



# Order

OFFICE OF THE  
MAYOR  
CITY OF SAN LUIS

**No. 2022-03**

**February 9, 2022  
COVID-19**

## ***Public Safety First Responders Emergency Pay***

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

**WHEREAS**, on March 13, 2020, by the Mayor's emergency proclamation and City Council Order No. 2020-6, a state of emergency was declared and ordered due to the COVID-19 pandemic with this year bringing the most severe consequences to the city's Public Safety departments; and

**WHEREAS**, on February 6, 2022, nearly two years into the COVID-19 public health emergency, Firefighter Robert Fernandez tragically lost his life as a consequence of contracting the highly contagious COVID-19; and

**WHEREAS**, two of the city's esteemed Peace Officers have suffered severe illness from the consequences of COVID-19 infections, each one continuing their battles against the disease now for at least two months; and

### **Background**

**WHEREAS**, during the pandemic, the City of San Luis's first responders in the Police and Fire Departments have suffered from periods of severe staff shortages due to COVID-19 illness, more than any other departments in the city; and

**WHEREAS**, throughout the pandemic, public safety services and operations continued without compromise because the first responders took on additional shifts on their regular rest days; and

**WHEREAS**, in a few weeks, it will be two years since Public Health confirmed the first case in Yuma County; and

**WHEREAS**, during the last two years, Police Department suffered several COVID-19 outbreaks; and

**WHEREAS**, the Fire Department suffered severe staffing shortages during the unprecedented COVID-19 cases surge this December and January; and

**WHEREAS**, peace officers can regularly work up to 13-hour shifts, so taking on more shifts and deferring the rest day can make for particularly long workweeks; and

**WHEREAS**, the Fire Department has been uniquely affected with the latest surge in COVID-19 cases because under the Fair Labor Standards Act (“FLSA”), firefighters have 28-day work-periods, which causes them to work more than four weeks without a break if they are needed to cover a shift on their regular rest days; and

**WHEREAS**, to compound the difficulty, many Fire Department staff who did eventually catch COVID-19 and after working more than four weeks without a break, fell ill from COVID-19 on their deferred days off; and

#### **Intent**

**WHEREAS**, the City of San Luis desires to respond to the first responders’ continued personal sacrifices away from family because of the COVID-19 pandemic;

**WHEREAS**, besides the required overtime under the FLSA, the City of San Luis desires to voluntarily compensate the first responders for taking on shifts on their regular rest day and provide more than regular pay that day for the hours worked during the respective pay-periods when working the rest day will not result in overtime under the FLSA; and

#### **Legal Authority**

**WHEREAS**, the City of San Luis exercises its discretion under the 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 employment policies in place at the

time;<sup>1</sup> and

### **Pandemic Conditions in Yuma County Continue**

**WHEREAS**, the COVID-19 pandemic conditions continue to put the city's first responders at high risk of COVID-19 infection; and

**WHEREAS**, although many indicators are trending into safer conditions, as of February 5, 2022, due to the height of the surge this December and January, there persists an extremely high risk of the inability to absorb another wave; and

**WHEREAS**, as of February 6, 2022, all of Yuma County, all of Arizona, and most of the United States are at extremely high risk; and

**WHEREAS**, although vaccinations continue to trend up in Yuma County with over 66% of the population fully vaccinated against COVID-19 (which the city has supported by facilitating 16 vaccination events), as of February 5, 2022, the County still must reach 70% to 90% to move closer to the aspiration of community immunity from COVID-19; and

**WHEREAS**, as of February 5, 2022, although plummeting down rapidly, the average number of daily new cases per week of COVID-19 per 100,000 people in Yuma County is still extremely high at 129.5 cases; and

**WHEREAS**, the average number of deaths per week in Yuma County is trending down at 2.6 on February 2, 2022; and

**WHEREAS**, as of January 27, 2022, 84% of the Intensive Care Unit ("ICU") capacity was in use in the one solitary hospital in Yuma County, and the usage is trending up.

**NOW, THEREFORE, IT IS ORDERED** by the Mayor and City Council of the City of San Luis, Arizona, under the laws, facts, and intentions 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 public safety first responders' hardships due to staffing shortages caused by the COVID-19 pandemic and working on their regular rest days.

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<sup>1</sup> § 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)).

**Section 2: First Responders Emergency Pay Eligibility:** Only a nonexempt, public safety first responder (“first responder”) is eligible for First Responders Emergency Pay if the first responder’s command orders or approves the first responder to work on the first responder’s regular rest day, and payment complies with this Order No. 2022-03.

Nonexempt means an employee entitled to 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 to the extent that such hours do not already result in overtime pay under the FLSA. (By illustration, if a police officer works eight hours on the police officer’s regular rest day and receives four hours of FLSA overtime for the workweek, such police officer will be eligible to receive four hours of First Responders Emergency Pay for the remaining 4 hours worked on the police officer’s rest day.)

**Section 4: First Responders Emergency Pay Calculation for Overtime Purposes:** First Responders Emergency Pay is outside the employee’s normal or regular working schedule under FLSA regulation 29 C.F.R. § 778.200. The extra compensation (the 0.5 times the regular pay) in the First Responders Emergency Pay rate in Section 3 above shall not be included in the first responders’ regular pay rate for computing overtime compensation as allowed under FLSA regulation 29 C.F.R. §§ 778.201, 778.202.

**Section 5: Harmonize A.R.S. § 23-392(A)(1):** A.R.S. § 23-392(A)(1) applied to law enforcement and not the Fire Department and states:

One and one-half times the regular rate at which the person is employed or one and one-half hours of compensatory time off for each hour worked if by the person’s job classification overtime compensation is mandated by federal law.

This Order No. 2022-03 clarifies that First Responders Emergency Pay is discretionary, not mandated by federal law. Further, compensatory time off is not available in place of First Responders Emergency Pay, neither for the Police Department nor the Fire Department. In other words, compensation with both First Responders Emergency Pay and compensatory time off for working on a rest day is prohibited.

**Section 6: Ends with the Fiscal Year June 30, 2022:** To both find a solution to compensate the first responders for sacrificing their rest days to serve the vital needs of the city’s residents and to protect the treasury, the First Responders Emergency Pay shall end on June 30, 2022.

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**Section 6: Reassess Long-Term Solution with 2022-2023 Fiscal Year:** The next few months will give staff experience implementing this First Responders Emergency Pay. Staff will learn from the experience and present long-term solutions for the City Council to consider as part of the fiscal budget process and the associated planning for the need to staff for first responders to contend with the continuing COVID-19 pandemic.

**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 9<sup>th</sup> day of February 2022.



Gerardo Sanchez, Mayor

**ATTEST:**



Sonia Cornelio, City Clerk

**APPROVED AS TO FORM**



Kay Marion Macuil, City Attorney