

MEMORANDUM

To: Zionsville Town Council Members
From: Mayor Emily Styron
Re: VETO of Ordinance 2020 - 12: an Ordinance reestablishing the Safety Board for Fire Department Matters and Ordinance 2020 - 13: an Ordinance reestablishing the Board of Metropolitan Police Commissioners as the Safety Board for Police Matters
Date: October 14, 2020

Dear Councilors:

Please let this Memorandum serve as notice of my veto of Ordinance 2020 - 12 and Ordinance 2020 - 13 and an explanation of the reasons for my veto.

In early June, my administration began researching the formation of both the Board of Police Commissioners and Safety Board, to get a better understanding of the evolution of these two bodies in the Town. After a diligent search through years of records, Amy Lacy was unable to find any documentation regarding when or how the Safety Board was initially formed. The search did uncover an ordinance, Ordinance No. 2008-21, that abolished the Office of the Zionsville Town Marshal and created the Board of Metropolitan Police Commissioners. That Ordinance, in Section 3(d), states that the Board of Metropolitan Police Commissioners shall constitute the Safety Board of the Town of Zionsville for purposes of exercising disciplinary powers for the Zionsville Police Department. The Ordinance further goes on to state that the current Safety Board should be dissolved and cease operating as of and after the effective date of that Ordinance, with the following language hand-written onto the Ordinance: “solely with respect to the Zionsville Police Department.” This Ordinance was never codified and does not appear anywhere in the Town’s Code of Ordinances.

We discovered, therefore, pursuant to this research that, prior to now, there had been no Town Ordinance that established the Safety Board, and only an uncodified Ordinance establishing the Board of Police Commissioners from 12 years ago, long before the Town was reorganized in 2014. My administration saw a need for these two Boards to be evaluated in light of the 2014 Town reorganization, to be properly established and constituted, with Ordinances properly codified, and therefore began a conversation on this effort with the Town Council in June of 2020.

The Safety Board Ordinance, Ordinance 2020 - 12, cites Indiana Code and states that it confers upon the Town Council the authority to establish a Safety Board. However, there is no section in that area of the Indiana Code which provides that the Town Council can appoint three of its own members to serve as the Safety Board. To the contrary, Indiana Code 36-8-3-4 and 4.1 are the sections that relate to Towns that have full time paid police or fire departments. Those sections say that the appropriate “appointing authority” of a Town is considered the Safety Board of a town or township. In a town with a Board of Metropolitan Police Commissioners, that Board is considered the Safety Board of the Town for police department purposes (says Section 36-8-3-4) and is considered the Safety Board of the Town (says Section 36-8-3-4.1). As you know, the Town of Zionsville has a full time paid police and fire department, which makes these two sections applicable. However, neither one of those sections say that the Town Council shall choose three of its own members to serve as the Safety Board. The Town Council does not appoint any police or fire department members, and therefore could not be considered the “appointing authority” of the Town. There is simply no other relevant statutory law that allows for such to be done in our municipality. Our reorganization documents say nothing regarding the Safety Board.

As you know, the Town of Zionsville is unique being a Town in the State of Indiana that has a Mayor. With regard to Safety Boards in all other municipalities in the State of Indiana that have a Mayor, Indiana Code 36-4-9-6 applies and says the city executive shall appoint the Chief of the Fire Department and the Chief of Police, and further goes on to say that a separate Safety Board consists of **three or five members who are appointed by the executive**. Our reorganization documents, specifically Resolution No. 2014-11, paragraph ZR2A22, says “the Mayor shall appoint the Chief of the Fire Department, the Chief of Police and any other officers required by statute.” Indiana Code 36-4-9-6, the section I referenced above, is the section that provides for the appointment of officers required to be made by the executive and states that the executive appoints the Chief of the Fire Department, the Chief of the Police Department as well as a three or five member Safety Board. Therefore, I do not think it is appropriate in the Town of Zionsville for the Town Council to be the appointing authority of the Safety Board. Rather, the Mayor should, as all other Mayors do, appoint the members of the Safety Board. Or, at the least, because of our unique

structure as a Town with a Mayor, the appointing authority over the Safety Board should be shared by the Mayor and the Town Council.

