

MEMORANDUM

To: Ben Martig, City Administrator
Deb Little, City Clerk

VIA EMAIL ONLY

From: Christopher M. Hood and Robert T. Scott

Date: October 5, 2017

Re: Municipal ID Card Program

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The following memorandum discusses two legal issues associated with the City of Northfield (City) City Council's consideration of development and implementation of a municipal ID card program in the City. This memorandum first addresses the legal authority of the City to adopt such a municipal ID card program, and second reviews the requirements imposed upon the City by state law for records retention, records management and access to government data collected by the City in implementing such a municipal ID card program.

Introduction

The City is currently considering the possible development and adoption, through enactment of a City ordinance, of a municipal ID card program. A municipal ID card program is, in its simplest sense, an identification card that provides certain basic information used by the cardholder to identify the cardholder is whom he/she says he/she is and establish residency. There are a number of cities around the country that have enacted such ID card programs in varying forms. Most of these cities are relatively large in population and include cities such as New York, Cincinnati, San Francisco, Milwaukee, Hartford, Detroit, Phoenix, New Haven, Oakland, Washington DC, and Los Angeles, among others.

Among other purposes, such an ID card program is may be intended to provide an alternate means of identification for groups that have historically had difficulty obtaining such means of identification, including but not limited to, vulnerable youth, vulnerable adults, homeless persons, low income elderly persons, persons with mental illness and disabilities, and immigrants, among others. Basic features of municipal ID cards often include a photograph of the cardholder; name, address and date of birth of the cardholder; city name and logo; card number; signature line of the cardholder; gender of the cardholder; and expiration date. Municipal ID cards may also include numerous other features and uses not addressed in this memo.

The above introduction is intended to introduce the issue as a means to provide a basic context for the below discussion. It is not intended to address or analyze the numerous policy considerations for the City Council associated with the development and implementation of such

a program or any of the features, costs, administration, uses or potential unintended consequences of such a program.

Analysis

1. Legal authority to establish a municipal ID card program.

• Charter and Statutory Authority

Minnesota cities are all political subdivisions of the state, and derive all their powers from the state; they have no “inherent powers” independent from those conferred upon them by the state.¹ Thus, cities can only take those actions expressly authorized by state statute or home-rule charter or implied as necessary therein to carry out the powers expressly conferred.²

A city with a home rule charter may draft and enact its own legislation regarding local activities in matters of municipal concern, and such cities have all the legislative powers possessed by the legislature in doing so, except where such power has been withheld or preempted by state law, is in contravention of state public policy or is unconstitutional.³

At the heart of the present matter is whether the City has legal authority, express or implied, to draft an ordinance establishing and implementing a local identification card program. In my review of state law, I did not find any statutory authority prohibiting a local unit of government from establishing a local identification card program. State law does not specifically address the issue of municipal ID and instead establishes the State’s own Minnesota identification card program and drivers’ license program. Since state statute does not expressly address the question presented, the analysis must turn to other bases of legal authority that would authorize the City to enact and implement such a program, including the City Charter and other municipal statutes.

City Charter (Charter), Section 2.2, establishes the powers of the City and provides in part that:

“In order to promote and protect the health, safety, morals, comfort, convenience, and welfare of the inhabitants of the city, the city shall have all powers which may now or hereafter be possible for a municipal corporation in this state to exercise in harmony with the constitutions of this state and of the United States. It is the intention of this Charter to confer upon the city every power which it would have if it were specifically mentioned. ...”

¹*Mangold Midwest Co. v. Vill. of Richfield*, 274 Minn. 347, 357, 143 N.W.2d 813, 820 (1966).

² See, e.g., *Borgelt v. City of Minneapolis*, 271 Minn. 249, 135 N.W.2d 438 (1965); *Alexander v. City of Minneapolis*, 267 Minn. 155, 125 N.W.2d 583 (1963); *City of Birchwood Village v. Simes*, 576 N.W.2d 458 (Minn. Ct. App. 1998); *Minn. Op. Atty. Gen.* 59A-32, 2002 WL 226358 (Minn.A.G.), January 25, 2002.

³ *State ex rel. Town of Lowell v. City of Crookston*, 252 Minn. 526, 528, 91 N.W.2d 81, 83 (1958); *Gadey v. City of Minneapolis*, 517 N.W.2d 344, 348 (Minn.App.1994).

Charter, Section 3.1, further provides that the “council shall exercise the legislative power of the city and determine all matters of policy.” Finally, Charter, Section 9.1, provides that the “council shall have full authority over the financial affairs of the city.”

