

To: **Mayor and City Council**
From: **Ryan Schroeder, City Manager**
Date: **July 27, 2020**

Acceptance of CARES ACT Funding and Expenditure Allocation Plan

BACKGROUND INFORMATION:

In order for West St. Paul to appropriately allocate \$1,586,138 in CARES ACT funding (and any accrued interest), City staff has consulted with or attended meetings with the City Attorney, the City's Auditor, senior representatives of the League of Minnesota Cities, Metro Cities, representatives of Congressperson Craig's office, and City Managers/Administrators of area Cities and Dakota County. Upon the guidance received, a basis for the allocation of CARES ACT funding follows.

Background

Timeline of Emergency Declarations and related actions:

- First Communication on Pandemic from the Mayor to the Public March 12, 2020
- First Communication on Pandemic from City Manager to the Staff March 12, 2020
- First Interagency COVID Management Meeting March 12, 2020
- Governor Walz Declares Peacetime Emergency March 13, 2020
- West St. Paul City Council Declares Pandemic State of Emergency March 20, 2020
- City Begins Teleworking/Offices Close End of Day March 27, 2020

Guidance from Minnesota Office of Management and Budget (MMB):

On July 1, 2020, the MMB provided guidance during a LMC Webinar. City Staff interpretation of this guidance follows:

- Document why in the opinion of the Chief Executive (City Manager) the expenditure is necessary as a COVID expense and how the determination was made
- Receive City Council approval even if City Manager is authorized
- Work with the City Auditor in preparation for the Single Audit
- Realize that Federal Guidance can change through this period
- On Public Safety expenses, no specific guidance received other than "work with auditor" and "the state is also working on Corrections interpretation"
- Expenditure Eligibility is for those expenses that have occurred or will occur between March 1 and November 15, 2020
- Can transfer funds to other governments such as South Metro Fire and need to verify that any sub-grantees also comply with 601(d)

The initial and largest question is whether Public Safety payroll and other expenditures are acceptable and appropriate expenditure allocations under the Act.

This is from the Federal Guidance for CARES Act funding:

The Guidance says that funding can be used to meet payroll expenses for public safety, public health, health care, human services, and similar employees whose services are substantially dedicated to mitigating or responding to the COVID-19 public health emergency.

How does a government determine whether payroll expenses for a given employee satisfy the “substantially dedicated” condition?

The Fund is designed to provide ready funding to address unforeseen financial needs and risks created by the COVID-19 public health emergency. For this reason, and as a matter of administrative convenience in light of the emergency nature of this program, a State, territorial, local, or Tribal government may presume that payroll costs for public health and public safety employees are payments for services substantially dedicated to mitigating or responding to the COVID-19 public health emergency, unless the chief executive (or equivalent) of the relevant government determines that specific circumstances indicate otherwise

Additionally, the South St. Paul City Administrator, on June 2, 2020 received the following email response in answer to a request for confirmation of intent of the CARES ACT regarding public safety expenditures as eligible expenditures under the ACT from the Senior Community Liaison, Morris Allen. Following is the relevant portion of that response.

On Jun 2, 2020 5:00 PM, "Allen, Morris" <Morris.Allen@mail.house.gov> wrote:

“I checked with our legislative director and this was his answer:

Unless there are additional conditions placed by the Governor or legislature, my reading of this is that payroll for law enforcement would automatically qualify.”

On July 9, 2020 staff emailed Mr. Morris to confirm that the above is still the Congressional office position on this topic. Following is the response:

“I just received this from my legislative Director. HOPE THIS HELPS. Feel free to forward to your colleagues.

Guidance released by the Treasury updated on June 30th

(<https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Guidance-for-State-Territorial-Local-and-Tribal-Governments.pdf>) and FAQs updated as of July 8th

(<https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Frequently-Asked-Questions.pdf>) continues to support that interpretation – that public safety payroll expenses are eligible.

The materials released by the Walz Administration on June 25th do not appear to impose any restrictions on that category of funding.”

In addition to the above, enclosed please find memorandums from LeVander, Gillen & Miller, P.A., our legal counsel, and Abdo, Eick and Meyers, the firm which will conduct a Single Audit for the expenditure of federal funds. Both support that police/public safety expenditures are an appropriate allocation for payroll and benefit costs.