Further, I have objections to the Town Council members serving on either the Safety Board or the Board of Police Commissioners. The members of the Safety Board and Board of Police Commissioners are to serve as an objective, independent, “judge-like” body in any action regarding discipline of firefighters or police officers. Just like any person or body serving in the role of judge, that individual or individuals must be impartial and objective, and cannot have ex parte communication with any party in order to provide the required level of due process in disciplinary proceedings. This would mean then, that the Town Council members serving on either the Safety Board or the Board of Police Commissioners, would have to receive zero information regarding employees of the fire department or police department that would relate to any potential disciplinary action that may come in front of the Safety Board. There is nothing in our reorganization documents, nor any requirement under state law that the Town Council members serve on the Safety Board or on the Board of Police Commissioners. To the contrary, if you research, you will find that the majority of Towns, if they have a separate Safety Board at all, have Boards whose members are either all or mostly citizen members. To have a separately constituted Safety Board comprised of three members, all of whom are Town Council members as proposed, is an anomaly among Indiana Towns. I believe it to be in the best interest of the Town, our employees and our constituents that these two important Boards are comprised of objective, citizen members and not members of the Town Council nor members of the Town Administration.

Being the unique type of municipality that we are, not only do we have Indiana statutes to follow but we have specific provisions in our reorganization documents, which, by the very terms of the reorg resolution (No. 2014-11 Sec. ZR2A12) says that provisions of the 2014 reorganization control over both state law and any conflicting items in the previous reorganization. Therefore, we are bound by the terms of 2014 reorganization documents as they exist and those terms serve as the foundation for our governance today. The language in your proposed Safety Board and Board of Police Commissioners ordinances which state that the Safety Board and Board of Police Commissioners “may make special and general orders” to the Zionsville Fire Department and the Zionsville Police Department through their respective Chiefs, is contrary to and conflicts with the language in Reorganization Resolution 2014-11 Section ZR2A23 which

says “the head of each department and its employees are under the jurisdiction of the Mayor . . .” By those terms of the reorganization documents, the Mayor is the authority to give general and special orders to the Fire Department and the Police Department, not the Safety Board and the Board of Police Commissioners. This language needs to be stricken from both Ordinances.

Finally, Reorganization Resolution 2014-11 explicitly, in ZR2A22, gives the Mayor the authority to appoint the Chief of the Fire Department and the Chief of Police. Indiana case law holds that a corollary to the power to appoint is the power to remove, replace and demote him or her to the position he or she occupied prior to his or her appointment as Chief. Therefore, language needs to be inserted into both Ordinances in paragraph 2A that says, although the Mayor must have the approval of a majority of the Town Council before the Mayor may **discharge** the Chief of the Fire Department or the Chief of Police, the Mayor has the authority to **demote** the Chief of the Fire Department or the Chief of the Police Department to the position he or she occupied prior to his or her appointment as Chief without the approval of the majority of the Town Council, the Safety Board or the Board of Police Commissioners. The reorganization requires Town Council approval only in instances where the Mayor seeks to “discharge” the Department Heads. Discharge, according to Black’s Law Dictionary, means the **firing** of an employee. Removing the Chief of the Fire Department’s or the Chief of Police’s appointed status is not a discharge, and therefore, it needs to be made clear in these Ordinances that no Town Council involvement nor any Safety Board involvement is required should the Mayor seek to demote either the Chief of the Fire Department or the Chief of Police to the rank that the officer held before his or her appointment to the upper level policy-making position of Chief. This is in alignment with statutory law, Indiana state case law and the Town of Zionsville’s reorganization documents.

These questions and concerns regarding the establishment of the Safety Board and Board of Police Commissioners have come about in part because we are the exceptionally and wonderfully unique municipality that we are – a Town with the Mayor. It is my job, as the Town Executive, to enforce the Ordinances of the Town and the statutes of the State and to insure the efficient government of the Town. I am vetoing Ordinance 2020 - 12 and

Ordinance 2020 -13 in furtherance of the duties of my office, and request that amendments be made to these Ordinances to more accurately reflect the present-day state of the Town and incorporate the provisions of our foundational reorganizational documents and state law.

Best regards,

A handwritten signature in black ink, appearing to be 'E Styron', with a long horizontal line extending to the right.

Mayor Emily Styron