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MEMORANDUM

TO: Barry Clegg, Chair
Members of the Minneapolis Charter Commission

FROM: Susan L. Segal, City Attorney
Erik Nilsson, Deputy City Attorney
Susan Trammell, Managing Attorney

CC: Mayor Jacob Frey
Council President Bender
Members of the Council
Casey Carl, City Clerk

DATE: September 28, 2018

RE: Charter Authority of Mayor & City Council Regarding Police Department

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The City Council has referred a proposed charter amendment to the Charter Commission relating to authority over the police department. In a staff direction dated August 3, 2018, as amended on August 9, 2018, the City Council authorized the City Attorney's Office to provide legal analysis to the Charter Commission in connection with this proposed amendment. The Chair of the Charter Commission has requested the legal analysis by the City Attorney's Office of the existing provisions of the City Charter and applicable state laws and regulations related to the authority of the Mayor and City Council with regard to the police department. This analysis was initially provided to the Mayor and Council on September 28, 2018, pursuant to the above-referenced staff direction. This memorandum is provided in response to the Charter Commission's request for analysis.

OVERVIEW

Broadly stated, legislative authority is defined as the power to make laws, while executive authority is defined as the power to carry out the laws. *Brayton v. Pawlenty*, 781 N.W.2d 357, 364–65 (Minn. 2010). In general, these functions are to be exercised by each branch independently. *State v. Christianson*, 229 N.W. 313, 314 (Minn. 1930). However, there are some instances where the actions of a government office may involve functions that are not exclusively executive or legislative. *See State ex rel. Patterson v. Bates*, 104 N.W. 709, 711 (Minn. 1905); *see also St. Paul Companies, Inc. v. Hatch*, 449 N.W.2d 130, 134–35 (Minn. 1989).

The Minneapolis City Charter, the City's local constitution, vests both the Mayor and City Council with certain powers and duties related to the establishment, administration, and regulation of all local municipal functions, including policing. In addition to the general executive authority to ensure that all city officials perform their duties, the Charter specifically states that the Mayor has "complete power" over the Police Department. As the governing body for the City, the City Council has general legislative authority and wields the "power of the purse" in regard to all City departments, including the Police Department.

ANALYSIS

I. The Minneapolis City Charter Conveys the Respective Powers and Duties of the Mayor and the City Council

A. Charter Provisions

Minneapolis City Charter, Article VII, § 7.1(b), addresses the Mayor's duties:

> The Mayor must—
>
> (1) take care that all laws and ordinances are faithfully observed and enforced within the City;
> (2) take care that each other officer discharges his or her duties, for which purpose the Mayor may seek a writ of mandamus or other appropriate action against any delinquent officer;
> (3) recommend action in the City's interest by any other government;
> (4) address the City Council annually on the state of the City, and recommend appropriate measures for the City's physical and economic development; and
> (5) notify the City Council and any other interested board, commission, committee, or department of any litigation against the City.

In addition, as set out in Article VIII, Section 8.4(b)(1) of the Charter, the Mayor has the "exclusive power" to nominate all charter department heads, including the Chief of Police.

The Charter includes the following with respect to the Mayor's authority over the Police Department:

> (a) **Police department.** The Mayor has complete power over the establishment, maintenance, and command of the police department. The Mayor may make all rules and regulations and may promulgate and enforce general and special orders necessary to operating the police department. Except where the law vests an appointment in the department itself, the Mayor

(b) appoints and may discipline or discharge any employee in the department (subject to the Civil Service Commission's rules, in the case of an employee in the classified service).

(1) **Police chief.**

(A) **Appointment.** The Mayor nominates and the City Council appoints a police chief under section 8.4(b).

*** * ***

(D) **Public health.** The chief must execute the City Council's orders relating to the preservation of health.

(c) **Temporary police.** The Mayor may, in case of riot or other emergency, appoint any necessary temporary police officer for up to one week.

Charter, Article VII, §7.3.

