

# A Tale of Two Cities: Mayors Veto Pay-to-Play Ordinances, But Are Then Overridden by City Councils

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January 2018

After Mayor Tom Henry vetoed a recent Fort Wayne, Indiana pay-to-play ordinance, the City Council on December 12, 2017 voted by a 6-3 margin to override his veto, thus reinstating the ordinance. Designed to avoid the appearance of impropriety and cronyism in city government, the ordinance bars businesses that contribute over \$2,000 per calendar year to elected city officials from bidding on city contracts. Included are donations to local officials' campaigns from so-called "key employers," or those individuals owning over 7.5 percent of a given company, which will count toward that firm's \$2,000 ceiling. Contributions from key employers' spouses and children will likewise be counted as contributions from their respective firms.

In a letter explaining his veto to the council, Mayor Henry noted that while he agreed with the council's "admirable" intent, he had several concerns with the ordinance, including that it 1) violates a provision in Indiana's Home Rule Act that local governments have no regulatory power over campaign finance; 2) violates state law because local governments cannot regulate conduct that has been assigned by the Indiana General Assembly to other units and agencies of the state government; and 3) violates both the Indiana and federal constitutions. Instead, he proposed returning the bill to the City Council to make the appropriate adjustments that would avoid likely legal challenges while also making the campaign contribution process more transparent through stricter disclosure requirements.

## Authors

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D. Mark Renaud  
Partner  
202.719.7405  
mrenaud@wiley.law

## Practice Areas

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Election Law & Government Ethics

The council was unpersuaded, however. According to The Journal Gazette, ordinance proponents argued that the measure is necessary to help restore citizens' faith in the government contracting process, especially given the negative publicity that can ensue when large contributors receive lucrative contracts to be city vendors. Proponents also argued that it does not actually impair free speech or limit how much any donor can give to an elected city official's campaign, but rather simply limits the city's ability to contract with certain large contributors. One of the ordinance's sponsors on the council further observed, "Our ordinance is not perfect and cannot stop all money influence in government. But it will help . . . . The alternative is to throw up our hands, saying we cannot do anything" because "it might not be legal and it's not perfect . . . . But seeing a problem and not trying to do your best to fix what you can by declaring it hopeless is just a form of cowardice."

Separately, on the West Coast, a similar ordinance was recently vetoed by the mayor of Spokane, Washington – and the veto was then overridden by the Spokane City Council on January 8, 2018. The ordinance prohibits any company with more than \$50,000 in contracts with the City of Spokane from contributing to local campaigns, while also imposing new reporting requirements and lowering the maximum campaign contribution limit to half of what the State of Washington currently allows. In explaining his veto to the Inlander, Mayor David Condon asserted that the ordinance violated free speech because it imposes contribution restrictions on city contractors but not on city unions, and that campaign finance restrictions should be handled at the state level.

The same six city council members who initially voted in favor of the ordinance then voted to override the veto, clearing the necessary five-vote hurdle to reinstate the ordinance without Mayor Condon's backing.

The ordinances took effect on January 1, 2018, in Fort Wayne and on February 7, 2018, in Spokane.

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