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## **CORONAVIRUS PRACTICAL GUIDANCE FOR CITIES CIRCULAR No. 8**

### **FINANCIAL REIMBURSEMENT FOR CITIES UNDER THE CARES ACT**

**WEDNESDAY, MAY 13, 2020**

#### **What is the CARES Act funding for local governments?**

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) was signed by President Trump on March 27, 2020.<sup>1</sup> This act included provisions that were designed to provide relief to State governments, Tribes, and certain local governments. These provisions are found in Section 5001 of the Act which added Section 601(a)(1) to the Social Security Act. The CARES Act provided \$150 billion for this purpose. The money was paid by the U.S. Treasury to eligible recipients. As provided by the Act, the only eligible local governments were those with a population of over 500,000. In Missouri, only Jackson County and St. Louis County were eligible for direct receipt of funds. The State of Missouri received \$2.38 billion as its share. On April 10, 2020, Governor Parson formed an informal working group, led by Treasurer Fitzpatrick, to make recommendations for the use of federal funding provided for COVID-19-related costs under the CARES Act. Approximately \$468 million was apportioned to 106 counties in Missouri.<sup>2</sup> Each county's share was based mostly on population.

In distributing this money to the counties, Treasurer Fitzpatrick said:

“Now our counties must work with cities and other political subdivisions to ensure that this money reaches those on the front lines—our health departments, healthcare workers, and first responders—to ensure they have the necessary resources to adequately respond to COVID-19.”<sup>3</sup>



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## What can the money be used for?

The use of this money is controlled by Section 601(d) of the Social Security Act (per Section 5001 of the CARES Act). This section limits the use of this money only to costs that meet three criteria:

- 1) Costs that are necessary expenditures incurred due to the public health emergency concerning COVID-19; and
- 2) Were not accounted for in the budget most recently approved as of March 27, 2020, for the State or [local] government; and
- 3) Were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020.

These criteria are obviously very vague. The use of the word ‘government’ in section 2 above is assumed to mean ‘local government’ but this is not made clear. One very clear item is that if a city receives any of this money it cannot directly be used to cover budget shortfalls. In addition, the Treasury has given some informal guidance on what might and might not be covered.<sup>4</sup> Below is a summary of the additional guidance given as to potentially qualifying activities that may be relevant to cities:

- 1) Medical expenses such as:
  - COVID-19-related expenses of public hospitals, clinics, and similar facilities.
  - Expenses of establishing temporary public medical facilities and other measures to increase COVID-19 treatment capacity, including related construction costs.
  - Costs of providing COVID-19 testing, including serological testing.
  - Emergency medical response expenses, including emergency medical transportation, related to COVID-19.

***Comment: Costs of ambulance or fire department response to Covid victims could be reimbursed under this provision.***
- 2) Public health expenses such as:
  - Expenses for communication and enforcement by local governments of public health orders related to COVID-19.

***Comment: Most cities made at least some attempt to communicate to their citizens. These costs could be reimbursable if they can be identified.***



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- Expenses for acquisition and distribution of medical and protective supplies, including sanitizing products and personal protective equipment, for medical personnel, police officers, direct service providers, and other public health or safety workers.  
***Comment: Most cities bought additional cleaning supplies. Also if the city bought PPE for its employees (as opposed to being given PPE by the State) these would be reimbursable.***
  - Expenses for the disinfection of public areas and other facilities.  
***Comment: This is more than the supplies. If city workers did extra cleanings, that could be reimbursable.***
  - Expenses for public safety measures undertaken in response to COVID-19.  
***Comment: This could include hardware or software for council meetings.***
  - Expenses for quarantining individuals.
- 3) 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 COVID19 public health emergency.  
***Comment: Most cities will have spent at least some HR time figuring out how to handle these issues. If that can be identified it could be reimbursable.***
- 4) Expenses of actions to facilitate compliance with COVID-19-related public health measures, such as:
- Expenses for food delivery to residents, including, for example, senior citizens and other vulnerable populations, to enable compliance with COVID-19 public health precautions.
  - Expenses of providing paid sick and paid family and medical leave to public employees to enable compliance with COVID-19 public health precautions.  
***Comment: This may be the most important but overlooked provision. As was outlined in Circular #1, cities, unlike private businesses, will not be getting tax refunds to pay for the new leave the CARES Act gave. This provision is where cities can get that reimbursement.***
- 5) Expenses associated with the provision of economic support in connection with the COVID-19 public health emergency, such as:
- Expenditures related to the provision of grants to small businesses to reimburse the costs of business interruption caused by required closures.
  - Expenditures related to a local government payroll support program.