The Charter places the City's general legislative and policy making authority in the City Council, while delineating the scope of that authority as follows:

> The City Council may act on the City's behalf in any matter, except where—
>
> (1) this charter reserves the action for a different board,
> (2) commission, or committee; or
> (3) the action is inconsistent with this charter or otherwise unlawful.

Charter, Article IV, § 4.1.

Charter, Article VII, § 7.2(a), discusses the City Council's role related to the Police Department:

> The City Council must establish, organize, and otherwise provide for these departments:
>
> *** * ***
>
> (11) a police department (section 7.3); . . . .

Additionally, while the Mayor nominates, it is the City Council that appoints the Chief of Police. (Charter, Article VII, §7.3).

The Charter itself informs the reader of the proper construction of its clauses. Not only do the canons of construction and other principles of interpretation in the Minnesota Statutes apply to the Charter but "settled interpretations" of prior Charter language are "valid in interpreting the revised [2015] charter to the extent that the charter carries forward the interpreted provision or term; . . . ." Charter, Article I, § 1.3(d). In that regard, the Minnesota Supreme Court has construed the Charter as vesting the Mayor with "complete supervision over the police department." *Rees v. City of Minneapolis*, 117 N.W.2d 432, 433 (Minn. 1908). This authority extends to appointment, discipline and removal of peace officers and definition of the officers' duties.

B. Prior City Attorney Opinions

The City Attorney's Office has issued several prior opinions interpreting charter authority of the Mayor and City Council with respect to the Police Department. In construing the scope of the City Council's authority, the City Attorney's Office has previously explained:

> There are five major areas of the Charter which grant to the City Council most of its authority to act. They relate to the following areas: 1) the authority for the City Council to levy taxes, 2) City Council's jurisdiction of City employees, 3) the purposes for which private property may be condemned, 4) the powers granted by Chapter 4, Section 5, of the Minneapolis City Charter to the City Council to adopt ordinances, and 5) the purposes for which obligations may be incurred, and the methods by which obligations may be incurred.

CAO Opin. 10-18-1974. The City Council's jurisdiction of City employees, including police department employees, in the classified service is limited to:

> setting compensation of all officers elected or appointed under the Charter, defining the type of staff which will be provided to accomplish various City functions, determining how many positions will be filled within a specific classification, and determining the number of employees from various classifications, except Fire Department employees [former Charter, Ch. 5, § 11], which will be laid off when funds are not sufficient to meet all of the City's expenses. With respect to employees in the unclassified service of the City, the City Council is not limited by the provision of [the Civil Service Rules]."

Id. The Council is the City's legislative body and, as such, the Charter constrains the City Council's ability to exercise control over the City's various departments, including the Police Department. Other than the Charter language providing for the executive committee and its powers to appoint, suspend and remove officers (Charter, Article IV, § 4.5 and Art. VII, § 8.4), the Charter gives the City Council no direct control over the officers and employees of any department of the City. Each department head has the authority to write policies and procedures for their respective department, generally sets the standards for the department's employees, and controls the operations of the department. The City Council approves business plans and ultimately can set the budget, but does not have the authority to direct the internal operations of *any* City department.

City Council control over Police Department personnel is similar to the City Council's control over the classified service and is "limited to consenting to any increase in the number of persons in the department …; providing buildings, facilities and equipment, including station houses and all other public property as may be necessary to the efficiency of the police department; fixing the salary and compensation of each member of the force and providing for the payment thereof; fixing the amount of bonds required from each officer and approving the same; . . . ." CAO Opin. 2-26-40.

Turning to the authority of the Mayor under the Charter, prior City Attorney Opinions have confirmed the power of the Mayor to direct the internal operations of the Police Department. For example, in an August 9, 1972 memorandum, City Attorney Stidd opined: "The establishment of rules and policies as to the use of [police] dogs is within the authority of the Mayor, rather than the City Council." City Attorney Brady subsequently issued an opinion dated January 4, 1995, concluding that "nothing within the Charter [ ] impinges upon the mayoral power to override a Chief of Police's recommendation as to discipline of a police officer. . . subject to potential Civil Service appeal or grievance under the Labor Agreement."

