

## MEMORANDUM

TO: Town Council, Town of Zionsville  
FROM: Heather Harris, Legal Counsel  
DATE: March 1, 2023  
SUBJECT: Ordinance 2023-05 – Review of Mayoral Veto Message

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As you are aware, during the February 13, 2023 Regular Meeting of the Town Council the members passed Ordinance 2023-05: An Ordinance Establishing the Position of Director, Department of Finance and Records, Deputy Director, Department of Finance and Records, and Reestablishing the Position of Municipal Relations Coordinator of the Town of Zionsville, Indiana. The Ordinance was vetoed by Mayor Styron on February 22, 2023 (*which has been previously circulated to the Town Council via Amy Lacy, Municipal Relations Coordinator and attached again here for your convenience*). President Jason Plunkett has requested that I review the Mayor's Veto message and provide additional information to the Council in preparation for the March 6, 2023 Regular meeting.

### *Review of Procedure to Consider Overriding a Mayoral Veto*

Ind. Code § 36-5-2-9.2 defines “Quorum” as a majority of all of the elected members of the legislative body constitutes a quorum. Additionally, Ind. Code § 36-5-2-9.4 applies to Towns and states “a requirement that an ordinance, resolution or other action of the legislative body [Town Council] be passed by a majority vote means that at least a majority vote of all the elected members. A requirement that an ordinance, resolution, or other action of the legislative body be passed by a two-thirds (2/3) vote means at least a two-thirds (2/3) vote of all the elected members.”

Resolution 2014-11 (Reorganization) states, that the mayor shall approve or veto ordinances, orders, and resolutions of the legislative body. *See*, ZR2A13(j). In order for an ordinance, order or resolution to be considered adopted under Ind. Code § 36-5-2-10, it must also be approved by the Mayor, or passed by the Town Council over the Mayor's veto. This section of code talks about when an ordinance, order or resolution is considered finally adopted. For

Zionsville, we have to review the requirement in the Reorganization. The Reorganization states, “whenever an ordinance, order, or resolution is vetoed by the Mayor, it is considered defeated unless the town council, **at its first regular or special meeting after the ten (10) day period** [for action by the Mayor], **passes and ordinance, order, or resolution over his or her veto by a majority vote**. See, ZR2A18. Therefore the Town Council will need a majority vote of all elected Town Council members to override the veto. Our majority is 4 (majority of 7).

### *Review of Mayoral Veto*

In the Mayor Styron’s Veto Message she notes for the Council that she no objection to the majority of the Ordinance passed by the Council. The Mayor notes two particular areas of concern: (1) that the Ordinance requires the Town Council approve job descriptions for Town Employees and (2) that the approval of the Town Council President be required before any employment action occurs involving the Municipal Relations Coordinator. As requested by President Plunkett, I would like to share the following additional background information for your review and consideration in advance of the March 6, 2023 meeting.

### *Review of Government Modernization Act and Guiding Principles of Reorganization 2.0*

The Town of Zionsville reorganized pursuant to Ind. Code § 36-1.5, commonly referred to as the Government Modernization Act (“Act”) and pursuant to Resolution 2014-11, Reorganization 2.0 (and Resolution 2014-3, the reciprocal Perry Township reorganization) (“Reorganization”). The Act states, “[E]xcept as otherwise specifically provided by law, to the extent the provision of this article are inconsistent with the provisions of any other general, special, or local law, the provisions of this article are controlling, and compliance with this section shall be treated as compliance with the conflicting law.” See, Ind. Code § 36-1.5-1-6. Further, the Act states that reorganized political subdivisions may “...(3)[Transfer] the functions of an office to another provide; (4)[P]rovide for a legislative body, an executive, or a fiscal body of the reorganized political subdivision to exercise the powers of a legislative body, an executive, or a fiscal body of a reorganizing political subdivision...” See, Ind. Code § 36-1.5-4-4. Further, the Act states that if “the functions of an elected office are transferred to another elected office by a reorganization under this article, any law, rule or other agreement that requires or permits an action

by an elected officer shall be treated after the functions of the elected officer are transferred as referring to the elected officer to which the functions have been transferred by the reorganization.” *See*, Ind. Code § 36-1.5-4-42. The Reorganization also states “all existing laws, resolutions, and ordinances currently in effect in the Town of Zionsville continue to validity after the reorganization, unless altered, amended or deleted by this plan of reorganization, or altered, amended or deleted after the effective date of his reorganization. This includes all aspects of the 2010 reorganization of Zionsville.”

