



To: Portland City Council

From: City Manager, Tutt Gorman

Date: October 21, 2019

RE: Section 19 Emergency Funding – Denial of Reconsideration

The City received the attached letter from the Michigan State Police (MSP) reaffirming the denial of Section 19 emergency funding to Ionia County, the City of Belding and the City of Portland. Once again, we are disappointed, not only with the decision, but the lack of analysis and transparency during the process. Regardless of how Portland and the local jurisdictions decide to proceed in this case, there remains a legitimate concern and need to clarify the existing eligibility criteria rules for emergency funding and the overall process – for all communities. Simply put, no one understands how these decisions are being made and who is making them. The City’s position that it is duly eligible for Section 19 funding is unchanged:

- MSP’s Role – Under Section 19 and the Administrative Rules, MSP’s authority is limited only to determining if an applicant meets the eligibility requirements. The complete and exhaustive list of those requirements can be found in R 30.53 of the Michigan Administrative Code. MSP has seemingly and arbitrarily added a new criterion of “unreasonably great”, which is found in the introductory subsection of Section 19 and wholly unrelated to the aforementioned eligibility requirements. It states that “if the demands placed upon the funds of a county or municipality in coping with a particular disaster or emergency are unreasonably great, the governing body of the county or municipality may apply, by resolution of the local governing body, for a grant from the disaster and emergency contingency fund.” “Unreasonably great” is simply a descriptor and cannot reasonably be interpreted as a prerequisite. There is no reference to MSP, nor the Governor. Simply, if a local government feels that a disaster places “unreasonably great” demands on their funds, they may apply. Moreover, without any statutory guidance, “unreasonably great” appears to be an arbitrary and unenforceable standard.
- “Exhaustion of Local Effort” – The letter states that “neither of the three jurisdictions exhausted or nearly exhausted their resources” while responding to or recovering from this event. However, no explanation was provided. “Exhaustion of Local Effort” is an eligibility requirement and appropriately defined as “utilizing all available and applicable disaster relief forces as identified in the emergency operations plan.” MSP failed to explain what aspect of the EOP the City/County

failed to exhaust that would address over 100k in public infrastructure damages. This question was repeatedly posed to MSP with no answer.

- The “State” – The letter provides that “the State concluded that supplemental funding under Section 19 of Act 390 is not warranted.” MSP has no statutory authority to approve or deny emergency funding under Section 19. As stated above, their role is limited to fact finding and determining if an applicant meets the eligibility requirements --- if eligible, MSP forwards on to the Governor who has broad discretion to approve or deny. It is unclear if MSP is referring to itself as the “State” or if they are referring to the Governor’s Office. Both are problematic.
- R 30.53 – The letter incorrectly states that the City of Portland cited the criterion as being the basis for the Governor to grant Section 19 funding. The City recognizes and has repeatedly stated that our position is that we are eligible based on the eligibility criteria, but understandably the Governor has broad discretion to approve or deny said funding. The last sentence in that paragraph is concerning and seems to suggest that MSP interprets the eligibility criteria as only coming into play after the Governor authorizes funding. This would be nonsensical and not supported by the Act or Administrative Rules.
- Transparency/Process – Aside from the substantive disagreement regarding eligibility, the process itself has become equally as frustrating. There has been little to no direct dialogue with MSP or the Governor’s Office throughout this event and with each referring to the other. The MSP Officers on the ground have been exceptional as they are simply liaisons for Division. The City and the County experienced problems early on when seeking the initial declaration. We have requested clarification on various topics, not to challenge them, but so we would not waste critical time during an emergency in the future. To date, still no answers. We have repeatedly requested meetings and they too have gone unanswered. The review process, as provided by R 30.55, is designed to make it clear to an applicant when they are not eligible for Section 19 funding. However, the reality has become far different with communities guessing if they will be deemed eligible. The City will continue to work with the Michigan Municipal League (MML) in an effort to provide clarity to this process.