City Staff Conclusion

Conclusion from the above is that published Federal guidance clearly states that police payroll and payroll for similar employees who are substantially dedicated to COVID response and mitigation are eligible expenditures. This clear reading of the guidance is also confirmed twice by the office of our US Congressperson, our legal counsel, and our audit firm (see attached and below).

On the same topic, we reviewed the common language to ascertain the “reasonable person” approach outside of legislative intent. City Staff intent is to ascertain the meaning of “substantially dedicated” within language and interpretation. It appears that the word “substantial” could not have been intended to mean anything other than as defined below which we conclude to mean “more than minimally.”

Definition of “Substantially”

1. Cambridge Dictionary: to a large extent
2. Dictionary.com: of a material nature; considerable amount
3. Webster: somewhat

Antonyms of “Substantially”

1. Webster: completely, entirely, thoroughly, absolutely, totally, wholly
2. Webster: barely, hardly, marginally, minimally, scarcely

The City’s legal Counsel provided an opinion on July 9. From that opinion, Staff explored passages of the opinion as follows. The entire opinion is also enclosed.

LeVander July 9 Legal Opinion

Opinion within the area discussing appropriate “Expenditures”

Para 1:

1. “necessary” (expenditures) will be construed broadly
2. In the reasonable judgement of government officials
3. “AND” must be used for actions taken to respond to the Public Health Emergency

City Staff Conclusion

Conclusion from above is that a determination by the responsible government officials are to be broadly, not narrowly, construed as it relates to expenditures related to response to the Public Health Emergency. It is adjudged, herein, that Government Officials would reasonably be defined as the City Manager in a Home Rule City Charter City Manager system. However, under a belt and suspenders theory, the decisions of the City Manager on allocated expenditures will be reviewed and affirmed by the policy board (City Council) which is the local body, which has declared the Public Health Emergency, which continues in effect.

Para 2:

1. Expenditures may be “incurred directly”
2. As well as expenditures incurred to respond to second order effects such as business interruptions
3. May be expended on payroll for public safety employees whose services are substantially dedicated to mitigating or responding to the COVID-19 crises
4. “including” public safety...and similar

City Staff Conclusion

Conclusion of the above is the determination that allocation of expenses in response to or mitigation of effects of the COVID-19 Public Health Emergency are appropriately both direct and indirect. Further, that any expense associated with the COVID-19 Public Health Emergency that resulted in a business interruption is an appropriate allocation. Finally, that payroll expenses for public safety employees are appropriately allocated so long as COVID-19 Public Health Emergency responses or mitigation impacts are more than minimal. It follows that “broadly construed” as denoted within the Federal guidance would necessarily include employees for which public safety employees rely upon for administrative support both inside and outside of the police department or South Metro Fire.

Para 3

1. An allowed expense is one that is “substantially different” from expected use

City Staff Conclusion

Conclusion of the above is the determination that an expense that is substantially different from the intended expense, if related to the COVID-19 Public Health Emergency would be appropriate to allocate to the CARES ACT allocation.

Conclusion From LeVander Memorandum

Within guidance received on the CARES Act expenditures from the MMB, the LeVander law firm and published Treasury and other articles phrases such as “substantially dedicated” appear consistently. In viewing definitions of “substantially,” and especially in viewing antonyms of the word, it is apparent that the guidance does not interpret the word “substantially” to mean a significant amount. In fact, it is apparent that the reference is something more than “minimally” and something less than totally. In fact, Webster defines the word to mean “somewhat.” Therefore, it is apparent that if the government officials responsible for spending decisions regarding CARES funding can identify that the expense incurred beyond a minimal amount due to COVID-19, it must be an expense eligible for CARES funding. Further, as a matter of Administrative Convenience, the government may presume that public safety payroll costs are “substantially dedicated” to the responding to or mitigating the COVID-19 Public Health Emergency.

