



Order

OFFICE OF THE
MAYOR
CITY OF SAN LUIS

No. 2022-02

AN ORDER OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SAN LUIS, ARIZONA AUTHORIZING AMERICAN RESCUE PLAN ACT (“ARPA”) FUNDS TO RESPOND TO ELIGIBLE EMPLOYEES WHO PERFORMED ESSENTIAL WORK DURING THE COVID-19 PUBLIC HEALTH EMERGENCY WITH PREMIUM PAY, AS AUTHORIZED BY ARPA AND THE U.S. TREASURY’S FINAL RULE ISSUED JANUARY 27, 2022; REPEALING ANY CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.

The following recitals are incorporated and made part of this Order No. 2022-02.

RECITALS

A. WHEREAS, on September 4, 1979, the City of San Luis, Arizona was duly incorporated and is a validly existing political subdivision under the laws of Arizona and governed by the San Luis City Council, and

B. WHEREAS, the San Luis City Council is charged with approving expenditures for employee compensation under A.R.S. § 9-274; and

C. WHEREAS, on March 13, 2020, the Mayor declared and City Council ordered a public health emergency in the City of San Luis due to the COVID-19 public health emergency, which remains in effect to date; and

D. WHEREAS, on March 11, 2021, the federal lawmakers amended the American Rescue Plan Act (“ARPA”) Public Law 117-2, establishing the Coronavirus Local Fiscal Recovery Fund at Section 603 (Codified at 42 U.S.C. 803) and allowing (under Section 603(c)(1)(B)) nonentitlement cities such as San Luis to use the funds to respond to eligible workers performing essential work during the COVID-19 public health emergency by providing premium pay to such essential workers as the underlined terms are defined at Section 602(g) and in the U.S. Treasury’s final rule at 31 C.F.R. § 35.3; and

E. WHEREAS, the meaning of “eligible workers” includes any work performed by an employee of local government; and

F. WHEREAS, “essential work” means work that:

- (1) Is not performed while teleworking from a residence; and

(2) Involves:

- (i) regular in-person interactions with patients, the public, or coworkers of the individual that is performing the work;
- or
- (ii) regular physical handling of items that were handled by or are to be handled by patients, the public, or coworkers of the individual that is performing the work.

G.. WHEREAS, COVID-19 public health emergency means the period beginning on January 27, 2020, and lasting until the termination of the national emergency concerning the COVID-19 outbreak declared pursuant to the National Emergencies Act (50 U.S.C. 1601 *et seq.*)

H. WHEREAS, on January 12, 2022, San Luis City Council duly passed Order No. 2022-01 authorizing \$645,000 of ARPA funding to provide premium pay to compensate its employees for the essential work they performed during the COVID-19 public health emergency; and

I. WHEREAS, on January 27, 2022, the U.S. Treasury issued its final rule to implement providing premium pay to eligible workers at 87 F.R. 4450 codified at 31 C.F.R. § 35.6; and

J. WHEREAS, under the U.S. Treasury's final rule, recipients of the ARPA funding may retroactively provide premium pay; and

K. WHEREAS, federal lawmakers intended premium pay to address the fact that many essential workers are not yet compensated for the heightened risks they have faced and continue to face (87 Fed. Reg. 4397, and footnote 259 (January 27, 2022)); and

L. WHEREAS, federal lawmakers also intended premium pay respond to the fact that many sectors that were most exposed to the hazards of COVID-19 tend to receive low income (87 Fed. Reg. 4397, and footnote 259 (January 27, 2022)); and

M. WHEREAS, San Luis City Council wishes to provide premium pay to eligible city employees adhering to the above-recited laws and spirit of the laws; and

N. WHEREAS, San Luis City Council ties the various amounts of premium pay to specific criteria designed to address the various levels of hazard based on in-person services provided to compensate employees that, by virtue of their employment, took on additional burdens and made personal sacrifices as a result of the COVID-19 pandemic; and

O. WHEREAS, San Luis City Council also prioritizes those essential employees with lower compensation, which under the formula provided by 31 C.F.R. § 35.6(c) is those with paid under \$80,100 per year;

NOW, THEREFORE, BE IT ORDERED by the Mayor and City Council of the City of San Luis, Arizona:

Section 1: Conflict of Interest Policy: As required by The City of San Luis, maintains and abides by a conflict of interest policy provided by state law under Arizona Revised Statutes Title 38, Chapter 3, Article 8, which is consistent with 2 C.F.R. § 200.3189(c). Decisions concerning the use of ARPA funding for premium pay shall be free of undisclosed personal or organizational conflicts of interest, both in fact and in appearance.

Section 2: Ineligible for Premium Pay:

(1) Because ARPA and Treasury's final rule limit premium pay to "employees" of local government, and the prohibition on City Council to use ARPA funding for private gain¹, all persons serving as elected officials, appointed members (including city boards, district boards, commissions and trustees of the San Luis Employee Benefits Trust), and volunteers are ineligible for premium pay. Any employee who is no longer on staff as of February 24, 2022 is ineligible for premium pay.

(2) Seasonal employees and former employees are ineligible for premium pay.

