



Order

OFFICE OF THE
MAYOR
CITY OF SAN LUIS

No. 2022-07

May 23, 2022

Public Safety First Responders Emergency Pay

AN ORDER OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SAN LUIS, ARIZONA, AUTHORIZING THE EXTENSION OF THE PUBLIC SAFETY FIRST RESPONDERS EMERGENCY PAY SUBJECT TO BUDGET AVAILABILITY; REPEALING ANY CONFLICTING PROVISIONS; AND PROVIDING FOR SEVERABILITY.

WHEREAS, on February 9, 2022, San Luis Mayor and City Council passed Order No. 2022-03 establishing first responders' emergency pay which expires June 30, 2022; and

Intent

WHEREAS, extending this pay, subject to budget availability, prepares for the possibility that first responder staffing shortages caused by COVID-19 or caused by an unforeseen emergency or disaster in the coming fiscal year; and

Legal Authority

WHEREAS, the City of San Luis exercises its discretion under the Fair Labor Standards Act ("FLSA") regulation 29 CFR § 778.200(a)(5) to provide additional compensation above their regular pay for first responders who work on regular rest days, and that does not result in overtime pay, which the city calls "First Responders Emergency Pay;" and

WHEREAS, the First Responders Emergency Pay is not retroactive; and

WHEREAS, Retroactive pay may violate the Anti-Gift Clause (Arizona Constitution Article IX Section 7) as an additional payment for duties the employees were already obligated to perform and received compensation under the then employment policies. (§ 39:31. Public purpose required—Donations, 15 McQuillin Mun. Corp. § 39:31 (3d ed.). The courts might interpret retroactive pay as requiring the city to pay twice (Scottsdale v. Deem, 446 P.2d 238 (Ariz. App. 1976).

NOW, THEREFORE, IT IS ORDERED by the Mayor and City Council of the City of San Luis, Arizona, under the laws, facts, and intention recited above:

Section 1: Purpose: This order does not alter overtime pay under the San Luis Personnel Policies HR-3-05. This order recognizes the unique COVID-19 exposure risks public safety first responders' work duties entail and their unique continuity of operations challenges. This order addresses the possibility the public safety first responders' staffing shortages caused by the COVID-19 might continue into the next fiscal year, or an unforeseen emergency or disaster might cause staffing shortages.

Section 2: First Responders Emergency Pay Eligibility: Only a nonexempt, public safety first responder ("first responder") is eligible for First Responders Emergency Pay if:

(a) the first responder's command orders or approves the first responder to work on the first responder's regular rest day, and

(b) due to the hours worked, the first responder is not eligible for overtime at the end of the work period in which the worked rest day falls.

Nonexempt means an employee must have the overtime rate of pay under the FLSA, Title 29 U.S.C. §207 for the hours worked beyond 40 hours in a workweek or for the Fire Department beyond 212 in a 28-day work period.

Section 3: First Responders Emergency Pay Rate: First Responders Emergency Pay rate is the eligible first responder's pay at time-and-one-half for all hours worked on the first responder's regular rest day.

Section 3: First Responders Emergency Pay Calculation for Overtime Purposes:

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Section 4: Subject to Reassessment and Effective Date: This order shall remain until further notice. City Council may consider repealing or revising this order as part of the fiscal budget process and the associated planning for the staffing needs for public safety first responders to contend with the continuing COVID-19 pandemic or other contingencies resulting in public safety first responders' staffing shortages. This order takes effect on July 1, 2022.

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 or use its emergency powers to contend with other emergencies or disasters. 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.

PASSED, ADOPTED, and APPROVED by the Mayor and City Council of the City of San Luis, Yuma County, Arizona, this ____day of May 2022.

Gerardo Sanchez, Mayor

APPROVED AS TO FORM

ATTEST:

Sonia Cornelio, City Clerk

Kay Marion Macuil, City Attorney