Similar Employees Substantially Dedicated

It follows that City Staff related to public safety response or support of public safety response or pandemic response could reasonably be presumed “as a matter of administrative convenience” to also be an eligible payroll expense, so long as their time has been dedicated toward responding to or mitigating the COVID-19 Public Health Emergency. Regardless, each of the following positions and their job duties have been substantially impacted in that the job duties and tasks contemplated within the 2020 budget have been significantly altered from what was intended at adoption of the 2020 budget. In addition to the following list of Staff having duties substantially impacted are additional staff that “may be” substantially impacted but for whom level of impacts beyond “minimal” levels is not as clear. Included would be:

1. City Manager
 - Response Coordination
 - Assisting the Policy Board (City Council) in response
 - Communication/messaging to the public
 - Collaboration with other agencies throughout the County
 - Responding to Citizen concerns
 - Coordinating COVID-19 response team meetings
 - Managing CARES Funding including creation of small business grants
2. Human Resources Director
 - Participating with response team meetings
 - Managing organization wide employee safety
 - Working with employees on quarantine and contamination issues
 - Recruitment of employees with job duties related to COVID-19
 - Working with departments on reassigning employees
3. Finance Director
 - Participating with response team meetings
 - Managing the accounting for COVID-19 expenses
 - Managing Telework assets
 - Management of the accounting and administration of Small Business Grants

4. Communications Manager
 - Participating with response team meetings
 - Coordinating/writing messaging to the public on COVID-19 impacts and response
 - Working with IT on employee teleworking and Policy Board (Council) virtual meeting technology and meeting management and support
 - Assisting with and communicating small business grants and communicating waiver of code requirements for small businesses in response to Governor's COVID closures and partial openings
5. Chief Building Official
 - Participating with response team meetings
 - Charged with sanitizing general government portion of the building and management of asset/infrastructure improvements to public facilities
6. Assistant Parks Director
 - Participating with response team meetings
 - Mitigating to and responding to the need for recreational facilities closures, re-openings and sanitizing including park playgrounds, basketball courts, playfields, ice arena, splash pad, outdoor pool, sports dome
7. IT Manager
 - Participating with subject specific response team meetings
 - Charged with ensuring employee teleworking technology works
 - Purchasing of IT technology in response to pandemic
 - Lead on Policy Board (Council) virtual meeting creation and technology
8. City Clerk
 - Participating with response team meetings
 - Managing Elections impacted by the Public Health Emergency including acquisition of personal protection equipment (PPE) and coordinating with the County on absentee balloting due to the Public Health Emergency
9. Public Works/Parks Director
 - Participating with response team meetings
 - Supervising the Public Health Emergency actions of the Assistant Park Director

Expenditure Line Items

Upon the above, our conclusion is the following are eligible CARES ACT expenditures:

1. Police Department payroll (wage and benefit) March 1 through November 15
2. South Metro Fire COVID-19 medical calls March 1 through November 15
3. Staff for departments outside Public Safety as per above
4. Seasonal and apportioned full time employees hired specifically for cleaning/sanitizing public facilities
5. Other employee wages when assigned specifically to respond to or mitigate impacts to the pandemic
6. Computer equipment purchased in order to facilitate teleworking and/or virtual meetings
7. Local cost share (25%) of FEMA grants received for the COVID-19 pandemic
8. Emergency sick leave, quarantines and FMLA leaves, medical leaves
9. PPE and sanitizing expense across the organization
10. Business grants in accordance with the Social Security Act 601(d)
11. Any other reasonably necessary expenditure that meets the criterion of 601(d) of the Social Security Act

Ineligible expenses would include the following:

- Anything covered by insurance
- Payroll expense for those not substantially dedicated to mitigating or responding to COVID
- Anything reimbursed by any other federal program
- Workforce bonuses other than hazard pay or overtime
- Reimbursement to donors
- Severance pay

Allocation Approach

- Upon guidance from the City's audit firm, it is intended that the City would first allocate Police Department payroll expenditures against CARES ACT funding
- Upon approval of the City Council, the City would create a Business Grant Program or provide funding to a Dakota County Community Development Agency (CDA) Business Grant Program to assist West St. Paul businesses with CARES ACT eligible expenses directly attributable to or in response to COVID-19
- As per the above, the City would allocate direct expenditures for PPE, sanitizing, teleworking/computer/server/telephone COVID-19 related expenditures
- To the extent funding would be available, the City would allocate Staff expense for those positions identified above, to the extent that these positions have been substantially dedicated to COVID-19 response or mitigation
- South Metro Fire is an eligible sub-grantee with direct COVID-19 expenditure which may be allocated