### *Approval of Job Descriptions*

The Reorganization states “the executive power of the reorganized town is transferred to and vested in the Mayor. All executive functions, rights and responsibilities of the office of Town Council President under Indiana law are transferred to the Mayor. For all purposes related to Ind. Code § 36-5-2-2, and any other provisions of Indiana Code, the town executive is the Mayor. *See*, ZR2A3.5. Ind. Code § 36-5-2-2 is the section of Indiana Code that states that the Town Council President is the Executive of the Town. Further, in ZR2A8, “all rights and responsibilities assigned by Indiana law to the town executive or town council president in his or her executive capacity are transferred to and are rights and responsibilities of the Mayor.”

The Mayor states in her veto message “Reorganization Resolution 2014-3 and Reorganization 2014-11 (the “Reorganization Resolutions”) provide that the executive power of the Town is vested to the Mayor, that all executive functions, rights and responsibilities of the office of the Town Council President under Indiana law are transferred to the Mayor, that the head of each department and its employees are under the jurisdiction of the Mayor, and that the Mayor must have the approval of a majority of the Town Council before the Mayor can discharge a department head.”

As noted above, the Mayor is correct that the executive functions of the Town Council President were transferred to the Mayor. The Town Council President executive functions are silent as to job descriptions and therefore it may be assumed that the power to approve a job description is vested in the Town Council (since such power was not statutorily delegated to the Town Council President). Further, the Indiana State Board of Accounts confirmed that in a traditional town (one that has not undergone reorganization), the Town Council (not the Town

Council President) approves all job descriptions unless such powers are specifically delegated to another individual/position by the Town Council.

Further, prior to the Reorganization, the Town Council employed a Town Manager to be the administrative head of the town government which position served at the pleasure of the Town Council body pursuant to the authority in Ind. Code § 36-5-5-1 *et seq.* The Town Manager, under the direction of the Town Council, was responsible for the administrative duties of the Town Council. One such duty was to “hire town employees according to the pay schedules and standards fixed by the legislative body or by statute.” *See*, Ind. Code § 36-5-5-8(2). The Town Manager was given specific responsibility for certain employment issues. Specifically, “[e]xcept for town employees of the Clerk-Treasurer’s office and the Parks and Recreation Department, the Police Department and the Fire Department, the Town Manager shall approve the hiring, termination and other personnel decisions for all town employees in accordance with the town’s salary ordinance and any policies established by the Town Council.” *See*, Zionsville Code of Ordinances, § 31.02, Town Manager. This provision is silent on the approval of job descriptions – or said alternatively, the power to approve job descriptions was not specifically delegated to the Town Manager. This provision has not been fully repealed by the Town Council and is scheduled to be repealed/replaced as part of the Town Council Code of Ordinances revisions in 2023 for which funding was approved by the Town Council during the 2023 budget process.

The position of Deputy Mayor was created following the Reorganization via Ordinance 2016-07, passed on May 2, 2016. The Deputy Mayor “shall fulfill the role of Town Manager as that position was previously defined unless expressly modified...” *See*, Zionsville Code of Ordinances § 31.03(c). Further, the “Deputy Mayor shall assist in approving hiring and other personnel decisions for the town employees below the level of Department Manager in accordance with the town’s salary ordinance and any other policies established by the executive.” While the language changes to executive (in lieu of Town Council), the language is still silent on the approval of job descriptions and no such power is specifically delegated to the Deputy Mayor via Town Council Ordinance. Therefore, we fall back to the powers that were specifically delegated to the Mayor in the Reorganization resolutions and that were vested in the Town Council President as the Executive. As noted above, the statute governing the Town Council President’s powers – in the role as the Town’s executive – do not provide for the approval of job descriptions.

The Mayor further notes (as stated above) “that that the head of each department and its employees are under the jurisdiction of the Mayor.” The Reorganization states, “the Mayor shall recommend, in writing, to the legislative body actions that the executive considers proper.” *See*, ZR2A13. Further, it states, “At least once per month, the Mayor shall meet with the officers in charge of the town departments: for consultation on the affairs of the town; to adopt rules and regulations for the administration of the affairs of the town departments; and to adopt rules and regulations for the administration of the affairs of the town departments; and to adopt rules and regulations prescribing a merit system for the selecting, appointing, or promoting town officers and employees.” *See*, ZR2A14. The Mayor is correct that the Reorganization states, “the head of each department and its employees are under the jurisdiction of the Mayor...” *See*, ZR2A24. A plain definition of the term “jurisdiction” is “the power, right, or authority to interpret and apply the law or the power or right to exercise authority.” *See*, Merriam-Webster Dictionary. While it is clear that the Mayor has jurisdiction over the employees and the power to interpret and apply the law that applies to employees, the Mayor does not have the right to write the laws for the Town. Further, the Town Council has not delegated the right to prepare job descriptions to the Mayor or her administration (and no statute or the reorganization clearly delegates this power to that position).