More recently, this office analyzed proposals both redesigning the Civilian Review Authority (CRA) and implementing the revamped CRA. On February 1, 1990, Deputy City Attorney Olson opined that a proposed ordinance was not, on its face, in conflict with the Charter because the proposed ordinance would not vest the CRA with nor divest the Mayor of power over the Police Department. On March 19, 1993, Assistant City Attorney Moore opined that the Police Chief was not compelled to follow CRA's recommendation for discipline as "[n]othing in Chapter 172 of the Minneapolis Code of Ordinances divests the Mayor, and the Mayor's designee, the Chief of Police, of the Mayor's inherent authority under the City Charter." On both June 13, 2006 and July 7, 2016, Deputy City Attorney Ginder issued opinions reiterating the conclusion that proposals divesting the Mayor of control over the Police Department would violate the City Charter.

C. Ordinance Provisions

Provisions of the Minneapolis Code of Ordinances reflect the differing authority and duties of the Mayor and City Council under the Charter. Ordinances provide that the Mayor:

- Directs the police chief as to the management of the department;

- May appoint special police officers; and
- May appoint any qualified city, state or federal emergency management personnel as a special police officer.

M.C.O.§§ 171.20, 171.90 & 128.270.

As with the Mayor's role, the City Council's role is further detailed in ordinance. The City Council:

- Provides necessary public property and equipment and number of police officers;
- Designates the police chief to appoint a community services bureau director; and
- Possesses the power to revoke appointments of special police officers.

M.C.O. §§ 171.10, 171.20 & 171.100. These provisions reflect the duty of the City Council to provide for the Police Department, with its "power of the purse," and includes provisions that were removed from the former charter.

II. Though the Legislative and Executive Branches Are and Must Remain Independent, Distinctions Between Legislative and Executive Authority Are Not Always Clear

A. Scope of Independent Authority

The legislative and executive branches of government "are independent of each other." *State v. Christianson*, 229 N.W. 313, 314 (Minn. 1930). The Minnesota Supreme Court, articulating the principle of separation of powers, has stated, "[e]ach branch of government is given its own powers, and the powers given have a . . . limited scope." *Cruz-Guzman v. State*, A16-1265, 2018 WL 3558940, slip op., at *13 (Minn. July 25, 2018). Thus, "[a]s the names of the two branches suggest, the legislative branch has the responsibility and authority to legislate, that is, to make the laws . . . and the executive branch has the responsibility and authority to execute, that is, to carry out the laws." *Brayton v. Pawlenty*, 781 N.W.2d 357, 364–65 (Minn. 2010). The Court has noted that "'[l]egislative power, as distinguished from executive power, is the authority to make laws, but not to enforce them or appoint the agents charged with the duty

of such enforcement.'" *State v. Chase*, 220 N.W. 951, 954 (Minn. 1928) (quoting *Springer v. Philippine Islands*, 277 S.Ct. 480, 482 (1928)). At the same time, the executive has "great power to see that the laws . . . are faithfully executed . . . [and] can enforce the laws, but cannot change or suspend them." *State ex rel. Lichtscheidl v. Moeller*, 249 N.W. 330, 333 (Minn. 1933).

Executive powers include "regulatory and protective functions," *St. Paul Companies, Inc. v. Hatch*, 449 N.W.2d 130, 137 (Minn. 1989), "[d]eployment of police forces," *Nusbaum v. Blue Earth Cty.*, 422 N.W.2d 713, 719 (Minn. 1988) (citing *Silver v. City of Minneapolis*, 170 N.W.2d 206 (Minn. 1969)), and "preservation of the public peace" with the duty of "enforcement of the law." *In re Olson*, 300 N.W. 398, 399 (Minn. 1941). Conversely, legislative power includes the general power of enacting laws, including the creation of substantive law which "create[s], define[s], and regulate[s] rights, declare[s] what acts are crimes, and prescribe[s] punishment for their violations[,]" *State v. Lemmer*, 736 N.W.2d 650, 657 (Minn. 2007)(citations and quotations omitted); debating and evaluating policy choices, *Isles Wellness, Inc. v. Progressive N. Ins. Co.*, 703 N.W.2d 513, 524 (Minn. 2005); making determinations of legislative expediency or declarations of public policy. *Park Const. Co. v. Indep. Sch. Dist. No. 32*, 296 N.W. 475, 477 (Minn. 1941); and using the "[p]lenary power to regulate." *W. States. Util. Co. v. City of Waseca*, 65 N.W.2d 255, 262 (Minn. 1954).