The Council, based upon the foregoing, has broad powers and discretion to legislate for the convenience and welfare of citizens and to appropriate funds for such purposes. This broad grant of authority is further bolstered by the following state statute.

Specifically, Minnesota Statutes, Section 412.221, Subd. 32, provides that:

“The council shall have power to provide for the government and good order of the city, ... the benefit of residence, trade, and commerce, and the promotion of health, safety, order, convenience, and the general welfare by such ordinances not inconsistent with the Constitution and laws of the United States or of this state as it shall deem expedient.”

Based on my review of state law and Charter, development, enactment and implementation of a voluntary municipal identification card program available to all residents of the City falls within the above broad grant of authority of the City to adopt ordinances for the public welfare and convenience of its residents.

The only other legal authority issue to address with a program of this nature is whether any federal preemption or prohibition exists with respect to a municipal ID card program. At this point, I have not undertaken a thorough review of federal law given the time and expense of doing so. My initial review has not identified any prohibitions currently in federal law to such a program, and I am not aware of any legal challenges that have been successful against one of the other municipal ID card programs around the country on the particular holding that such a program is preempted by or in violation of federal law⁴, in particular given that major municipal ID card programs have in some cases existed for approximately a decade.⁵ However, it is clear that a municipal ID card program must not appear intended to address, regulate or contravene any federal immigration and enforcement policies or laws, but must instead benefit all citizens of the City regardless of immigration status, as the subject of immigration may only be regulated by the federal government.

- **Public Purpose**

Expanding upon the above discussion, to expend public funds on a municipal ID card program, the City must not only find legal authority for the proposed action, as previously discussed, but

⁴ There is a legal challenge currently on appeal against the city of New York for refusing to disclose data collected as part of its municipal ID program. There was a 2008 legal challenge to San Francisco’s municipal ID program ((Langfeld et al. v. City and County of San Francisco et al.). The California court rejected all of the claims in that case, concluding that San Francisco’s ID program has no impact on federal immigration status, does not conflict with federal immigration law, and does not provide any benefits that are not otherwise available to City residents.

⁵ According to the ACLU, New Haven, CT issued the first municipal IDs in 2007 to help undocumented residents who, since they could not open bank accounts, carried large amounts of cash and were often robbed.

must also find a public purpose for the expenditure.⁶ Since, as stated above, a public expenditure must always further a public purpose, whether the proposed municipal ID card program serves as a “public purpose” must also be considered in this analysis.

The Minnesota Supreme Court⁷ has generally found expenditures to meet a “public purpose” when the activity authorized meets all the following:

- a. The activity will benefit the community as a body.
- b. The activity directly relates to functions of government.
- c. The activity does not have, as its primary objective, the benefit of a private interest.

The Minnesota Supreme Court⁸ further clarified that activities that promote the following objectives for the benefit of all the city’s residents further a public purpose:

- a. Public health
- b. Safety
- c. General welfare
- d. Security
- e. Prosperity
- f. Contentment

Making determinations of whether a given policy or action serves a public purpose lies at the heart of a city council’s legislative responsibility and discretion.⁹ As the League of Minnesota Cities (LMC) explains, “(c)ouncilmembers are elected or appointed to govern by and for these interests (i.e. promoting public health, general welfare, security, prosperity, contentment), acting as specialists on what best serves the local population.”¹⁰ LMC recommends that city councils “document, in writing, reasonable findings of the council in its determination of a valid public purpose).”¹¹

Therefore, should the City Council move forward with development of a municipal ID card program, it will be important for the City Council to make findings for why such a program is a public benefit to and in the public interest for all residents of the City (e.g., business and community integration; improved access to local government services and better and more effective and efficient costumer service; improved public safety; improved identity and

⁶ League of Minnesota Cities Publications, “Public Purpose Expenditures” at 1, available at <http://www.lmc.org/media/document/1/publicpurposeexpenditures.pdf?inline=true>.

⁷ *Id.* at 2; *Visina v. Freeman*, 89 N.W.2d 635 (Minn. 1958).

⁸ *Id.* at 2; *City of Pipestone v. Madsen*, 178 N.W.2d 594 (Minn. 1970).

⁹ *City of Pipestone v. Madsen*, 287 Minn. 357, 364—65, 178 N.W.2d 594, 599 (1970).

¹⁰ League of Minnesota Cities Publications, “Public Purpose Expenditures” at 2, available at <http://www.lmc.org/media/document/1/publicpurposeexpenditures.pdf?inline=true>.

