



## Request for Council Action

**TO:** Mayor and City Council  
**FROM:** Tim Murray, City Administrator  
**MEETING DATE:** May 26, 2020  
**SUBJECT:** Authorize Submittal of Letter to Governor Walz regarding COVID-19 Pandemic Impacts

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### **Background:**

At the May 19, 2020 Joint Committee meeting, the majority of the Council were in support of submitting a letter to the Governor requesting that actions be taken to improve the economic conditions for local businesses. Attached is a letter that was prepared to express these sentiments. As it relates directly to this topic, I have also attached recent guidance from the League of Minnesota Cities regarding submittal of resolutions on this matter. Please note that the attached letter does not in any manner recommend or encourage any business, individual, or the City Council to defy the current executive orders or other applicable laws and regulations.

As discussed at the Joint Committee meeting, this letter is more symbolic in nature than legislative, but that should not be seen as a reason to not consider taking such an action. Its primary purpose is to express the Council's recognition of the severe economic impacts that local businesses have endured, and to encourage and support further actions by the Governor to help improve the conditions to allow them to return to full and successful operations.

### **Recommendation:**

Authorize Submittal of Attached Letter

### **Attachments:**

- Letter to Governor Walz
- League of Minnesota Cities May 14, 2020 Publication



May 26, 2020

**A LETTER IN SUPPORT OF FARIBAULT AREA BUSINESSES AND URGING THE GOVERNOR TO TAKE ALL PRUDENT AND REASONABLE ACTIONS TO LIFT RESTRICTIONS TO IMPROVE LOCAL ECONOMIES**

To the Honorable Governor Tim Walz:

The COVID-19 Virus pandemic has had a tremendous impact on the way people live and work in Minnesota as well as throughout the world. There is no debate that the pandemic poses risks to public health and safety. The response to the outbreak has resulted in a number of significant impacts, among which is the severe economic damage that has been experienced. Due to the pandemic, numerous Executive Orders have been issued that have required a number of businesses to cease or significantly reduce operations, in addition to the issuance of "stay at home" orders for Minnesotans. The inequity in the closure of some businesses and the reduction in operations of others has created much economic hardship in the city of Faribault and throughout Minnesota.

While pleased that some steps were taken to loosen restrictions on "non-critical" businesses and that a June 1 date has been set to lift the total closure of restaurants, bars, and hair salons, the level of onerous controls and restrictions still in place will render the changes meaningless for a multitude of businesses in Faribault as well as Minnesota. Many establishments either do not have the physical space to meet the requirements set forth, or if able to, will suffer greater economic losses than if they continue to stay closed.

The economic harm caused by the restrictions imposed in response to the COVID-19 pandemic may result in the permanent closure of many businesses and cause irrevocable harm to the local economy and livelihood of many Faribault residents. The closure and reduced operations of many Faribault businesses has resulted in lost economic activity and encouraged residents to do their business in neighboring states where businesses are re-opening faster or with less restrictions.

The Faribault City Council understands the need to protect public health, and has and continues to urge those who are sick, have weakened immune systems, or who otherwise do not feel comfortable going out to stay home or take other measures to minimize their risks. The Council continues to urge residents to continue practicing social distancing and follow other guidelines by the Centers for Disease Control and Minnesota Department of Health.

The Faribault City Council urges you and other State leaders to balance the overall public health and economic health needs in making decisions and taking action relating to the COVID-19 pandemic. The Faribault City Council urges you and State leaders to further re-open the State's economy in the fastest and fairest way possible while balancing the need to protect public health.

We strongly request that you thoroughly and promptly reevaluate the newly established restrictions being imposed for the June 1 opening date for bars, restaurants, hair salons, etc. as well as the existing restrictions on the small retailers and other places of public accommodation, and any other businesses that were required to close or significantly limit their operations as a result of the Executive Orders.

On behalf of the Faribault City Council, I hereby submit this letter for your consideration in support of taking further actions to improve the economic climate and options for all of the businesses affected by the executive orders and the restrictions imposed.

Respectfully,

Kevin F. Voracek, Mayor



# City Resolutions Supporting Local Businesses Create Questions and Unknown Risks

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Even with the lifting of Gov. Tim Walz's stay-at-home order, the continuing restrictions on certain businesses — and the varying impacts on communities across the state — are placing many city officials under pressure to express formal support for businesses that don't comply with the restrictions, most commonly in the form of a council resolution.

City resolutions and other affirmative actions taken by local governments in a pandemic are without precedent in modern times. The consequences of non-enforcement of COVID-19 emergency executive orders are unknown and untested.

## Limit your city's exposure

For these reasons, the League urges cities to exercise restraint against adoption of resolutions or other actions that may expose the city and its officials to civil and/or criminal liability. We also urge cities to consult with their own attorney before taking any official action. Interpretation of current law to particular circumstances and with respect to particular language in a resolution should be left to the city attorney, who is in the best position to weigh all factors.

Finally, we encourage cities to reach out to their state and federal elected officials and provide information and examples of the specific negative impacts happening in their communities now — and expected to happen in the future — due to COVID-19 rules, guidelines, and restrictions.

## Additional considerations

Here are some additional points city officials may want to evaluate and discuss with their legal counsel when considering formal resolutions and other actions:

- A city does not have authority to change a state law or be less restrictive than state law, unless the law specifically allows for it. Local units of government, including cities and their officers, have only those powers that are granted by the Legislature either expressly or by reasonable implication. Any action passed by a city council should be evaluated within this scope of authority principle.
- A city will want to consider all implications, including potential liability for damages and civil penalties, for decisions made regarding non-enforcement of executive orders. Since such actions are without precedent and thus legally untested, cities may be assuming potential liability for unknown and completely novel legal claims and other risks. In addition, whether these risks can be successfully tendered to the League of Minnesota Cities Insurance Trust (LMCIT) for claims coverage is also unknown. If there is no ability for LMCIT to provide coverage, the city could be left paying for litigation costs and damages out of its own pocket.
- Minnesota Attorney General Keith Ellison has communicated that he will enforce executive orders, if necessary, but the state has not provided any other specific insights on how it will respond if a local government makes an affirmative decision not to enforce the orders. Also, business owners and employees who act in violation of executive orders could still face criminal charges or administrative penalties (such as license revocation) if they open their businesses in violation of an executive order.

## Alternative types of resolutions

There are many examples of cities passing alternative types of resolutions that reduce or eliminate the above risks. These actions explicitly acknowledge the city's support for local businesses while strongly encouraging the governor to lift or further relax restrictions.

The League has copies of some of these resolutions and can provide them upon request. To make such a request, contact the LMC Research Department at [research@lmc.org](mailto:research@lmc.org) (<mailto:research@lmc.org>).

—Access more COVID-19 News and Resources (<https://www.lmc.org/resources/covid-19-resources/>)

Your LMC Resource

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