However, the Court has acknowledged that the distinction between the scope of authority of each independent branch of government cannot be drawn with "mathematical precision" and that courts cannot "divide the branches into watertight compartments, were it ever desirable to do so." *Chase*, 220 N.W. at 954 (quoting *Springer v. Philippine Islands*, 277 U.S. 480, 485 (Holmes, J., dissenting) (1928)).

B. Distinguishing Between the Scope of Legislative and Executive Authority

In a line of cases dating back to 1905, the Minnesota Supreme Court recognized that government officials sometimes exercise functions belonging to more than one of the three branches of government. *See State ex rel. Patterson v. Bates*, 104 N.W. 709, 711 (Minn. 1905); *see also St. Paul Companies, Inc. v. Hatch*, 449 N.W.2d 130, 134–35 (Minn. 1989). In *Patterson*, the Court explained, "It is not always easy to discover the line which marks the distinction between executive, judicial, and legislative functions, and when duties of an ambiguous character are imposed . . . any doubt will be resolved in favor of the validity of the statute." 104 N.W. at 711 (discussing ambiguous distinctions between judicial and executive functions). Even a single act may involve functions that can be characterized as judicial, legislative, or executive, "and these are often so interwoven and connected that they cannot readily be separated and distinguished." *Id.* The *Patterson* court rejected the notion that all government actions "must necessarily be either executive, legislative, or judicial in their nature." *Id.* at 712. The court reasoned that where a power "cannot be said to be either executive, legislative, or judicial" and where that power is not "unequivocally [e]ntrusted to either . . . the mode of its exercise" must be determined by the Legislature. *Id.* (quotations omitted).

The current status of *Patterson* is not entirely clear. In 1989, the Court walked back its holding, stating that "the literal language of *Patterson* is . . . no longer controlling." *St. Paul Companies*, 449 N.W.2d at 135. This statement appears directed at changes to administrative law that had occurred in the intervening decades between *Patterson* and *St. Paul Companies*. *Id.* In *St. Paul Companies*, the Court explained that, rather than deferring to the legislature as the *Patterson* Court had suggested, it is instead necessary to "determine the essential nature of the

function being performed by the administrative agency, rather than apply the *Patterson* analysis to every situation." *Id.* at 136. However, this new rule appears limited to the context of administrative agencies, which tend to exercise both executive and quasi-judicial functions. *Id.* at 135–36. The Court later quoted *Patterson* for the proposition that there is an "unwarranted assumption that all functions of government must necessarily be either executive, legislative, or judicial" in the context of a dispute between the legislative and executive branches of state government. *Ninetieth Minnesota State Senate v. Dayton*, 903 N.W.2d 609, 623 (Minn. 2017) (citing *Patterson*, 104 N.W. at 712). Thus, it appears that courts are inclined to recognize the principle articulated in *Patterson*, that while the government is divided into three branches, in practice, the functions of the branches of government tend to overlap and that lines of demarcation may be ambiguous or interwoven. *See* 104 N.W. at 712.

C. Interaction Between the Council's Legislative Authority and the Mayor's Executive Authority

The Charter requires the Mayor "take care that all laws and ordinances are faithfully observed and enforced within the City." Charter, § 7.1(b)(1). Pursuant to the powers granted in Charter, Article IV, section 4.1, the Council may enact ordinances addressing any matter of City business unless that matter is reserved for another board, committee, or is inconsistent with the Charter. The control over the Police Department is reserved for the Mayor. Charter, Art. VII, § 7.1. An ordinance that doesn't intrude into the functions and responsibilities assigned by the Charter to the Mayor and doesn't interfere with or otherwise restrict the Mayor's control over the Police Department may be appropriately enacted by the City Council subject, of course, to a mayoral veto. However, an ordinance intruding into the functions and responsibilities of the Police Department or an ordinance that constrains or divests the Mayor's control over the police

department are inappropriate intrusions by the City Council into the executive branch and an encroachment on the Mayor's authority. Such action would exceed the powers provided to the City Council and violate the Charter.