¹¹ *Id.*

residency to local law enforcement officers, city officials, institutions and businesses; business benefits of card membership, more efficient program access, etc.), and that such a municipal ID card program is not a local attempt to regulate immigration. In doing so, the City will ensure that its municipal ID card program falls within the City's broad grant of police powers to legislate for the health, safety and welfare of all residents of the City.

2. Legal requirements for records retention, management and access to data collected in implementing a City ID card program.

In considering development, enactment and implementation of a municipal ID card program, the City should also consider the requirements of the various laws governing the retention, management and access to data collected as part of such a City program. Each of these issues and the requirements imposed upon the City in this regard are discussed summarily below for your consideration.

- **Records Retention and Management**

Cities are required by law to maintain a complete and accurate record of all city transactions and affairs. State laws govern the creation, maintenance, and destruction of city records as well as the public's right to access government data.

- a. The Official Records Act (Minn. Stat. § 15.17) mandates that cities "shall make and preserve all records necessary to a full and accurate knowledge of their activities."
- b. The Records Management Act (Minn. Stat. § 138.17) provides the mechanism for the orderly and accountable disposition of government records. To comply with this law cities have typically adopted the state's records retention schedule,¹² which classifies numerous categories of data and the length of time that such data must be maintained before it can be disposed of by a city.

State law¹³ defines government records to include all cards, correspondence, discs, maps, memoranda, microfilm, papers, photographs, recordings, reports, tapes, writings, optical disks, and other data, information, or documentary material, regardless of physical form or characteristics, storage media or conditions of use, made or received by a city official pursuant to state law or in connection with the transaction of public business by the city. The list of data covered is broad and extensive. However, not every document that a city receives or creates is a government record as defined by law required to be kept and maintained by the City.

Specifically, state law excludes the following from the definition of government records:¹⁴

- a. data and information that does not become part of an official transaction;

¹² Minn. Stat. § 138.17, subd. 7.

¹³ Minn. Stat. § 138.17, subd. 1 (b) (1).

¹⁴ Minn. Stat. § 138.17, subd. 1 (b) (4).

- b. library and museum material made or acquired and kept solely for reference or exhibit purposes;
- c. extra copies of documents kept only for convenience of reference and stock of publications and processed documents; and
- d. bonds, coupons, or other obligations or evidences of indebtedness, the destruction or other disposition of which is governed by other laws;

For purposes of a municipal ID card program, the City will be required to comply with the above records retention and management laws, but there is some discretion in what the City must keep and maintain as government records of the transactions. Computer information collected by the City to implement a municipal ID program as well as physical application forms filled out by applicants for a municipal ID card, however, are likely to fall within the category of an official record required by law to be kept and maintained by the City pursuant to an adopted records retention schedule. Evidence to verify identity and residence could possibly be immediately processed at the point of application by City staff and not kept by the City as an official record provided the City's computer system or application form allowed for City staff to at least complete a section on the application form or computer system verifying the identity and residency of the applicant. This would seem to be minimally required to be able to have such a municipal ID card program.

• **Data Practices**

Since at least some amount of data is required to be kept and maintained by the City with respect to a municipal ID card program under the above described records retention and management statutes, such data then falls under the additional requirements of the Minnesota Government Data Practices Act (MGDPA), Minnesota Statutes, Chapter 13. The MGDPA is the body of law and opinions governing classification of government data and access thereto by subjects of data or those persons or entities otherwise requesting government data.

The purpose of the MGDPA is to balance the public's right to information, individual's right to privacy, and government's need to function responsibly. The general presumption of the MGDPA is that government data are public unless otherwise specifically classified by state or federal law.¹⁵

The MGDPA defines "government data" to mean all data collected, created, received, stored, maintained or disseminated by a city and that such are public and are accessible for both inspection and copying.¹⁶ Cities are often asked to disclose to requesters data in the cities' possession. There is nothing in the MGDPA requiring any city to hand over requested

¹⁵ Minn. Stat. § 13.03, subd. 1 provides: "Public data. All government data collected, created, received, maintained or disseminated by a government entity shall be public unless classified by statute, or temporary classification pursuant to section 13.06, or federal law, as nonpublic or protected nonpublic, or with respect to data on individuals, as private or confidential. The responsible authority in every government entity shall keep records containing government data in such an arrangement and condition as to make them easily accessible for convenient use. Photographic, photostatic, microphotographic, or microfilmed records shall be considered as accessible for convenient use regardless of the size of such records."

¹⁶ Minn. Stat. § 13.02, subd. 7.

information on the spot, but there are nonetheless time requirements that are applicable depending on the nature and scope of the request or whether the requester is the subject of the data.