STATE OF MICHIGAN

DEPARTMENT OF STATE POLICE

LANSING

GRETCHEN WHITMER

GOVERNOR

COL. JOSEPH M. GASPER

DIRECTOR

October 18, 2019

Mr. David Hodges
Chair, Ionia County Board of Commissioners
101 W. Main Street
Ionia, Michigan 48846

Dear Mr. Hodges:

I am in receipt of your letter dated August 13, 2019 in which you request reconsideration of your May 21, 2019 request for financial assistance from the disaster and emergency contingency fund. While the statute and rules do not recognize a process for reconsideration, I am happy to elaborate on the earlier decision and respond to some of the specific concerns.

Additional information provided by the City of Portland indicates the city discovered approximately \$56,000 in additional expenses, and the City of Belding indicated an additional \$2,309 in additional expenses incurred during the ice jam and flash flooding event which resulted in a state of emergency declaration from Governor Whitmer under the provisions of Public Act 390 of 1976, as amended, on February 13, 2019. Information provided in the initial request for disaster and emergency contingency fund assistance indicated that Ionia County incurred total estimated costs of approximately \$105,316. The additional information provided with your request for reconsideration would bring these costs to approximately \$163,865.

Public Act 390 states if the Governor proclaims a state of disaster or a state of emergency, the first recourse for disaster related expenses must be to funds of the county or municipality. Under extraordinary circumstances, upon the declaration of a state of disaster or emergency under Act 390, the Governor may provide state financial assistance to a county or municipality under Section 30.419 of the Act (Section 19) when federal assistance is not available. However, this allowance is only if the fiscal demands upon the county or municipality in coping with the disaster or emergency are unreasonably great and there is a demonstrated exhaustion of local effort.

A review of the audited financials on the Michigan Department of Treasury website, specifically the general revenue, has been conducted for each affected jurisdiction (Ionia County, the City of Belding, and the City of Portland). The audited financials are examined individually and are not viewed as a whole in making a determination for requested financial assistance. The determination of whether a local jurisdiction has exhausted local efforts requires a consideration of each local jurisdiction, independent of the county, and does not assume that a local jurisdiction can invoice the county for emergency response expenses. Neither of the three jurisdictions exhausted or nearly exhausted their resources while responding to or recovering from this incident. The jurisdictions did not request resources or identify unmet needs after the flood waters receded. Having completed this review, the State concluded that supplemental funding under Section 19 of Act 390 is not warranted as the local commitment did not place unreasonably great demands upon the county or affected local jurisdictions.

MICHIGAN STATE POLICE HEADQUARTERS • 7150 HARRIS DRIVE • DIMONDALE, MICHIGAN 48821

MAILING ADDRESS • P.O. BOX 30634 • LANSING, MICHIGAN 48909

www.michigan.gov/msp • 517-332-2521

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In reference to the additional information provided by the City of Portland, in which R 30.53 of the Michigan Administrative Code is cited as the criterion for the Governor's authorization of expenditure from the disaster and emergency contingency fund, please note that this rule is only used in determining applicant eligibility during the state disaster grant application process, following a Governor's authorization of expenditure to fund the grant program for a specific incident. R 30.53 is not a rule used in determining authorization of expenditures from the disaster and emergency contingency fund. As the statute makes clear in MCL 30.419(1), the decision to authorize an expenditure from the disaster and emergency contingency fund is discretionary. Moreover, the eligibility requirements in R 30.53 are purposefully maintained at a very low threshold so that every jurisdiction (county, city, village, or township) impacted, after an expenditure from the disaster and emergency contingency fund has been authorized, would have a greater likelihood of being eligible to receive funding.

The Michigan State Police, Emergency Management and Homeland Security Division is available to provide further advice and guidance about preparing your community for any future emergency or disaster events.

Again, thank you for your commitment to protecting life, health, and property.

Sincerely,



Capt. Emmitt McGowan, Commander
Deputy State Director, Emergency Management
and Homeland Security Division

cc:

Mr. Mark Totten, Executive Office

Col. Joe Gasper, Michigan Department of State Police

Lt. Col. W. Thomas Sands, Michigan Department of State Police

Sgt. William Hoskins, Ionia County Emergency Management Coordinator

Lt. Orville Theaker, Sixth District Coordinator, Michigan Department of State Police

Mr. S. Tutt Gorman, City Manager, City of Portland

Mr. Brad Miller, Mayor, City of Belding