Many current City ordinances impact the parameters by which City departments, including the Police Department, conduct their business operations, such as:

- Contracting requirements, including procurement requirements, the Small and Underutilized Business Program and the Target Market Program;
- The Ethics in Government Code;
- Interactions with Federal Homeland Security;
- Racial Equity;
- Use of City Vehicles; and
- Paid Sick and Safe Time.

M.C.O. Ch, 18, Ch. 18A, Ch. 15, Ch.19, Ch. 21, Ch. 30 & Chapter 40, Art. III. These ordinance provisions require all department personnel, including Police Department personnel, to comply with the requirements of the ordinances. While these ordinances do establish city-wide regulations for the conduct of City business, these ordinances do not constrain, interfere, or otherwise restrict the executive branch, including the Mayor's power over the Police Department.

While the City Council has general authority to determine what ordinances the Mayor and the City's departments must enforce, the City Council is not entitled to dictate how the executive branch is to execute the law. The City Council's interest in administering and controlling executive branch departments and the chain of command with respect to internal operations must not impinge upon the executive branch's ability to effectively and efficiently fulfill its obligations.

There is overlap, however, between executive and legislative authority. The demarcation line between the Council's authority to legislate and set general policy and the Mayor's authority

over the Police Department is not always clear. For example, the ordinance establishing the Police Civilian Oversight Commission (PCOC) and Office of Police Conduct Review (OPCR) mandates a number of actions by the police department, from requiring participation in investigations and review panels of the OPCR to the provision mandating the Police Department to provide "full, free and unrestricted access" to the Department's records. M.C.O. Chapter 172. The ordinance provides that the failure by any employee, including an employee of the Police Department, to comply with lawful requests for information or access to Police Department records shall be deemed an act of "misconduct." M.C.O. §172.90. Yet, this ordinance was accepted and approved by the Mayor, even with these provisions.

The City's separation ordinance provides another illustration. The City's separation ordinance, for example, sets out the general city policy that immigration status should not be a determinative factor in access to any city services or programs and that city staff should not gather information about immigration status, except as otherwise required by state or federal law. This is legislative policy that is applicable to the full city enterprise and, as such, is indisputably within the proper authority of the Council. The ordinance, however, goes into greater detail than the summary above and sets out how specific departments are to apply this policy, including a section dealing with public safety officials, which is defined in the ordinance as including police, fire and the criminal division employees of the City Attorney's Office. One section provides:

> Public safety officials shall not question, arrest or detain any person for violations of federal civil immigration laws except when immigration status is an element of the crime…..

M.C.O. §19.309(a)(3).

It could be argued that this section intrudes improperly on the exclusive authority of the Mayor to establish policy for the Police Department. The section relates to police powers to

question, arrest and detain and dictates what questions police officers are allowed to ask of members of the public. The ordinance was also supported by the Mayor even with these provisions proscribing certain conduct by police officers.

Council powers also arise from its "power of the purse" and its authority to require accountability of all departments, including police. The Council for example, can refuse to fund programs or equipment and it can require the Police Department, just like any other department, to provide reports to the Council and to respond to Council questions and directives. The Department's purchase of tasers is one example. The Council required a number of public hearings and, with its "power of the purse," had control over whether tasers should be acquired by the Department. Body Worn Cameras (BWC) provide another example, where Council had control over whether BWCs should be purchased and how many should be deployed. Moreover, Council initiated an internal audit report on BWC policy compliance and, in response to that report, the Department provides regular updates to the Council on BWC policy compliance.