While a great deal of the information at city hall is public and must be released when requested, a city is entitled to establish and follow a process for evaluating and complying with data requests. Thus, when the City receives a request for data, it has a reasonable amount of time, or 10 days if the requester is the subject of the data, to compile the data and determine whether any of the data requested is nonpublic or falls into some other classification such that all or a portion of the data cannot be disclosed by law.¹⁷

This analysis of the data request for compliance with the MGDPA is necessary for the City to avoid significant liability for disclosing data that it is prohibited from disclosing by law. This is why such data requests typically should be submitted to the City Clerk or Administrator and sometimes the City Attorney for analysis and response given that the MGDPA is a complicated law that has been the subject of voluminous interpretation in the form of advisory opinions from the Information Policy Analysis Division (IPAD) of the Department of Administration¹⁸ and in some cases by the appellate courts.

In short, the presumption is that all data collected by the City as part of a municipal ID card program are public and must be disclosed by the City to a requester upon a valid request within the timeframes specified in the MGDPA, unless the data is otherwise classified in law as other than public. Depending on what data the City actually requests from applicants and collects as part of a municipal ID card program, there could be certain data that could be classified as private and could not be disclosed by the City even if requested.

As an example, if the City requested an applicant's social security number on an application form for a municipal ID card¹⁹ in order to verify identity and there was a subsequent request for this data by a requester other than the individual subject of this data, the City would have to redact the social security number of the applicant before releasing the completed application form to the requester since social security numbers are generally classified by the MGDPA as private data on individuals.²⁰ The City would be prohibited by the MGDPA from disclosing such private data and would incur liability if such disclosure was made. There are similar

¹⁷ Minn. Stat. § 13.03, subd 1 and 13.04, subd. 3.

¹⁸ <https://mn.gov/admin/data-practices/opinions/>.

¹⁹ This is just an example for illustrative purposes. The City would not have to request social security numbers from applicants for a municipal ID card program to verify identity.

²⁰ Minn. Stat. § 13.355, subd. 1 provides: "The Social Security numbers of individuals, whether provided in whole or in part, collected or maintained by a government entity are private data on individuals, except to the extent that access to the Social Security number is specifically authorized by law."

private data classifications for computer electronic access data,²¹ personal contact and online account information,²² and municipal utility customer data.²³

The same cannot be said of certain other data that would be part of an application for a municipal ID card, such as the name, address, photograph or date of birth of an applicant. That data would be classified as public and available upon request since there is no statute classifying such data as being anything other than public.²⁴

In the event the Council's determination is to move forward with development of a municipal ID card program, the above data issues associated with records retention, management and access to data will have to be considered carefully to ensure compliance by the City with the applicable laws.

Conclusion

I hope that the foregoing is helpful in your consideration of this matter. If you have any questions, please contact me at your convenience at (651) 225-8840. Thank you.

CMH-RTS/kp

²¹ Minn. Stat. § 13.15, subd. 2 provides: "Electronic access data are private data on individuals or nonpublic data."

²² Minn. Stat. § 13.356 (a) provides: "The following data on an individual collected, maintained, or received by a government entity for notification purposes or as part of a subscription list for an entity's electronic periodic publications as requested by the individual are private data on individuals: (1) telephone number; (2) e-mail address; and (3) Internet user name, password, Internet protocol address, and any other similar data related to the individual's online account or access procedures."

²³ Minn. Stat. § 13.685 provides: "Data on customers of municipal electric utilities are private data on individuals or nonpublic data, but may be released to: (1) a law enforcement agency that requests access to the data in connection with an investigation; (2) a school for purposes of compiling pupil census data; (3) the Metropolitan Council for use in studies or analyses required by law; (4) a public child support authority for purposes of establishing or enforcing child support; or (5) a person where use of the data directly advances the general welfare, health, or safety of the public; the commissioner of administration may issue advisory opinions construing this clause pursuant to section 13.072."

²⁴ The above conclusions are also consistent with the response that City Clerk, Deb Little, received from Stacie Christensen, Director, Data Practices Office, Department of Administration, in an email to the City, dated September 28, 2017, providing as follows: "With regard to the classification question, all of the data collected as part of the proposed program (e.g. name, address, date of birth, picture and a signature) are presumptively public. Although it appears other jurisdictions have protection for the data, Minnesota does not have the same legal protections. Because there is not a specific state or federal law that classifies these newly collected data at the City, all of the data are presumptively public. When data are public, a government entity is legally required to provide them upon request. So, upon request, the City of Northfield would have a legal obligation to provide public data that it maintains as part of the program. In order to have legal protection for the data, the MN Legislature would have to pass a law that specifically classifies this new collection of data as private."