Section 3: Period of the COVID-19 Public Health Emergency: For the purposes of calculating the lump-sum premium payments and eligibility to receive it under this Order No. 2022-02, the period of the COVID-19 Public Health Emergency started with the city's declaration and order of emergency on March 13, 2020, and continues through February 24, 2022.

Section 4: Included Categories for Premium Pay: All employees receiving premium pay shall be eligible if they are current employees who were on the city's staff on or after March 13, 2020 (date of the city's emergency declaration and order) and continue through February 24, 2022, and do not fall into the ineligible category under Section 2 above, but do fall into any one of these three categories defined by 31 C.F.R. § 35.6(c):

(1) the eligible worker's total wages and remuneration, including the Premium Pay, is less than or equal to \$80,100 per year; or

(2) the eligible worker is an hourly wage-earner (non-exempt from the Fair Labor Standards Act ("FLSA") overtime provisions (29 U.S.C. 207); or

(3) if the eligible worker does not fit into categories above categories (1) or (2), then the following serves as the written justification that must be provided to the U.S. Treasury Department under 31 C.F.R. § 35.6(c)(3):

(a) This category (3) encompasses employees of the city ("eligible workers" as defined by 31 C.F.R. § 35.3 includes workers needed to maintain continuity of operations of essential critical infrastructure sectors such as local government work.) Category (3) employees are:

- exempt from FLSA overtime provisions of 29 U.S.C. 207 and
- report directly to the City Manager or City Council and supervise employees.

Note: Employees in category (3) are generally relatively high-earners, but as long as they are both exempt, and report directly to the City Manager or City Council, then they may earn above or below \$80,100 per year.

(b) Premium pay is responsive to category (3) eligible workers performing essential work. Essential work is defined under 31 C.F.R. § 35.3 as work that:

(i) Is not performed while teleworking from a residence; and

(ii) Involves:

(A) regular in-person interactions with patients, the public, or coworkers of the

¹ 87 F.R. 4400 under the heading "Treasury Response."

individual that is performing the work; or
 (B) regular physical handling of items that were handled by or are to be handled by patients, the public, or coworkers of the individual that is performing the work.

Justification for Premium Pay In-Person Work. Teleworking was possible for many but not all in category (3). Time teleworking was not counted in the determination of premium pay for category (3) employees. Everyone in this group worked at least one day per week in-person at the workplace and others their entire work-week was in-person at the workplace. In addition to regular business hours, this group is responsible for attending in person, after business hours, to provide their expertise in governmental decision-making and emergency planning to maintain continuity of government at official meetings of City Council, the Planning Commission, the San Luis Employee Benefits Trust, and other city Boards. Despite the risk of infection, this group continued their in person duties to maintain, governmental operations. For instance, in-person supervision of staff and projects, covering shifts for those out due to COVID-19 illness, reaching out to businesses to explain COVID-19 laws and relief, insuring that payments to vendors and staff were on time, inspecting COVID-19 protocols were being observed, in-person assistance to adjust staff for changing technology to handle remote meetings, assisting with vaccination outreach. All in this group were directed to cease remote work on April 1, 2021.

Justification for Premium Pay Prioritizes the Lower Earners and Most Hazard. The premium pay for category (3) is capped at \$1,250 which is below what those *not* in category (3) can potentially receive. Both lower earners and those who were most exposed to the COVID-19 hazards potentially can receive a maximum \$2,500 premium pay depending upon their percent of in-person work and the nature of their work. In this way, the cap on category (3) premium pay honors the federal lawmakers' intent that the ARPA funds address the inequities of those being more exposed to the COVID-19 hazard at work and having less compensation. (See Treasury's final rule at 87 F.R. 4397). Because this group is a small percentage of those eligible for premium pay, the great majority of those receiving premium pay are lower earners or were most exposed to the hazards of COVID-19.

Section 5: Lump Sum Premium Pay Tiers: The table below shows the tiers for lump-sum premium pay, which roughly correlate with the level of in-person workplace attendance. To qualify for premium pay, the employee must continue with the city through February 24, 2022.

% In-Person Work	\$ Amount	Additional Pay for those Bearing the Most Risk Due to the Nature of Their Work	Description for Additional \$500 Premium Payment
95 thru 100%	\$2,000	\$500.00	*See below the explanatory description.
75 thru 94%	\$1,500	\$500.00	
50 thru 74%	\$1,250		Not applicable
25 thru 49%	\$1,000		Not applicable
24% and below	\$ 500		Not applicable
Part-Time	\$ 500		Not applicable

***Explanatory description:**

Order No. 2022-02 reserves the additional \$500 premium pay for those employees who bear and endure the most risk of hazard from COVID-19 due to the nature of their work. Employees who do administrative support work are not eligible for this additional \$500 if the hazard of exposure to the virus that causes COVID-19 is mainly ordinary, in-person office work.