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- Unemployment insurance costs related to the COVID-19 public health emergency if such costs will not be reimbursed by the federal government pursuant to the CARES Act or otherwise.
- 6) Any other COVID-19-related expenses that are reasonably necessary to the function of government that satisfy the Fund's eligibility criteria.

***Comment: This could cover many things.*** For example, legal fees incurred by the city to draft emergency ordinances or proclamations, legal advice on HR or sunshine law issues, or IT expense, all might be covered under this item.

### What can't be reimbursed?

First and foremost, budget shortfalls cannot be reimbursed. Items that were already in your budget cannot be reimbursed. For example, if you had budgeted to buy new laptops, these cannot be reimbursed. But, if you went out and bought new laptops as a result of the coronavirus situation, those are reimbursable.

Bonuses or extra pay for hazardous duty cannot be reimbursed. However, overtime incurred because employees needed to work more due to the virus would be reimbursable.

Anything otherwise covered by insurance or federal money is not reimbursable.

### Are counties required to share the funding with cities?

Unfortunately there is no clear mandate requiring the counties to pay anything to the cities. Even where counties are willing to share, the mechanism to distribute money to the cities has not been worked out. That being said, it is expected that counties will require cities to submit expenses for which the county will reimburse them. Each county will create its own procedures to do this. It is also possible that some counties will apportion the money directly to the cities. In that case, the city would need only to account for how it used the money and verify that those expenses qualified.

If your county is prepared to reimburse your city, you will need to be prepared to verify your expenses. Even if the county is willing to directly pass some portion of the funding to your city you will ultimately have to account for it, so record keeping is vital. Your records will need to show three things; first that you actually incurred the expense, second that it was related to the pandemic, and third that it was not otherwise budgeted.



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## Are Counties prohibited from distributing CARES funding to municipalities?

The Treasury has made it clear that recipient governments may transfer the money to other local governments so long as the money is ultimately used for the appropriate purposes.<sup>5</sup>

## How can cities get counties to release the money?

At this point, there is no way to force the counties to release any money to cities. City leaders need to contact their county commissioners and find out how the county intends to proceed. In doing this it may be helpful to remind them that the State Treasurer indicated that the money was intended to be shared with cities. If your county is reluctant to share, then you should advise the State Treasurer and your legislators. Neither can specifically remedy the problem but if they are aware that the problem exists a solution may be forthcoming.

Missouri State Treasurer Scott Fitzpatrick <https://treasurer.mo.gov/emailus/emailus.aspx>

Please feel free to contact us if we can be of assistance.

### DISCLAIMER

*The information provided herein is of a general nature and is not intended to provide specific legal advice or to create an attorney-client relationship; you should always consult with your municipal attorney.*

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<sup>1</sup> Public Law 116-136 (2020)

<sup>2</sup> State Treasurer Scott Fitzpatrick Press Release “*Treasurer Fitzpatrick Announces First CARES Act Payments to Local Governments Processed*” May 4, 2020. Note that some counties had not filed the paperwork to receive a share and St. Louis and Jackson Counties were excluded due to their direct receipt of funds.

<sup>3</sup> State Treasurer Scott Fitzpatrick Press Release “*Treasurer Fitzpatrick Announces First CARES Act Payments to Local Governments Processed*” May 4, 2020.

<sup>4</sup> United States Department of the Treasury, *Coronavirus Relief Fund Guidance for State, Territorial, Local, and Tribal Governments April 22, 2020* (2020). <https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Guidance-for-State-Territorial-Local-and-Tribal-Governments.pdf>

<sup>5</sup> United States Department of the Treasury *Coronavirus Relief Fund Frequently Asked Questions Updated as of May 4, 2020* (2020).