



**RELEASE: MICHIGAN ATTORNEY GENERAL OFFICE SIDES WITH THE CITY OF PORTLAND IN ITS INTERPRETATION OF THE EMERGENCY MANAGEMENT ACT ARISING FROM THE 2019 DENIAL OF STATE DISASTER FUNDS. MICHIGAN STATE POLICE TO MAKE CHANGES TO THE PROCESS GOING FORWARD**

Portland, Michigan (December 18, 2020) -- The Michigan Attorney General Office, through Assistant Attorney General, Jessica McGivney, has issued an opinion to the Michigan State Police (MSP) that supports the City of Portland's argument that the law<sup>1</sup> was not properly interpreted and applied during the 2019 ice jam/flooding and state of emergency. During a conference call on December 8, 2020, MSP Captain and Deputy Director of the Emergency Management/Homeland Security Division (MSP/EMHSD), Kevin Sweeney, summarized the findings of the Attorney General Office. Based on the Attorney General Opinion, "step 3" in the application process will be removed going forward.

Throughout the application process, Portland was advised there were generally 4 steps for local governments to obtain Section 19 funds:

- 1.) Local declaration is declared
- 2.) Governor issues a state declaration
- 3.) Governor "opens up" or authorizes Section 19 funding**
- 4.) Local jurisdictions must meet the eligibility criteria to qualify for funding<sup>2</sup>

The issue in controversy is related to step 3 in the process above which is nowhere to be found in the state statute or administrative rules. The City of Portland, through its attorneys, has maintained that they were wrongfully determined to be ineligible since being initially denied in July 2019. Portland demonstrated that it met all remaining requirements to be eligible. The City raised this issue repeatedly with the Governor's Chief Legal Counsel, as well as MSP/EMHSD. On August 12, 2019, the City filed a Request for Reconsideration to the Governor's Office outlining the law and related administrative rules governing eligibility. However, this request was also denied citing the same flawed interpretation stating that the eligibility criteria in Rule 30.53 did not apply until after the Governor authorizes Section 19 funding<sup>3</sup> – this is step 3 referenced above.

The City of Portland, joined by the Michigan Municipal League (MML), then sought clarification on this middle step ("step 3") so to be better prepared for future states of emergency impacting communities across the state. Specifically, what is the criteria or standard being used to open or authorize Section 19 funding, if it's not the "eligibility" criteria in the administrative rules. The Governor's Office initiated a

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<sup>1</sup> Public Act 390 of 1976, Michigan Emergency Management Act ("Act") and Administrative Rules 30.51 through 30.61

<sup>2</sup> Administrative Rule 30.53. It should be noted that although a community meets the eligibility criteria, funding is not automatic – the ultimate decision rests with the Governor per the Act.

<sup>3</sup> Page 2 of the October 18, 2019 denial letter from then acting MSP Captain/EMHSD Deputy Director, Emmitt McGowen on the City of Portland website: <https://www.portland-michigan.org/DocumentCenter/View/2999/Sct-19-Emergency-Funding---Denial-of-Reconsideration>

