



EDWARD POLLARD
HOUSTON CITY COUNCIL MEMBER, DISTRICT J

May 26, 2020

Honorable Mayor Sylvester Turner
901 Bagby Street
Houston, Texas 77002

RE: Allocation of CARES Act Dollars

Dear Mayor Turner,

Due to the COVID-19 pandemic, our city faces dire financial circumstances, which will require us to make difficult decisions in the upcoming days and months. As we deliberate and strategically plan for how to sustain our economy, I ask that you consider the broad flexibility the language in the CARES Act gives as it pertains to permissible use of allocation of federal dollars within the fund package.

Of the \$404,000,000.00 dollars the city of Houston has received from the CARES Act, it is my hope that we are being as diligent as possible to utilize the money in a variety of areas, specifically city employee groups. While seeking guidance from the US Treasury, it is my understanding that the CARES Act may support a “broad range of uses” including payroll expenses for several classes of employees whose services are “substantially dedicated to mitigating or responding to the COVID-19 public health emergency.”

Examples of broad classes of employees whose payroll expenses would be eligible include 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. Payroll and benefit costs associated with public employees who could have been furloughed or otherwise laid off but who were instead repurposed to perform previously unbudgeted functions substantially dedicated to mitigating or responding to the COVID-19 public health emergency are also covered.

As you are aware, the CARES Act provides that payments from the Fund may only be used to cover costs that—

1. are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19);
2. were not accounted for in the budget most recently approved as of March 27, 2020 (the date of enactment of the CARES Act) for the State or government; and
3. were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020.

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When examining the three elements that must be adhered to in order to meet the criteria of permissible use, the first element is extremely broad. It states that funds must be “necessary” expenditures related to Coronavirus. The Department of the Treasury understands this term broadly to mean that the expenditure is *reasonably necessary* for its intended use in the *reasonable judgment* of the government officials responsible for spending Fund payments. In other words, if the expenditure can be reasonably justified to be needed to combat the virus, it shall be deemed permissible.

To determine if the Coronavirus caused the need to use funds for a particular reason, we can use the “but-for” test. The but-for test is a test commonly used in the legal profession to determine actual causation. The test asks, “but for the existence of X, would Y have occurred?” If the answer is yes, then factor X is an actual cause of result Y. As such, as long we can show that but-for X (the Coronavirus), we would not have to pay for Y (certain city services), we can use dollars from the CARES Act.

As we move forward to continue to put measures in place to keep our city safe and economically stable, please consider the above words. I trust in your leadership and I make myself available for any assistance you may need. Together we will overcome this challenge, like the many that have come before, and come out on the other side even more Houston Strong.

Sincerely,

/s/ Edward Pollard

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