Finally, the Council has authority to enact and repeal criminal ordinances for misdemeanor level offenses. This is another source of authority with respect to the Police Department, determining which lower level offenses, not otherwise covered by state law, should be enforced as crimes by the Department. The Council, for example, voted to repeal the spitting and lurking ordinances in 2015.

III. State Laws that Restrict City Authority with Respect to Oversight and Administration of the Police Department

The Minnesota Constitution gives the state legislature the power to define the authority of municipalities. State law thus takes precedence over local authority, even for home rule charter cities such as Minneapolis. Thus, there are a number of state laws, some general and some specific to law enforcement agencies, that also govern the City's authority with respect to management of the Police Department. Several of the more significant state laws are summarized below.

A. Minnesota Public Employment Labor Relations Act (PELRA).

Enacted in 1971, the Minnesota Public Employment Labor Relations Act (PELRA) governs labor relations between the City and its police officers. PELRA provides that if the City wants to impose new terms and conditions of employment on a particular group of employees, the City must negotiate those terms and conditions with the employee's labor representatives. The Police Federation of Minneapolis (Federation) is the exclusive labor representative for the sworn police officers, sergeants and lieutenants.

The purpose of PELRA is to "promote orderly and constructive relationships between all public employers and their employees." PELRA achieves this purpose by granting public employees certain rights to organize and choose representatives, requiring negotiation between public employers and their employees in certain circumstances, and establishing special rights, responsibilities, and procedures. Minn. Stat. § 179A.01. PELRA imposes upon public employers the "obligation to meet and negotiate in good faith with the exclusive representative of public employees in an appropriate unit regarding grievance procedures and the terms and conditions of

employment, ...” Minn. Stat. § 179A.07, subd. 2(b). The City may not amend its Charter or ordinances in a way that avoids its obligations under PELRA. The City’s duty to meet and negotiate “exists notwithstanding contrary provisions in a municipal charter, ordinance, or resolution.” *Id*.

The City’s obligation to meet and negotiate with the Federation is contingent upon whether the issue is a “mandatory” or “permissive” subject of bargaining. If the subject is permissive, the City may choose to bargain, but is not required to do so. Grievance procedures and terms and conditions of employment are mandatory issues requiring collective bargaining.

Under PELRA "terms and conditions of employment" means the “hours of employment, the compensation therefor including fringe benefits . . . and the employer's personnel policies affecting the working conditions of the employees.” Minn. Stat. § 179A.03, Subd. 19. Courts have interpreted this definition very broadly, holding that when a labor issue affects the employees’ welfare, it is a term or condition of employment. *City of Richfield v. Local No. 1215, Int’l Ass’n of Fire Fighters*, 276 N.W.2d 42, 49 (Minn. 1979).

Matters of “inherent managerial policies” are considered permissive subjects of bargaining. Minn. Stat. § 179A.07, subd. 1. Inherent managerial policy matters include, but are not limited to, areas of discretion or policy such as the functions and programs of the employer, its overall budget, utilization of technology, the organizational structure, selection of personnel, and direction and the number of personnel. Minn. Stat. § 179A.07, subd. 1.

The City may not adopt an ordinance or a charter provision that unilaterally changes an existing provision in a labor agreement. All unilateral changes to a labor agreement by the City would violate the labor agreement and PELRA’s obligation to meet and negotiate in good faith. Minn. Stat. § 179A.07, subd. 2. *See also, W. St. Paul Fed'n of Teachers v. Indep. Sch. Dist. No.*

197, 713 N.W.2d 366, 374 (Minn. Ct. App. 2006). Any Charter provision that conflicts with a labor agreement is superseded by the labor agreement and is thereby unenforceable. Minn. Stat. § 179A.07, subd. 2; *Gallagher v. City of Minneapolis*, 364 N.W.2d 467, 470 (Minn. Ct. App. 1985) (Rejecting City's request to declare provision of collective bargaining agreement void as in conflict with the Charter), *Somers v. City of Minneapolis*, 245 F.3d 782, 785-87 (8th Cir. 2001) (Holding twelve-month probationary period established by the parties' labor agreement prevailed over conflicting six-month period established by Charter).