In addition, to be eligible for \$500 additional premium pay, employees must meet all of the following criteria:

(1) the employee works in Departments of Public Safety, or the Divisions of Facilities, Wastewater, or Solid Waste; and

(2) the employee worked during the months from March 13, 2020, through April 30, 2021, when the ability to be fully vaccinated to protect against the odds of severe illness and hospitalization was not available. A demarcation on April 30, 2021 is warranted because the vaccines against COVID-19 were out in December 2020. The Arizona Department of Health services set priorities for the first vaccines. Those most at risk of severe illness and death had a preference. By the end of April 2021, three things were true: (1) the vaccines were available for all working-age people, (2) there had been sufficient time to get both doses required for the Pfizer and Moderna vaccines, and (3) the City of San Luis facilitated on-site vaccination events, so all employees had plenty of opportunities to be fully vaccinated.

Section 6. Calculations for Premium Pay

Proration Period means March 13, 2020 through February 24, 2022, for the purposes of premium pay under this Order No. 2022-02.

(1) High-Risk Work Public Safety, Facilities, Waste Water and Solid Waste

For a description and explanation of eligibility for additional \$500 premium pay refer to the bottom of the table in above Section 5.

Part-time employees are not eligible for the additional \$500 premium payment.

For full-time eligible employees doing work that puts them at most risk from the hazards of the virus that causes COVID-19 (public safety, facilities, wastewater, and solid waste) their premium pay is calculated as follows:

(a) If they were employed with the city for the entire Proration Period, they are eligible for a maximum premium pay capped at \$2,500 (\$2,000 for 100% in-person work plus the \$500 high-risk premium pay).

(b) If they were hired after March 13, 2020, but before April 30, 2021 and continued to the end of the Proration Period, their premium pay is based on the percent they were on staff during the Proration Period and on a maximum premium pay capped at \$2,500 (\$2,000 for 100% in-person work plus the \$500 high-risk premium pay).

(c) If they were hired after April 30, 2021, and continued on staff to the end of the Proration Period their premium pay is prorated based on a maximum premium pay capped at \$2,000. This cap reflects the fact that by April 30, 2021, precautions against the virus were known and vaccines were available. The beginning of the pandemic was a particularly difficult time for those most exposed to the virus. Because as a new virus (also called "novel" virus) little was known how to protect against contracting the disease. The technology to test for the virus was known, but tests were mostly unavailable.

(2) Full-Time & Part-Time, Lower-Risk Work excludes category (3) under Section 4

For the eligible full-time and part-time employees who do the remaining lower-risk work and do not fall into category (3) under Section 4 above:

(a) If they were employed with the city for the entire Proration Period, they are eligible for a maximum premium pay capped at \$2,000 based on their percentage of in-person attendance in the workplace from March 13, 2020, through April 30, 2021.

(b) If they were hired after March 13, 2020, but before April 30, 2021 and continued to the end of the Proration Period, their premium pay is based both on their percentage of in-person attendance in the workplace from their hire date through April 30, 2021, and on the percent, they were on staff during the Proration Period and on a maximum premium pay capped at \$2,000.

(c) If they were hired after April 30, 2021, and continued on staff to the end of the Proration Period their premium pay is prorated based on a maximum premium pay capped at \$1,500. (Note: Percentage of in-person attendance is the same for all employees after April 30, 2021, because City Council directed all employees to cease remote work on May 1, 2021. This maximum premium pay cap at \$1,500 reflects the reduced risk since, by then, employees had an opportunity to be fully vaccinated against the odds of suffering severe illness and hospitalization from COVID-19. This cap also resolves the anomaly that a would occur if this cap were not imposed that employees working the entire pandemic for the city could receive less than a person hired after April 30, 2021 due to the percentages of in-person work.)

(3) Full-Time, who do fall into category (3) under Section 4

For the eligible full-time employees who do fall into category (3) under Section 4 above are eligible for a maximum premium pay capped at \$1,250. All in this category have been with the city since before March 13, 2020 to the present. For the reasons stated in Section 4 above, category (3) employees have this reduced maximum allowable premium pay (\$1,250).

Section 7. It is ordered that staff shall disburse premium pay no later than Monday, February 28, 2022.

Section 8. City officers and employees are authorized and directed to perform all acts necessary or desirable to give effect to this Order No. 2022-02.

Headings: The descriptive headings of the paragraphs of this order are inserted for convenience only. They shall not control or affect the meaning or construction of this order.

Reservation of Rights. Nothing in this order alters the city's rights to implement any and all legal COVID-19 mitigation measures or lift mitigation measures. The city reserves all its rights to do so.

Severability: If any provision of this order or its application to any person or circumstance is held invalid by any court of competent jurisdiction, this invalidity affects no other provision or application of this order. Those provisions that remain valid shall be given effect without the invalid provision or application. To achieve this purpose, the provisions of this order are declared to be severable.

Emergency: Whereas it is necessary to preserve the peace, health, and safety of the City of San Luis, Arizona, an emergency is declared to exist, and this order shall become immediately operative and in force after posting this order.

PASSED, ADOPTED, and APPROVED by the Mayor and City Council of the City of San Luis, Yuma County, Arizona this ____ day of February 2022.

Gerardo Sanchez, Mayor

ATTEST:

APPROVED AS TO FORM:

Sonia Cornelio, City Clerk

Kay Marion Macuil

Kay Marion Macuil, City Attorney