is not as comprehensive as, in comparison, Iowa's traffic regulations and enforcement mechanisms. *Cf. Seymour*, 755 N.W.2d at 533 (holding Iowa's traffic regulations and enforcement mechanisms were not sufficiently comprehensive as to indicate the legislature intended to preempt the entire field of regulation).

The Court therefore concludes American is unlikely to succeed on the merits of its claim that HF 295, SF 489, and the emergency rules have "so covered a subject by statute as to demonstrate a legislative intent that regulation in the field is preempted by state law." *Id.* at 539. The length, breadth, and comprehensiveness of these rules does not demonstrate an intent to preempt the field. Accordingly, the Court finds American is unlikely to succeed on the merits of its claim field preemption prohibits the City from regulating consumer merchandise or fireworks.

2. Substantive Due Process (Count III)

American alleges the City's Ordinances deprive it "of the right to meaningfully access the Des Moines marketplace and sell consumer fireworks." ECF No. 9 at 15. As American acknowledges, in order to succeed under a substantive due process claim, it must establish the City's Ordinances violate a protected property interest. *Id.* (quoting *Honeywell, Inc. v. Minn. Life & Health Ins. Guar. Ass'n*, 110 F.3d 547, 554 (8th Cir. 1997)); *accord Minneapolis Taxi Owners Coal., Inc. v. City of Minneapolis*, 572 F.3d 502, 510 (8th Cir. 2009). If American succeeds in identifying a protected property interest, American then carries the burden to prove the City's zoning ordinances are not rationally related to a legitimate government interest. *Koscielski v. City of Minneapolis*, 435 F.3d 898, 902 (8th Cir. 2006). American directs the Court to intervene, even in light of the deferential standard, because the City's Ordinances are "irrational, arbitrary, or capricious." ECF No. 9 at 16; *see Koscielski*, 435 F.3d at 902–03 (holding the district court properly dismissed plaintiff's substantive due process claim because plaintiff did not prove the zoning ordinance was irrational, arbitrary, or capricious).

American does not overcome the deferential substantive due process standard. Even assuming American could establish a protected property interest to sell fireworks, the City's Ordinances are reasonably related to a legitimate governmental purpose of specifying the use of

buildings within the City where the sale of fireworks may take place. Other courts have similarly found "city ordinances prohibiting the sale, storage, and use of fireworks" withstand a substantive due process challenge. *PPC Enters., Inc. v. Texas City*, 76 F. Supp. 2d 750, 755–56 (S.D. Tex. 1999) (citing cases). There is no evidence the Ordinances are irrational, arbitrary, or capricious.

The Court must consider the other factors to determine whether a preliminary injunction should issue. *Home Instead*, 721 F.3d at 500 (directing district courts to consider all the factors). The Court notes that, at this preliminary stage, the standard for the *Dataphase* factor the Court now addresses is merely a likelihood of success on the merits. As previously noted, the Court's findings of fact and conclusions of law in this order are not binding at trial. *See Camenisch*, 451 U.S. at 395.

B. Threat of Irreparable Harm

Having found American has not demonstrated a substantial likelihood of success on the merits, the Court turns to the threat of irreparable harm. "To succeed in demonstrating a threat of irreparable harm, 'a party must show that the harm is certain and great and of such imminence that there is a clear and present need for equitable relief.'" *Roudachevski v. All–Am. Care Ctrs., Inc.*, 648 F.3d 701, 706 (8th Cir. 2011) (quoting *Iowa Utils. Bd. v. Fed. Commc'ns Comm'n*, 109 F.3d 418, 425 (8th Cir. 1996)). "Irreparable harm occurs when a party has no adequate remedy at law, typically because its injuries cannot be fully compensated through an award of damages." *Rogers Grp., Inc. v. City of Fayetteville*, 629 F.3d 784, 789 (8th Cir. 2010) (quoting *Gen. Motors Corp.*, 563 F.3d at 319). "The primary function of a preliminary injunction is to preserve the status quo until, upon final hearing, a court may grant full, effective relief." *Kan. City S. Transp. Co. v. Teamsters Local Union # 41*, 126 F.3d 1059, 1066–67 (8th Cir. 1997) (quoting *Ferry–Morse Seed Co. v. Food Corn, Inc.*, 729 F.2d 589, 593 (8th Cir. 1984)). Although the likelihood of success on

the merits prong carries the most weight in the Court's analysis of the *Dataphase* factors, *see Home Instead*, 721 F.3d at 497, "[w]hen there is an adequate remedy at law, a preliminary injunction is not appropriate," *Watkins Inc. v. Lewis*, 346 F.3d 841, 844 (8th Cir. 2003).

