

MEMORANDUM

To: Zionsville Town Council Members
From: Mayor Emily Styron
Re: Safety Board and Board of Police Commissioners Ordinances
Date: September 29, 2020

Dear Councilors:

I am grateful for the opportunity to provide you with the following written response regarding the Ordinances establishing the Board of Police Commissioners and Safety Board which were on your agenda for consideration at your September 21st Council meeting.

As I've come to understand that some of you may not have information on how this issue has evolved over the past few months, I'll provide you with a short summary of how we've arrived at this point regarding these two bodies.

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."

Having found no documentation in Zionsville records regarding how the Zionsville Safety Board was ever formed, the Town's general counsel, Amy Nooning, researched the relevant sections of the Indiana Code to determine, statutorily, how our Safety Board should be formed and constituted. After a review of the relevant statutes, Amy Nooning reached out to the Town

Council's counsel, Heather Willey, via email on June 22nd, identifying the issue and questions with regard to the formation of the Safety Board and requesting an opportunity to touch base with her on the same within a few days. Having heard nothing in response from Heather Willey, Amy Nooning again reached out to Heather on June 26th, then again on July 7th as a follow up, at which time Heather responded she was happy to look into it. Shortly thereafter, having heard nothing from Heather on the matter, and due to the further development of a pending disciplinary issue, Amy told Heather that their discussion could be put on the back burner momentarily, while attention was turned to other pressing matters. Amy Nooning later followed up with Heather on August 7th via email asking that this issue be moved again to the top of the list to see that it gets resolved soon. As the Safety Board had a meeting scheduled for August 17th, on August 11, having again not heard anything in response from Heather Willey on the topic, in conversation with Terry Dawson, a partner with Barnes & Thornburg on a different topic, Amy mentioned that there was an urgency to resolve the Safety Board issue in light of the pending meeting. After her conversation with Terry Dawson, Amy again reached out to Heather via email on August 11th expressing the need to figure out the legal issues with the Safety Board ASAP, considering it was now just days away from the Safety Board's scheduled meeting, and I, along with my administration, wanted to determine whether the Safety Board was legally constituted before the Safety Board took any further official action. Despite repeated attempts, having not been able to turn Heather Willey's attention to the matter of the legal constitution of the Safety Board, and therefore having no opportunity to resolve the issue that had now been pending at this point for two months, I requested, through Amy Nooning, that the Safety Board meeting be cancelled until the issues regarding its formation were resolved. Both Heather Willey and Josh Garrett repeatedly refused these requests to postpone the Safety Board meeting, responding that it would go on as scheduled. I did not want the Town employees to participate in any sort of action with a Board that may or may not have been legally constituted, and therefore, I requested that the staff not participate in the Monday, August 17th meeting. Thereafter, it was cancelled.

Since that time, Heather and Amy have had the opportunity to talk on multiple occasions, via email and phone conversations regarding their analysis of the relevant laws. Amy and Heather also discussed potential creative resolutions of the issue, which might satisfy both my concerns and the concerns of the Town Council President. Amy was told by Heather that

my administration would have the opportunity to review any draft ordinance that was prepared by her regarding the Safety Board and Board of Police Commissioners prior to it becoming part of the Town Council's agenda.

Fast-forwarding now a couple weeks later, my administration heard, from Amy Lacy, that ordinances regarding the Safety Board and Board of Police Commissioners had been submitted to her and were part of the Council's packet. We requested these copies from Amy Lacy, and she provided them. Amy Nooning also requested copies of these from Heather Willey, and Heather provided them at that time. We had not been given an opportunity to review and comment on these draft ordinances prior to them becoming part of the Council packet, as had been promised.

Upon review of both Ordinances, we discovered that none of the concerns that we had raised in the hours of conversation and emails exchanged between Amy Nooning and Heather Willey on the topic were incorporated into the Ordinances. No attempt was made to acknowledge, in the Ordinances, or otherwise, that we had concerns. We received copies of these Ordinances at 1:00 p.m. on Monday, September 14th, with no opportunity to comment or request modifications prior to them becoming part of the Council's packet that was due to Amy by the close of business on Monday, September 14th.

I provide you with this historical account of the evolution of this issue to show you all the diligence with which we have attempted to have discussions regarding the Safety Board and Board of Police Commissioners and have our concerns be heard by the Council prior to any proposed Ordinance being presented to you regarding these two bodies. I am not sure if all of you have received any or all of this information previously, and if you have, I apologize for the redundancy.

Please let me now explain to you what our concerns are regarding the Safety Board and the Board of Police Commissioners as they have been expressed over the past month.

The Safety Board Ordinance 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.

As you know, the Town of Zionsville is the only Town of 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. 2014-3, 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, considering our unique structure as a Town with a Mayor, 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.

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 unbiased 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. This is not a novel concern. Please see the enclosed article relating to the same issue being raised in the Town of North Judson in 2018.

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. 2014-3 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 the reorganization documents as they exist. 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 2014-3 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, 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 retains the ability to demote the Chief of the Fire Department or the Chief of the Police Department without involvement from the Town Council or the Safety Board. 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 (I.C. 36-8-3-4), Indiana state case law and the Town of Zionsville's reorganization documents.

Councilmembers, thank you for the opportunity to provide all of you with my administration's thoughts and concerns on these matters. Going forward, in order to ensure that all councilors are receiving all of the information that my administration is attempting to convey, you may see more frequent memos like this coming from me. I appreciate each and every one of you taking the time to carefully consider our concerns regarding this matter, and the opportunity to engage with each of you in further dialogue regarding this in order to arrive at a consensus on how the matters regarding the Safety Board and the Board of Police Commissioners are to proceed.

Best regards,

A handwritten signature in black ink, appearing to read "Emily Styron", with a long horizontal flourish extending to the right.

Mayor Emily Styron



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North Judson Town Attorney Recommends Appointing a Separate Safety Board

📅 November 10, 2018 👤 [Jacque Ryan](#)

Last updated

Tuesday, September 29th 2020

11:17AM CDT 12:17PM EDT



North Judson Town Attorney Justin Schramm encouraged town council members to appoint a safety board when they met Monday night. Currently, North Judson Town council members also serve as members of the safety board.

The attorney referenced an Indiana code that regulates the discipline and removal of firefighters and police officers which gives individuals the right to a hearing where they can appeal to the safety

board if they face a suspension exceeding 5 days.

Schramm said that can lead to a bit of an issue when safety board consists of the same people who serve as town officials.

He noted, "Usually it starts with an executive meeting between the chief and the town council, at which time the town council receives information about the type of transgression."

Schramm explained that this puts the town council in a tricky position because they wouldn't be able to hear the appeal from the individual being reprimanded without having that initial information from the chief.

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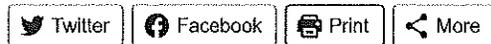
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 Wednesday, September 30th
 6pm Start Time
 COVID Guidelines will be followed
 On-Air at 6pm 99.3
 Streaming at wkvi.com or the99.3.com

He said in order to avoid any question of potential bias, it would be beneficial to appoint five to seven individuals to serve as safety board representatives.

He said a decision doesn't have to be made right away but he asked them to start looking for people who would be fit for a safety board position, such as retired firefighters and police officers or other impartial community members.

Schramm added that he is making this recommendation to all of the municipalities he represents that don't already have a separate safety board established.

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