

**Office of the Mayor
City of Marion, Indiana
Jess Alumbaugh, Mayor**

October 23, 2020

Today I am vetoing General Ordinances 14, 15 & 16-2020 adopted by the Marion Common Council on October 13, 2020. These ordinances attempt to distribute the City's share of CARES Act Coronavirus Relief funds in ways that are illegal for these reasons:

(1) The CARES Act, and guidance from the United States Treasury Department and the Indiana Finance Authority (IFA), specifically declare the Mayor of a municipality as the "authorized representative" to distribute the CARES Act funds. The City Council's attempt to take over distribution of these funds violates the CARES Act guidance, and is yet another attempt by this Council to violate the separation of powers doctrine set forth in the Indiana Code.

(2) These ordinances provide for across-the-board salary increases for all maintenance employees and all members of the fire and police departments. Aside from the exclusion of maintenance employees from the CARES Act, the Act itself and guidance from the United States Treasury Department and the IFA state that

reimbursement is allowed only for employees whose services are substantially dedicated to specific, identifiable COVID-related mitigation or COVID emergency response activity. Here is what the IFA guidance of September 25 says:

***Hazard Pay, meaning additional pay for performing hazardous duty or work involving physical hardship, in each case that is related to COVID-19, would be an eligible expenditure. However, across-the-board for employees working during the state emergency would not be considered eligible. For supporting documentation, the IFA will require (1) payroll, time, and or human resource records to support the costs incurred for payroll expenses, and (2) a detailed description of duties performed and how these services were substantially dedicated to mitigating or responding to the COVID-19 public health emergency.**

(3) The Council's attempt to increase the compensation of selected employees set in 2019 for 2020 is a clear violation of the Indiana Code which says a council may reduce but not increase public employees' compensation. The action of this Council is an attempt to increase the 2020 budget after-the-fact which it is not authorized to do.

(4) No public hearing was conducted before the Council acted on October 13, as is required by Indiana law. In addition, the Council's actions violated the Indiana Code which prohibits passage of an ordinance on the same day it is introduced unless there is a unanimous vote of the entire council to suspend the rules.

(5) These ordinances also fail because they direct City Controller Julie Flores to pay these increases "...from any source available, including remaining funds from 2020...or by additional appropriation in 2021." Note that payment of these increases is not restricted to CARES Act funds, which is what brought this about in the first place.

(6) The mandate that the City Controller pay these hazard pay funds from several sources including additional appropriations in 2021 is a violation of the Indiana Code which says that before a council may appropriate more money than provided in the budget the council is required to:

(a) Publish notice in the newspaper of the additional appropriation 10 days before a public hearing called to consider the additional appropriation; and,

(b) After the public hearing the council is required to file a certificate with the Indiana Department of Local Government Finance explaining what action was taken.

(7) The CARES Act specifically requires me, as Mayor charged with distribution of these funds, to certify under oath that the uses of the funds are consistent with the CARES Act. I cannot make that certification under the circumstances created by this Council.

I am not against first responders, as some on the Council have suggested. Our first responders have a unique duty to protect all of us and for that I am, and all of you should be, eternally grateful. But

this is about what the law allows and my obligation is to enforce the law.

In addition, we are not out of the woods with this pandemic. We are seeing increased numbers of cases locally and across the Country. There are still two months remaining before the CARES Act program expires. Recently we have experienced several positive cases with Marion firefighters. These cases have increased significantly our overtime costs. If we spend all of the CARES funds now as the Council would have us do we will have nothing left to help us defray other COVID related expenses in the next two months.

The time has come for this council to realize it is not the Board of Directors of the City. It, like me as Mayor, is bound by the separation of power doctrine which is the foundation of our representative democracy. It is my hope for the citizens of our community that going forward this council will limit its activities to those granted them by the Indiana Code.