American asserts the Ordinances prevent it from selling consumer fireworks to commercial retailers and local community groups, causing monetary and non-monetary harms that require immediate intervention by the Court.[3] ECF No. 9 at 17–20. American argues it "is losing thousands of dollars each day and estimates its losses will be in the range of $300,000." *Id.* at 18. American claims "the first year of commercial activity after a state decides to allow the use of consumer fireworks is American's most significant and important sales time," because the first year after a prohibition is lifted is "when consumers are most interested in the previously prohibited product." *Id.* American argues sales and exposure during this first-year period are necessary "to establish its brand and reputation, build relationships with retailers, and present its products to the purchasing public." *Id.* American contends without immediate relief, it will lose "immeasurable exposure and goodwill with consumers," retailers, local community groups, and philanthropic organizations. *Id.* at 18–19. American claims these types of "intangible injuries" cannot be remedied by monetary compensation. *Id.* at 19. Moreover, American asserts, any monetary harm it has suffered is difficult to quantify because American is "a new entrant into the market" of consumer fireworks in Iowa, and "the market itself is new." *Id.* at 20.

[3] Whether American, as a wholesaler of fireworks, is the proper party to challenge the Ordinances, which regulate only the retail sale of fireworks, is not a question raised by the parties. *See, e.g.*, *Craig v. Boren*, 429 U.S. 190 (1976) (considering third-party standing for a beer vendor challenging a state statute prohibiting beer sales to males under 21 and females under 18). However, because the Court finds American is not entitled to a preliminary injunction based on the merits of its motion, the Court defers consideration of this issue. *But see FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 231 (1990) ("The federal courts are under an independent obligation to examine their own jurisdiction, and standing 'is perhaps the most important of [the jurisdictional] doctrines.'" (quoting *Allen v. Wright*, 468 U.S. 737, 750 (1984)).

The Court finds American has demonstrated some amount of irreparable harm caused by the Ordinances. "Loss of intangible assets such as reputation and goodwill can constitute irreparable injury." *United Healthcare Ins. v. AdvancePCS*, 316 F.3d 737, 741 (8th Cir. 2002). The Ordinances prevent American from selling its fireworks over the Fourth of July season in the manner it originally intended. American thus stands to lose goodwill and reputation with its customers, including retailers and local community groups. Such intangible harms can at times be quantifiable. *See Novus Franchising, Inc. v. Dawson*, 725 F.3d 885, 895 (8th Cir. 2013) (questioning the district court's finding that "loss of customers or customer goodwill" cannot be addressed through money damages); *Gen. Motors Corp.*, 563 F.3d at 319 (affirming denial of a preliminary injunction where the district court found harm from "lost customer relationships was equivalent to a claim of lost profits" and "could therefore be" quantified as money damages).

Here, however, the circumstances posed by Iowa's fireworks market raises unique issues such that it is unclear whether American's harm can be properly redressed by money damages if American later prevails on the merits. At this point, Iowa is four weeks into the first fireworks-selling season. Consumers are purchasing fireworks for the first time in over 80 years. If a fireworks seller is hindered in this early period when purchasers are first exposed to sellers and their products, the seller could suffer irreversible harm to its goodwill and reputation in the community. As the adage goes, there is no second chance to make a first impression.

Moreover, even if such harm is not irreversible, it would be exceedingly difficult to quantify. *See Med. Shoppe Int'l, Inc. v. S.B.S. Pill Dr., Inc.*, 336 F.3d 801, 805 (8th Cir 2003) ("Harm to reputation and goodwill is difficult, if not impossible, to quantify in terms of dollars."). And while American has not provided the Court any concrete evidence of this loss of goodwill and reputation, this is not dispositive because "it might take months for a loss of goodwill to

become manifest." *United Healthcare*, 316 F.3d at 742. The Court finds American has shown irreparable injury is not only possible, but "*likely* in the absence of an injunction." *Winter*, 555 U.S. at 22.

The City of Des Moines argues American has not suffered irreparable harm because American's complaint estimates its losses at $300,000. ECF No. 5 at 10. The City is correct quantifiable damages are not irreparable. *See Rogers Grp.*, 629 F.3d at 789. But American's representative testified at the preliminary injunction hearing its business stands to lose not only monetary harms, but also customer exposure, goodwill, and reputation to its business. Given the unique circumstances posed by the current state of the fireworks market in Iowa, the Court finds these alleged intangible injuries represent some amount of irreparable harm. For these reasons, this *Dataphase* factor weighs in favor of granting an injunction. However, this factor is of limited relevance when weighed against the likelihood of success on the merits. *See Home Instead*, 721 F.3d at 497 ("While 'no single factor is determinative,' the probability of success factor is the most significant." (citations omitted) (quoting *Dataphase*, 640 F.2d at 113; *Barrett*, 705 F.3d at 320)). The Court next considers the weight of the alleged harm as compared to any injury an injunction would inflict on other interested parties.

C. Balance of Harms

The Court must consider "the balance between th[e] harm [to the movant] and the injury that the injunction's issuance would inflict on other interested parties, and the public interest." *Pottgen v. Mo. State High Sch. Activities Ass'n*, 40 F.3d 926, 928–29 (8th Cir. 1994). This factor requires the examination of the harm granting or denying the injunction poses to both parties to the dispute, as well as other interested parties. *See Dataphase*, 640 F.2d at 113–14; *accord Baker Elec. Coop, Inc. v. Chaske*, 28 F.3d 1466, 1473 (8th Cir. 1994).