In Indiana, the requirement to approve job descriptions falls to the Town Council unless that power has been specifically delegated to another individual via Ordinance by the Town Council. Per a discussion with the Indiana State Board of Accounts, the Town Council holds this responsibility because it is the Town Council’s requirement to pass the salary ordinance and establish the compensation and benefits for each position in the Town. This issue was raised by the State Board of Accounts during the 2022 audit discussions and discussions on proper internal controls for the Town. Further, we reaffirmed the State Board of Accounts position yesterday that the authority is vested with the Town Council unless specifically delegated to another individual/position. It should be recognized that the Reorganization does state that “the Mayor shall fix compensation of each appointive officer, deputy, and other employee of the town” but this authority is “subject to the approval of the Town Council.” While ultimately it may make sense to further delegate this authority to the position of Mayor, at this time it is recommended that the Town Council approve all job descriptions to ensure that the positions can be properly funded in the budget and to allow the Town Council to best determine at what level the compensation of

each position should be finally set. Additionally, given the State Board of Accounts' concerns about the lack of strong internal controls it seems prudent to ensure good checks and balances on such matters, including but not limited to the approval of job descriptions which ultimately lead to a request for an appropriation by the Town Council by requiring such approval by the Town Council. The authority to delegate the power to approve job descriptions is a policy decision of the Town Council. The Town Council may wish revisit this issue (or delegate this power) at a time when there is restored confidence in the Town's finances, evidence and adherence to strong internal controls.

*Oversight of Position of Municipal Relations Coordinator*

The Mayor states her concern that pursuant to Ordinance 2023-05 the Mayor or the administration must receive approval of the Town Council President before an employment action resulting in the change of duties, suspension or termination of an individual employed as the Municipal Relations Coordinator may occur. Specifically, Ordinance 2023-05 states:

- i. No employment action resulting in change of duties, suspension or termination of the individual holding the position of Municipal Relations Coordinator shall occur without notification to and approval of the Town Council President prior to such employment action unless the action(s) of the Municipal Relations Coordinator are such that there is an immediate risk of death, injury or reckless endangerment to the individual serving in such position, to other Town employees or the public at large; and
- ii. The Town Council president shall inform the Director of Human Resources of any and all concerns with the work performance of the individual who holds such position and shall be allowed to sit in on any and all formal discussions regarding the performance review of such individual holding the position; and
- iii. The Director of Human Resources and the Town Council President shall meet routinely, including no less than annually, to discuss the performance of the individual holding such position.

As the Town Council may recall, the Reorganization eliminates the elected office of Clerk

Treasurer and renames the position as Mayor as of January 1, 2015. *See*, ZR2A3. Under ZR2A3, the duties of Clerk Treasurer shall be delegated Mayor to a new Department of Finance and Records. The position is a Department Head.

In the 2020 Salary Ordinance, the Mayor proposed that the Department of Finance & Records be restructured including the elimination of the position of Director of Finance & Records and creates the Chief Financial Officer. *See*, Ordinance 2020-03. Per the Mayor's recommendation, the Clerk duties formerly held by the Director of the Department of Finance and Records were transferred by the Town Council (at the Mayor's request) to the new position of Municipal Relations Coordinator. At that time, the Mayor did not have the authority to transfer the Clerk duties vested in the position of the Director of the Department of Finance and Records without the approval of the Town Council. Following that action, I shared a concern with the Town Council President and the Mayor's leadership team that the Reorganization does not allow all of the duties of the Clerk Treasurer to fully be vested in the position of Municipal Relations Coordinator. The Reorganization clearly states that the Mayor "shall" vest the Clerk-Treasurer duties in the position of the Director of Finance and Records. Therefore, we made clear that the CFO still had oversight over all required duties of the former Clerk-Treasurer position in the Town and that the CFO was a Department Head.