Approval Approach

1. Council approval of the Expenditure Plan
2. Council approval of the Small Business Grant Program and/or approach
3. Future Council approval of CARES ACT allocations
4. If Business Grant Program is approved, future Council approval of Individual Business Grants
5. Upon approval of the Federal Single Audit (spring/summer 2021), re-allocation of any residual revenue per adopted fund balance policy

Appendix:

1. Business grant (enclosed)
2. Specifics of Police Department impacts

Following is a compendium of Police Department direct and indirect impacts of the public health emergency and related impacts.

Year to date activity for 2020 compared to the same period from 2019 reveals:

- Crashes are down significantly (probably due to stay at home orders)
- Community policing activities down significantly (due to COVID)
- Mental Health calls up (Mental Health calls can be labeled Mental Health or are in other categories where mental health is the underlying contributor to the reason for Police response)
- Domestic / disturbances are up slightly
- Fireworks complaints up significantly (increases are up nationally)
- Order for Protection and Domestic Abuse No Contact Order violations are up significantly
- Ordinance violations are down dramatically due to lower number of Snow Emergencies the first part of the year
- Traffic stops are down significantly (due to COVID, Officers do not want to make unnecessary contact. This is nationally, as well.)

2019 versus 2018, larcenies were up 84 percent. This year, we are seeing it remaining steady. The increase in larcenies are attributed to the increase of people being caught stealing when using the self-checkouts at Wal-Mart and Target, which were put in place at the end of 2018 and beginning of 2019. They have 10 items and only ring up two.

Not all community outreach has ended. We have done some virtual meetings, outreach, etc. We will be having a virtual Safety Camp and in person youth activities with limited numbers of youth participating this summer. We are making great progress in the planning of a diversity outreach / recruitment effort next spring. This outreach effort is in partnership with the FBI / Department of Justice (DOJ) and the two of us are taking the lead in the organization of this event. Participants will not only include the DOJ and our Department but many other local, state, and federal law enforcement agencies, as well as private and public organizations. The event is called "Be the change you want to see...Pursue a career in Public Safety." The focus will be recruitment of more diversity in the Criminal Justice field and will not only be a career fair, but there will be several speakers and other activities. The event is April 10, 2020 at the University of Minnesota. This will be the second such event in the country.

The COVID-19 pandemic has caused several issues with moving forward with the Departmental Work Plan. However, progress has been made on the following:

- Additional data and information placed on website. Regular meetings and planning being done with the Social Media Committee.
- Several stories have been produced in conjunction with Town Square TV and West St. Paul Reader to promote activities within the Police Department.
- Body camera implementation completed with a community meeting via Facebook Live scheduled for next week.
- Informal discussions taking place reference web design/content. Issues exist with locating time availability.
- Review of Mission Statement taking place through our Policy Committee.
- Citizen Academy has been cancelled due to COVID.
- Every other week, communications are being sent out to the Department. Many times, this has occurred weekly. During the riots, looting, and emergency scheduling, daily updates were provided.
- All data requests being processed in a timely fashion.
- Initial IT meeting was conducted to address IT deficiencies in the Police Department.
- Rehab project in the Department is near completion.
- Had some discussion so far with Human Resources regarding training deficits and addressed them via line item additions in the 2021 budget request.
- Temporarily reconfigured Supervisory Staff to include an Administrative Sergeant position to enhance career development. Working with Human Resources to get this completed.
- Developed committees to provide employee feedback and involvement in the operations. This includes Social Media and Web Content, Community Events and Engagement, IT, Recruitment, Policy and, lastly, Facilities, Equipment and Maintenance.
- It has been suggested that recent nationwide rioting was influenced in part by economic and social impacts from the pandemic, in addition to the larger influencers associated with the unrest that was demonstrated.
- The Police Department has assisted South Metro Fire with COVID responses somewhat.
- Recruitment has ceased for the most part.

FISCAL IMPACT:

		Amount
Fund:		
Department:		
Account:		

STAFF RECOMMENDATION:

Approval of the CARES ACT Expenditure Plan.