




# CITY OF FORT WAYNE

THOMAS C. HENRY, MAYOR

To: Members of City Council

From: Mayor Tom Henry 

Date: December 7, 2017

Re: Ordinance G-17-11-12

I want to congratulate you on your recent attempt to address local campaign finance protocols, policies and procedures. There is no question from a philosophical and ideological view this issue needs to be addressed. I am concerned though that your ordinance is; A) in violation of the state Home Rule Act, specifically, that local governments have no regulatory power over campaign finance; B) not permissible under state law because local governments cannot regulate conduct that has been assigned by the Indiana General Assembly to other units and agencies of government (here the Indiana Election Division and county election boards) and; C) a violation of the state and federal constitutions.

Again, although I believe your intent to be admirable, the ordinance seems to be flawed in several specific areas:

- It sets campaign finance limits as a condition for contracting eligibility that do not exist in state law
- It sets contribution limits for contract eligibility on business entities that state law does not limit
- It restricts campaign finance activities in ways the state law does not
- It imposes campaign finance reporting requirements inconsistent with state law
- It is a violation of the free speech and association rights of candidates and donors, especially for spouses and children of business owners who are not themselves seeking office.

One of my biggest concerns is at a minimum the ordinance could be challenged in court for a determination that the City exceeded its authority under both the state Home Rule Act and the U.S. Constitution. In either case, the City would not only have to pay for its own defense, but, if unsuccessful on the federal claims, would have to pay damages to the plaintiff as well as pay the plaintiff's attorneys fees. This is worrisome, to say the least.

However, since I do agree something needs to be done to make the campaign donation process more transparent, I would prefer to return the ordinance to you, unsigned, for further discussion, debate and modification.

Therefore, I am formally requesting you revisit the ordinance, make the appropriate adjustments and return the proposed statute to me for further examination. Again, I support the intent but struggle with the legality and enforcement components of the ordinance.

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I am also including, for your review, legal opinions of four of the leading law firms in the state outlining what they observe as the illegal, unauthorized and unconstitutional aspects of the ordinance.

Unfortunately, a veto by operation of law is now at play and will require you to either sustain it and rework the ordinance in order to comply with state and federal statutes, or override it and possibly subject our City to legal action. Should you choose the former, my administration stands ready to work with you to ensure any new revisions are consistent with current state and federal law.