At the December 19, 2022 Regular Town Council meeting, the members of the Town Council, Director of Human Resources and the Deputy CFO of the Town publically discussed the possibility of eliminating the position of Chief Financial Officer and restoring the position of Director of the Department of Finance and Records. The Town Council then took action to eliminate the position of Chief Financial Officer and Deputy Chief Financial Officer as part of the final passage of the 2023 Salary Ordinance and restored the positions of Director and Deputy Director of the Department of Finance and Records at the same time. At the first meeting of the Town Council on January 6, 2023, the Chief Financial Officer presented recommended job descriptions for the position of the Director of the Department of Finance and Records and the Deputy Director of the Department of Finance and Records. These positions were approved by the Town Council at the Council's January 17, 2023 Regular Meeting. At that meeting, the Town Council and me (as Legal Counsel to the Town) discussed that the Town Council would have to



eliminate the Ordinance establishing the Chief Financial Officer and replace it with an Ordinance reestablishing the position of Director and Deputy Director of the Department of Finance and Records. We further discussed the need to reestablish the position of Municipal Relations Coordinator to ensure that the duties of the position of Clerk-Treasurer were clearly delegated in the Town's Code of Ordinances (to ensure compliance with the Reorganization).

As part of the process to reestablish these positions, it was imperative that all statutory duties of an elected Clerk Treasurer were clearly outlined in the Ordinance. The statutory duties are found in Ind. Code § 36-5-6 and specifically require the individual serving in this role to perform certain functions. The Ordinance is closely modeled off the job descriptions that were prepared by and recommended to the Council by the Mayor's administration. For your convenience, I am notating how these duties were assigned in Ordinance 2023-05 as passed by the Town Council.

- (1) Receive and care for all town money and pay the money out only on order of the town legislative body (Director of the Department of Finance and Records).
- (2) Keep accounts showing when and from what sources the clerk-treasurer has received town money and when and to whom the clerk-treasurer has paid out town money (Director of the Department of Finance and Records).
- (3) Prescribe payroll and account forms for all town offices (Director of the Department of Finance and Records).
- (4) Prescribe the manner in which creditors, officers, and employees shall be paid (Director of the Department of Finance and Records).
- (5) Manage the finances and accounts of the town and make investments of town money (Director of the Department of Finance and Records).
- (6) Prepare for the legislative body the budget estimates of miscellaneous revenue, financial statements, and the proposed tax rate (Director of the Department of Finance and Records).
- (7) Maintain custody of the town seal and the records of the legislative body (Municipal Relations Coordinator).
- (8) Issue all licenses authorized by statute and collect the fees fixed by ordinance (Director of the Department of Finance and Records).
- (9) Serve as clerk of the legislative body by attending its meetings and recording its proceedings (Municipal Relations Coordinator).



(10) Administer oaths, take depositions, and take acknowledgment of instruments that are required by statute to be acknowledged, without charging a fee (Municipal Relations Coordinator).

(11) Serve as clerk of the town court under [IC 33-35-3-2](#), if the judge of the court does not serve as clerk of the court or appoint a clerk of the court under [IC 33-35-3-1](#) (Director of the Department of Finance and Records).

(12) Perform all other duties prescribed by statute (Both).

Since the Mayor initially proposed (and as approved by the Town Council) the split in the duties of Clerk-Treasurer that were assigned in the Reorganization to the Director of the Department of Finance and Records (who was given the protection in the statute for Town Council Approval prior to discharge), similar protections may be given to that position by the Town Council due to the importance of the role of Clerk in the operation of the Town Council statutory duties. The policy goal was to ensure coordination and input into the job performance of a Town position that reports both to the Mayor and to the Town Council President. The Clerk of a Town Council also reports to the Town Council President and helps to administer the business of the Town Council. If the position of Clerk were vacant (and the statutory duties outlined above were unfulfilled), the Town Council would have no ability to operate or conduct the required legislative and fiscal responsibilities of the Town. Therefore, it is imperative that any employment action to remove the Clerk from his or her position, reduce or eliminate the duties of the Clerk or take other employment actions must be done in coordination and with the approval of the Town Council President. The Reorganization recognized these important duties and specifically assigned such duties to a Department Head. While the Reorganization does allow the Town Council approve changes to the departmental structure, these important duties of the Town were specifically noted in the Reorganization and afforded such protection. As noted above, while the Mayor has jurisdiction over Town employees, the Mayor only has the authority that has been vested in the position by the Reorganization. The Reorganization does not vest the statutory duties of clerk in the Mayor. The Reorganization vests those duties in the position of the Director of the Department of Finance and Records (which has been further split into the position of the Municipal Relations Coordinator as recommended by the Mayor). Ordinance 2023-05 does not give the position of Municipal Relations Coordinator department head status.

That said, it does require the Mayor to coordinate with the Town Council President on the job performance of the individual that holds such position and require approval of the Town Council President before the individual may be removed to ensure that the effective continuation of the Town Council duties and responsibilities may continue (as understood with the spirit and intent of the original Reorganization provisions to protect the important role and duties of the Town's Clerk-Treasurer).

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Please let me know if you have questions or need any additional information. Thank you.

