



August 13, 2019

Governor Gretchen Whitmer
P.O. Box 30013
Lansing, Michigan 48909

RE: City of Portland – Request for Reconsideration of Section 19 Emergency Funding

Dear Governor Whitmer:

On behalf of the City of Portland (the “City”), we are respectfully seeking reconsideration of the City’s request for financial assistance pursuant to Section MCL 30.419 (“Section 19”) of the Michigan Emergency Management Act (the “Act”) that was facilitated by Ionia County. On February 13, 2019, you declared a state of emergency for the City of Portland and Ionia County, citing that local resources were insufficient to respond to the ice jams and extreme flooding. During the course of this 4-week event, the City sustained significant damage to public infrastructure, such as the electric utility, river trail system, and of most concern, the wastewater treatment plant which operated far beyond its designed capacity and is essential in protecting public health and the environment. In a letter dated July 2, 2019, the City was informed, through the Emergency Management and Homeland Security Division of the Michigan State Police (“MSP”), that its request for funding was denied citing only that “the local commitment did not place unreasonably great demands upon the county or clearly demonstrate exhaustion of local effort.” In reaching its decision, we believe that MSP failed to properly apply the statutory criteria for disaster assistance eligibility. We are respectfully requesting that you correct this error and find that the City of Portland is duly eligible and grant the request for funding as provided by the Act.

First, MSP erroneously evaluated the financial burden on the County’s budget, when in reality 95% of the loss was borne by the City of Portland, a community of less than 4,000 residents. The analysis incorrectly merged jurisdictions of the County and local municipalities, contrary to the Act which contemplates that disaster assistance should be awarded to the governmental unit sustaining the loss. Here, the loss is almost entirely the City of Portland. By virtue of the state’s approval of Ionia County’s Emergency Operations Plan, all municipalities within the county with a population less than 10,000 are independently eligible for Section 19 assistance. As currently applied, many if not most communities with a population of less than 10,000 would seldom qualify, if at all.

Second, both the City and the County exhausted all available recourses responding to this disaster. “Exhaustion of local effort” is expressly defined as “utilizing all available and applicable disaster relief forces as identified in the emergency operations plan.”¹ Under no circumstances would the County’s (or any other jurisdiction) emergency operations plan provide for repair or replacement of items related to local infrastructure, overtime, etc. In other words, the City cannot reasonably invoice the County for such expenditures as that was clearly not the intention of the Act and subsequently promulgated regulations. In fact, such items are contemplated and expressly listed in MSP Rule 6² as allowable expenditures for reimbursement.

¹ Rule 30.53(1)(c)

² Rule 30.56

“The City of Portland is an equal opportunity provider and employer.”

Third, the City clearly suffered an extraordinary financial burden within the meaning of MSP Rule 3. Specifically, the applicant must experience an “extraordinary financial burden” which “shall be demonstrated by the applicant's incurring expenses, over a consecutive 5-day period, for the allowable expenditures specified in R 30.56, in an amount that is not less than \$30,000.00 or 1% of the applicant's affected agencies' annual general fund operating budget, whichever is less”.³ Of the \$105,316.00 requested by the County, approximately \$100,00.00⁴ of that amount was related to the City alone.⁵ Furthermore, 1% of the City's annual operating budget is approximately \$24,000.00. By either standard, the City's losses far exceed the required threshold to demonstrate an “extraordinary financial burden.”

In summary, we ask that you find that the City of Portland is eligible for Section 19 assistance based upon the proper application of the required statutory and regulatory criteria provided above and authorize financial assistance under the Act accordingly.

Respectfully,



S. Tutt Gorman
City Manager

cc: Mark Totten, Chief Legal Counsel, Office of the Governor
Col. Joe Gasper, Michigan State Police
Capt. Emmitt McGowan, Michigan State Police
Chairman David Hodges, Ionia County Board of Commissioners
Sgt. William Hoskins, Ionia County Emergency Management Coordinator
Lt. Orville Theaker, Sixth District Coordinator, Michigan State Police
Peter H. Ellsworth, Dickinson Wright PLLC

³ R 30.53(1)(d)

⁴ The City received approximately the same amount in Section 19 assistance during the 2015 Tornado and state of emergency.

⁵ Since the initial request of approximately \$97,000 in Section 19 assistance, the City has discovered additional allowable expenditures in the amount of approximately \$56,000 that will be submitted along with the reconsideration request.