B. Civil Service Commission.

Through the Charter, the City has established a Civil Service Commission to "make, amend, or repeal rules in order to promote sound human resource management practices, to promote efficiency in the City service, and to carry out its Charter responsibilities." Civil Service Commission Rule 1.02. The Commission's rules, among other things, provide for:

> …classification of all covered positions; fair and objective examinations; public advertisement of examinations; lists of eligible candidates that rank persons in order of their experience, education and relative abilities; certification procedures that correspond to current law and statute requirements; rejection of candidates or eligible candidates; temporary employment or re-assignment without examination; transfer, promotion, demotion, suspension and discharge of current employees; and other rules, consistent with the Charter, as become necessary.

Id.

The City's Civil Service Commission rules recognize the possibility of a potential conflict with PELRA. To that end, the Civil Service Commission Rules specifically defer to PELRA. Under the Civil Service Commission Rules, "[a]greements reached under PELRA between the City of Minneapolis and exclusive employee representatives will supersede Civil Service Commission Rules whenever overlap exists." Civil Service Commission Rule 1.03.

Thus, whenever overlap exists between a civil service rule and a provision in the labor agreement, or stated more precisely, whenever a provision of a labor agreement conflicts with a Civil Service Commission Rule, the labor agreement will take precedence.

C. Minnesota Governmental Data Privacy Act.

The Mayor and the City Council's authority to control the public's access to Police data is limited in certain circumstances. Minnesota Statutes section 13.82 regulates public access to law enforcement data. The statute is applicable to "agencies which carry on a law enforcement function, including . . . municipal police departments . . . ." Minn. Stat. § 13.82 subd. 1. A significant amount of police data must be made available to the public. For example:

- data involving the arrest of an adult individual;
- audio recording of 911 calls;, and
- response or incident data.

Minn. Stat. § 13.82, subd. 2, 4, and 6.

While a significant amount of police data is accessible to the public, certain types of data are exempt. Examples of exempted data include:

- data involving ongoing criminal investigations;
- child abuse identity data;
- vulnerable adult identity data; and
- data regarding name changes.

Minn. Stat. § 13.82 subd. 7, 8, 10, 12. Additionally, a law enforcement agency may elect to withhold data from the public if it believes public access "would be likely to endanger the physical safety of an individual or cause a perpetrator to flee, evade detection or destroy evidence." Minn. Stat. § 13.82 subd. 14. However, depending on the overall circumstances, a law enforcement agency may make classified data available to the public if it determines that "the access will aid the law enforcement process, promote public safety, or dispel widespread rumor

or unrest." Minn. Stat. § 13.82 subd. 15. In short, while law enforcement agencies must make most data public, there are types of data that are either not accessible by the public or can be withheld from the public at the discretion of the agency. The City may not, by ordinance or charter amendment, change the accessibility of police data.

D. Police Residency Requirements

Another way that the Mayor and the City Council are limited in their control over the Police is in establishing police residency requirements. In 1981, the legislature enacted Minnesota Statutes, § 415.16. 1981 Minn. Laws 636. The statute expressly states that "no . . . city or county shall require that a person be a resident of the city or county as a condition of employment by the city or county." Minn. Stat. § 415.16. A 1993 special law exempted Minneapolis from the residency prohibition1993 Minn. Laws. 1484 ("[T]he city of Minneapolis may require residency within the city's territorial limits as a condition of employment by the city."). The 1993 exemption has since been repealed. 1999 Minn. Laws Chapter 4. Since the 1999 repeal there has not been another special law exempting the City from the general residency requirement prohibition.

