DATE: JULY 27, 2020

TO: ANCHORAGE ASSEMBLY

FROM: KATHRYN R. VOGEL, MUNICIPAL ATTORNEY

SUBJECT: CARES ACT FUNDING TO FUND AO 2020-66(S)

SUMMARY:

This memorandum memorializes legal advice that this office has provided to the administration and assembly members regarding whether CARES Act Funds paid under Section 601(d) of the Social Security Act may be used to purchase buildings for the purposes of providing homeless overnight shelter, homeless day shelter, and homeless outreach services. The short answer is that such use of CARES Act Funds is legally appropriate because it is consistent with the federal statute and in line with official guidance from the United States Treasury Department and CDC recommendations.

STATUTORY REQUIREMENTS:

Section 601(d) of the Social Security Act, as added by section 5001 of the CARES Act (Public Law No. 116-136) requires:

A State, Tribal government, and unit of local government shall use the funds provided under a payment made under this section to cover only those costs of the State, Tribal government, or unit of local government 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 for the State or government; and

(3) were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020.
ANALYSIS:

Purchases of the buildings proposed in AO 2020-66(S) with CARES Act funds (namely, America’s Best Value, the former Alaska Club on Tudor Road, and Beans Café) fit the required criteria. Two of the criteria are not the subject of debate: the costs of these purchases have not been incurred yet and would need to be paid on or before December 30, 2020 to be eligible to use CARES Act funds. And the purchase of these properties has not been accounted for in any budget approved by the assembly before March 27, 2020, which is why the issue is before the Assembly today.

That leaves only the issue of whether these purchases are “necessary expenditures incurred due to the [COVID-19] public health emergency.” The United States Treasury Department, which is in charge of overseeing use of the funds allocated to state and local governments, has issued two key interpretive documents to assist governments in the proper spending of CARES dollars, a “Guidance Document” and an FAQ. Both are consistent with the proposed use of CARES Act funds to purchase buildings to address the homelessness crisis. First, the Treasury Department notes that it interprets the term “necessary” 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 the guidance document Treasury provided nonexclusive examples of eligible expenditures. This included, “Expenses for care for homeless populations provided to mitigate COVID-19 effects and enable compliance with COVID-19 public health precautions.”

Likewise, Treasury’s FAQ document specified that governments may “retain assets purchased with payments from” the CARES Act so long as the purchase of the asset was

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1 Purchase of a fourth property in AO 2020-66(S), The Golden Lion Hotel, for intended use as a substance use treatment center is proposed to be funded with assets generated by the sale of Municipal Light & Power. Accordingly, this memorandum does not address whether CARES Act funding would be appropriate for that purchase.
2 Social Security Act, sec. 601(f).
5 Treasury Guidance at 1.
6 Treasury Guidance at 4.
an eligible use of CARES Act funds. This provision clarifies that if the Muni were to purchase a building to mitigate COVID-19 effects on the homeless, it would be able to keep that building after the CARES Act funding period passed.

Additionally, other federal agencies have acknowledged explicitly the necessity of devoting resources to address homelessness in direct response to COVID-19. For example, the CDC recommends that where existing shelter does not accommodate six-feet of physical distancing between individuals, public health officials should “[c]ollaborate with local officials to establish an additional homeless service site.” The CDC also acknowledges that homeless service provider sites can present “unique challenges” because the sites can be crowded and the clients are often older or have underlying medical conditions. The CDC accordingly recommends relocating clients at higher risk for severe illness to individual rooms. Likewise CARES Act funds allocated by HUD (via a separate provision than the funding at issue here) recommends allocating funding to “[m]ake more emergency shelters available” and to provide essential services to people experiencing homelessness including “education services, employment assistance, outpatient health services, legal services, mental health services, substance abuse treatment services, and transportation.” These recommendations from the federal government within the context of COVID-19 response strongly support a finding that purchase of buildings to provide services and additional non-congregate shelter for the homeless is a necessary expense.

In summary, the arrival of COVID-19 exacerbated the existing problem of Anchorage’s overcrowded and inadequate shelter space for homeless individuals. It added a new, unbudgeted, public health dimension to a problem that had long been recognized, and created an urgent need for more housing and services. And because response to COVID-19 may reasonably include following federal recommendations for the provision of services and non-congregate housing to homeless individuals, use of COVID-19 funds during the remainder of 2020 to acquire additional buildings to house and provide services to homeless individuals is consistent with the rules governing CARES Act funds.

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7 FAQ at 10.
9 Id.
10 Id.