American asserts the balance of harms weighs in its favor because the harm to the City is "nonexistent." ECF No. 9 at 21. American argues an injunction prohibiting the City from enforcing the Ordinances would not harm the City's rights because the Ordinances are preempted by state law and thus it "has no power to enforce an ordinance that is preempted by state law." *Id.* at 22. In so arguing, American cites to *Northern States Power v. Prairie Island Mdewakanton Sioux Indian Community*, where the Eighth Circuit held an Indian tribe's sovereign powers were not infringed by enjoining a tribal ordinance because that ordinance was preempted by federal law and was therefore "not a legitimate exercise of the tribe's sovereign powers." ECF No. 9 at 21–22 (quoting *N. States Power Co. v. Prairie Island Mdewakanton Sioux Indian Cmty.*, 991 F.2d 458, 463–64 (8th Cir. 1993)).

However, while the Eighth Circuit in *Northern States Power* confirmed the lower court's holding that the tribe's ordinance was likely preempted under federal law, here the Court concludes American is not likely to succeed on its claim the Ordinances are preempted by Iowa law, as explained in the previous section. Accordingly, the City has the power to enforce the Ordinances; *Northern States Power* does not further American's position.

Cities in Iowa have a general interest in regulating public safety and enforcing their laws, as emphasized by Iowa's municipal home rule act. *See* Iowa Code § 364.1. In addition, the Iowa Code mandates "[e]ach city shall provide for the protection of life and property against fire." *Id.* § 364.16. The interest of cities and their citizens in restricting the location of the sale of fireworks is not an unjustified precaution, as demonstrated by the Spencer fire of 1931:

> A few days before the Fourth of July, 1931, a young American boy, whose name does not appear in the record, filled with enthusiasm and the desire to demonstrate his patriotism like boys of his age at that time of the year, entered a drug store which had a large display window filled with fire crackers and other explosives used to awaken the patriotism of the people of this country on the Fourth of July. In some way or other, no doubt by crowding or pushing, the young boy came close to the

> display window. Whether it was a lighted match, a piece of punk, or a torpedo he dropped into the window, probably never will be known. But, before the fire that followed was extinguished, the business section of the beautiful city of Spencer was practically destroyed[.]

Fillgraf v. First Nat. Ins. Co. of Am., 256 N.W. 421, 421 (Iowa 1934). The issuance of a preliminary injunction enjoining enforcement of the Ordinances would thus harm interests of the City and the public.

Weighing against these harms are the potentially significant economic harm to American as described above, and the public's interest in enjoying the use of and ease of access to recreational fireworks. The celebration of Independence Day "has been regarded, and has ever been looked upon, as the right and privilege of the American citizen to[] celebrate." *Reinart v. Inc. Town of Manning*, 231 N.W. 326, 326 (Iowa 1930). The Iowa legislature has decided its citizens' celebration may include recreational fireworks for the first time in over 80 years, and the Court recognizes the public's interest in purchasing and using fireworks. However, the Ordinances do not ban the sale of consumer fireworks within the City limits. While perhaps inconvenient, fireworks are available for sale within the designated industrial districts.

In balancing the harms caused to the parties and the public interest by granting or denying a preliminary injunction, the Court finds there are significant interests on both sides. Accordingly, this factor does not weigh in favor of either party. The Court proceeds to the next *Dataphase* factor, the public interest.

D. The Public Interest

The final *Dataphase* factor directs consideration of the public interest. In order for a court to grant a preliminary injunction, the court must consider whether a preliminary injunction would serve the public interest. *Dataphase*, 640 F.2d at 113. Public interest can include, for example, the impact on the national defense, *Winter*, 555 U.S. at 24; the protection of constitutional rights,

Phelps–Roper v. Nixon, 545 F.3d 685, 690 (8th Cir. 2008), *rev'd on other grounds Phelps–Roper v. City of Manchester*, 697 F.3d 678 (8th Cir. 2012) (en banc); or the importance of having governmental agencies fulfill their obligations, *Sierra Club v. U.S. Army Corps of Eng'rs*, 645 F.3d 978, 997 (8th Cir. 2011). The Court considers both the public interests injured and the public interests served in granting or denying a preliminary injunction. *Sierra Club*, 645 F.3d at 997–98.

American asserts the public interest favors an injunction because the Iowa legislature has given the public the right to purchase and use consumer fireworks in Iowa. ECF No. 9 at 22. However, as discussed above, the Ordinances allow the public to purchase fireworks in industrial zones within the City. Moreover, the public has an interest in ensuring it is protected from potential fire hazards associated with the selling and storing of consumer fireworks in commercial zones. Given these competing interests, the Court finds the public interest factor is neutral and does not weigh in favor of either party.

V. CONCLUSION

Weighing the factors outlined above, the Court concludes Plaintiff's Motion for a Preliminary Injunction should be denied. Although American faces some irreparable harm, American is unlikely to succeed on the merits of its underlying claims and the balance of harms and the public interest factors are neutral. The Court **DENIES** American's motion for a preliminary injunction.

IT IS SO ORDERED.

Dated this 29th day of June, 2017.

REBECCA GOODGAME EBINGER
UNITED STATES DISTRICT JUDGE