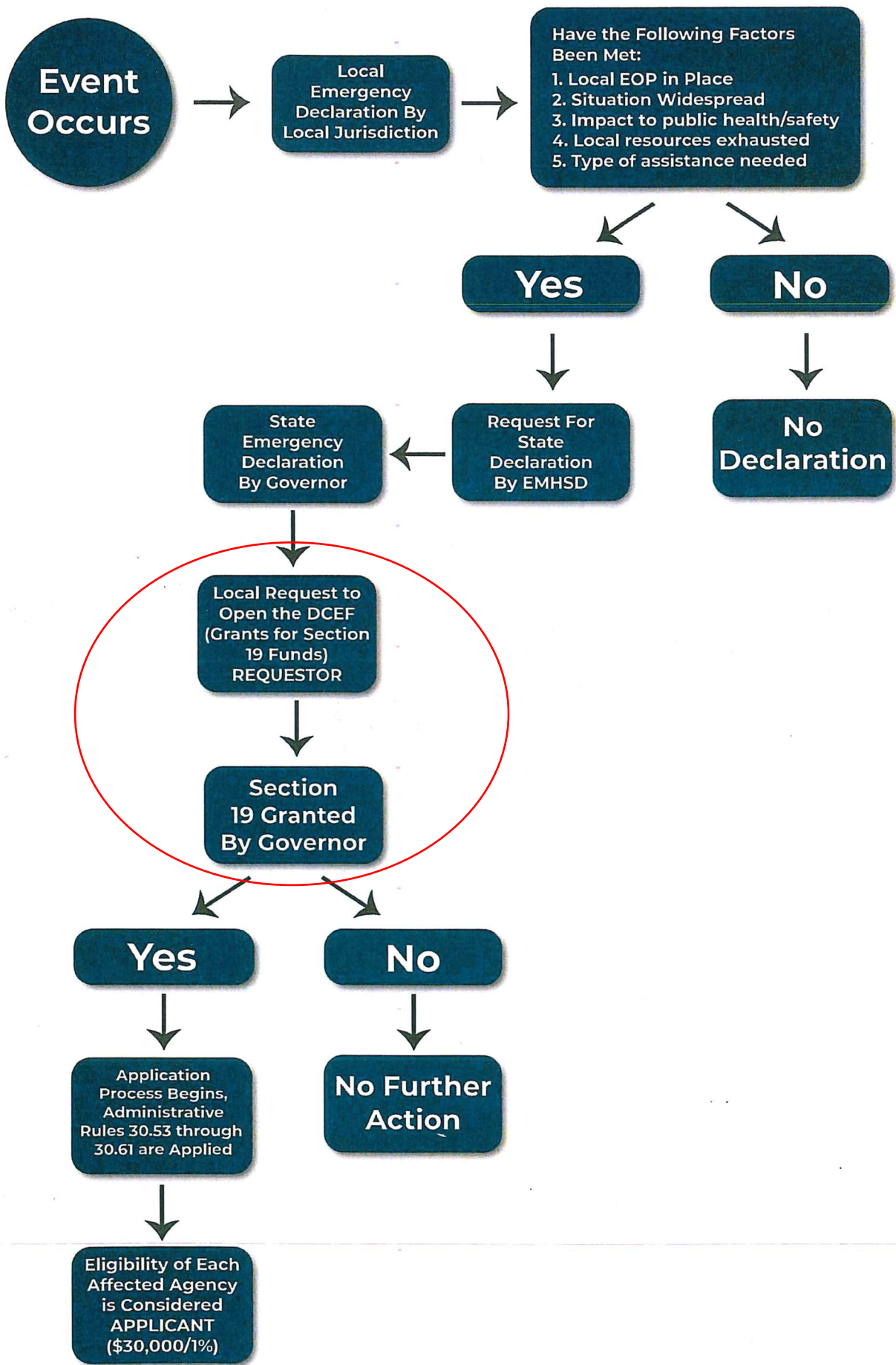
workgroup comprised of MSP/EMHSD staff, emergency managers, the City of Portland, MML and other individuals “to suggest possible points of clarification to the Administrative Rules.” This meeting took place on January 14, 2020 at the MSP Headquarters in Dimondale, Michigan. Deputy legal counsel for the Governor’s Office also attended. During the meeting, MSP/EMHSD staff could not produce any legal authority or standards for this “middle step”, but reaffirmed its purported existence by offering the attached flow chart<sup>4</sup>. This was the only workgroup meeting that took place and there was no further action or follow-up.

In April of 2020, MSP Captain, Kevin Sweeney was named the new Deputy Director of MSP/EMHSD, seemingly a turning point in this process. Captain Sweeney was briefed on this matter by MSP/EMHSD staff and also sought input from the City of Portland and other stakeholders. Captain Sweeney then appropriately sought guidance from the Michigan Attorney General Office who has opined that “step 3” is not supported by the Act or Administrative Rules. Based on the Attorney General Opinion, Captain Sweeney stated that step 3 will be eliminated from the process going forward.

Portland City Manager, Tutt Gorman stated that “the City is grateful to Captain Sweeney and MSP/EMHSD for objectively reviewing this matter and going through the proper channels. This change to the process will provide much needed clarity to communities across the state and will streamline the process during emergencies when time is most precious. Although the City of Portland successfully obtained the disaster funding through the legislative process, this may not have been necessary had a formal legal review been conducted when this issue was initially raised.”

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<sup>4</sup> The circled area is the “middle step” or “step 3.”



**Event Occurs**

**Local Emergency Declaration By Local Jurisdiction**

**Have the Following Factors Been Met:**  
1. Local EOP in Place  
2. Situation Widespread  
3. Impact to public health/safety  
4. Local resources exhausted  
5. Type of assistance needed

**Yes**

**No**

**Request For State Declaration By EMHSD**

**No Declaration**

**State Emergency Declaration By Governor**

**Local Request to Open the DCEF (Grants for Section 19 Funds) REQUESTOR**

**Section 19 Granted By Governor**

**Yes**

**No**

**Application Process Begins, Administrative Rules 30.53 through 30.61 are Applied**

**No Further Action**

**Eligibility of Each Affected Agency is Considered APPLICANT (\$30,000/1%)**