E. Police Officer Bill of Rights

Minnesota Statutes section 626.89 requires police officers to be afforded certain protections in disciplinary proceedings. These protections apply to "law enforcement agencies and government units." Minn. Stat. § 626.89, subd. 2. However, Minnesota Statutes section 626.89 does not extend to investigations of criminal charges against an officer. *Id.*

The most expansive provision of these protections for police officers relates to the taking of "formal statements" to be used in disciplinary proceedings. A "formal statement" is a statement taken in "the course of obtaining a recorded, stenographic, or signed statement to be

used as evidence in a disciplinary proceeding against the officer." Minn. Stat. § 626.89, subd.1(b). There are seven formal statement protections afforded to officers. The three most significant protections are (1) that the officer is entitled to a signed written complaint, detailing the complainant's knowledge regarding the officer before a formal statement may be taken; (2) the right to have a union representative or an attorney retained by officer, or both, present during the session; and (3) the officer must be advised in writing or on the record that admissions made in the course of the formal statement may be used as evidence of misconduct or as a basis for discipline." (Minn. Stat. § 626.89, subds. 5,9–10).

There are further protections outside of those in the formal statement context. For example, the City may not:

- require production or disclosure of personal financial records;
- include disciplinary letters or reprimands in an officer's personal record without providing the officer a copy of the same; and
- publicly release, without written permission, an officer's photograph.

Minn. Stat. § 626.89, subds. 11 - 13.

The City may not, by ordinance or charter amendment, alter the protections of Minnesota Statues section 626.89.

F. Peace Officer Standards and Training ("POST") Board Requirements

Established in 1967, the POST Board regulates the practice of law enforcement in Minnesota. POST's responsibilities broadly include education and licensing of new and current police officers. Minnesota Rules, Chapter 6700, and the subdivisions within, detail the POST Board's education and licensing requirements. *See generally* Minn. R. 6700 (2018). The POST Board also requires written procedures, setting forth minimum specifications and issues to be considered, for both investigation and resolution of misconduct allegations and police pursuits.

Id. The Mayor and the City Council's ability to control police officers is limited by POST Board requirements.

Police officer education centers must adhere to the POST Board requirements, with certain required topics on state laws, the juvenile justice system, human behavior and crisis intervention, defensive tactics and use of force, and cultural awareness and response to crime victims. Minn. R. 6700.0300, subp.1 (2018). While there are required topics that all professional police officer education programs must include, "[n]othing . . . precludes any certified school from enacting rules which establish standards of training above the minimum requirements . . . ." Minn. R. 6700.0300, subp. 3 (2018). The POST Board also approves the required continuing education necessary to maintain licensure. Minn. R. 6700.0100, 6700.0900 (2018).

The POST Board also requires that "[a]ll certified [police officer] schools shall develop standards for admission to the professional peace officer education courses." Minn. R. 6700.0300, subp. 5 (2018). Admission standards "must measure the student's likelihood of successful completion of the program." *Id.* Additionally applicants cannot be admitted to police officer education programs if they "pose…a serious threat to the health or safety of themselves or others" or "ha[ve] been convicted of any crime listed as a disqualification from appointment to the position." *Id.*

Aside from required educational requirements, the POST Board police officer licensure standards require police officers to be United States citizens, possess a valid driver's license, complete a comprehensive written application, and submit to a thorough background search. Minn. R. 6700.0700, subp. 1 (2018). Additionally, potential officers that are registered predatory offenders, committed a felony in Minnesota or committed a crime in another jurisdiction that would have been a felony in Minnesota, are precluded from licensure. *Id.* Importantly, since the

POST Board only establishes minimum requirements for licensure "an appointing authority may require an applicant to meet more rigid standards than those prescribed…." Minn. R. 6700.0700, subp. 4.

CONCLUSION

The powers and authority of the Mayor and the City Council are distinct, with the Mayor having clear executive authority over the internal operations of the Police Department. The City Council has the same authority over the Police Department as it does over all City departments, its authority to legislate and set enterprise policies, goals and strategic direction, hold hearings and require accountability of and reports and information from the Police Department. The Council also holds substantial power by reason of its power over budgets and department expenditures – its "power of the purse." As set out above, however, there are many areas of potential overlap and potential conflict between Council and Mayoral powers and authority. Nevertheless, there are a number of examples, such as the separation ordinance and the Department's acquisition and deployment of BWCs, where Council priorities have been effectively enacted into ordinance and implemented by the Police Department under the existing charter structure.