

MUNICIPALITY OF ANCHORAGE



ASSEMBLY MEMORANDUM

No. AM ____-2022

Meeting Date: July 26, 2022

1 **From: Assembly Counsel**
 2 **Subject: Legal Analysis of Mayor's Veto Message re: AR 2022-208(S-1), As**
 3 **Amended.**
 4

5 The Mayor's written explanation for his veto of AR 2022-208(S-1), As Amended,
 6 included references to legal requirements or declarations, and concluded "[w]ith the
 7 lack of State and Local health mandates for non-congregate sheltering, this
 8 disqualifies eligibility for FEMA reimbursement ..." and that circumstance disallows
 9 expending funds from the COVID-19 Fund (231803), which is a special revenue
 10 fund. This memorandum evaluates the legal references and assertions as to their
 11 applicability to the directive in the AR to appropriate and expend funds for non-
 12 congregate sheltering (NCS) for vulnerable individuals following the closure of the
 13 COVID-19 congregate mass sheltering at the Sullivan Arena.
 14

15 The President declared a "nationwide emergency pursuant to Sec. 501(b) of the
 16 Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-
 17 5207" on March 13, 2020.¹ The declaration as reported by FEMA stated "Eligible
 18 emergency protective measures **taken at the direction or guidance of public**
 19 **health officials** in response to this emergency, and not supported by the authorities
 20 of another federal agency, **will be reimbursed** strictly under the FEMA Public
 21 Assistance program."² The following day on March 14, FEMA issued a fact sheet
 22 that included this statement "States, Tribal and Territorial governments do not need
 23 to request separate emergency declarations to receive FEMA assistance under this
 24 nationwide declaration."³ To date there is no indication there is any change to this
 25 proclamation from FEMA that no separate state or local declaration is required.
 26 There are indications from FEMA's policy documents that assistance beyond its
 27 nationwide public assistance (PA) fund policies for the COVID-19 pandemic do
 28 require declarations of a "new incident," but no such declarations are necessary to
 29 continue applying for and receiving FEMA PA under March 2020 nationwide
 30 emergency declaration.
 31

32 The declared COVID-19 nationwide public health emergency was renewed on July
 33 15, 2022 for another 90 days by U.S. Department of Health and Human Services
 34 Secretary Xavier Becerra, as authorized by federal law.⁴ FEMA Policy FP 104-009-

¹ See <https://www.fema.gov/news-release/20200514/president-donald-j-trump-directs-fema-support-under-emergency-declaration> (accessed July 26, 2022).

² *Id.* (emphasis added).

³ See <https://www.fema.gov/press-release/20210318/covid-19-emergency-declaration> (accessed July 26, 2022).

⁴ See <https://aspr.hhs.gov/legal/PHE/Pages/covid19-15jul2022.aspx> (accessed July 26, 2022) (stating in part: "As a result of the continued consequences of the Coronavirus Disease 2019 (COVID-19) pandemic,

1 19 allows for FEMA reimbursement of non-congregate sheltering costs. FEMA
2 Policy 104-009-18, Version 3 provides that “[i]n circumstances, such as when
3 congregate sheltering may not be available, sufficient, or safe due to a threat to
4 public health and safety, FEMA may reimburse costs related to emergency
5 sheltering in non-congregate environments.” This document provides much
6 flexibility for the FEMA Regional Administrator to determine whether to allow costs
7 after July 1, 2022. Moreover, by memorandum dated June 28, 2022 from the FEMA
8 Assistant Administrator, Recovery Directorate, to all FEMA Regional Administrators,
9 “Emergency Non-Congregate Sheltering,” FEMA will waive the pre-approval
10 requirement for NCS in traditional settings like hotels, and the applicant, Anchorage,
11 needs to submit time extension requests if sheltering is longer than 30 days.
12 (Attached.) As understood by the undersigned, due to the scheduled (after
13 postponements) return of the Sullivan Sports Arena-a non-traditional setting for
14 congregate sheltering-to its intended use and public purposes, at the direction of
15 local public health officials with AHD vulnerable individuals were to be sheltered at
16 the Aviator Hotel. The funding requested by the original AR 2022-208 would provide
17 for a maximum of 225 individual rooms in order for these vulnerable individuals to
18 be safe and continue social distancing and other health and safety precautions in
19 response to the nationwide COVID-19 pandemic emergency. These reasons align
20 with the FEMA policies regarding NCS beyond July 1, 2022 for PA reimbursement,
21 subject to approval.

22
23 The foregoing authorities make it clear that the Mayor’s legal premise for his veto
24 that FEMA reimbursement is not available due to a “lack of State or local health
25 mandates” is incorrect. Such mandates are not a requirement for FEMA
26 reimbursement for NCS after July 1, 2022.

27
28 The Mayor’s veto message also asserts GASB No. 54 requires a Special Revenue
29 Fund to have a corresponding restricted or committed revenue before expenditures
30 can be made, and that the lack of FEMA PA availability is grounds to veto. As stated
31 above, FEMA PA funds may still be available, and more importantly the AR 2022-
32 208(S-1) restricted the interfund loan proceeds specifically for NCS expenses, and
33 thus should satisfy this accounting standard. The revenue to pay back the loan may
34 come from FEMA PA or another source, either way the loan proceeds authorized
35 by the Resolution are restricted and appropriate for fund 231803, as has been
36 utilized similarly in the past.

37
38 For the foregoing reasons, Assembly Counsel disagrees with the legal premises
39 asserted in the Mayor’s veto message. There do remain financial risk and policy
40 factors for the Assembly and Administration to consider.

41
42 Respectfully submitted: Dean T. Gates
43 Assembly Counsel

on this date and after consultation with public health officials as necessary, ..., do hereby renew, effective July 15, 2022, the January 31, 2020, determination by former Secretary Alex M. Azar II, ... that a public health emergency exists and has existed since January 27, 2020, nationwide.”).



FEMA

June 28, 2022

MEMORANDUM FOR: FEMA Regional Administrators
Regions I – X

ATTENTION: Regional Recovery Division Directors

FROM: Melissa K. Forbes
Assistant Administrator
Recovery Directorate

SUBJECT: Emergency Non-Congregate Sheltering

A handwritten signature in black ink, appearing to read "Melissa K. Forbes".

FEMA Policy 104-009-18, [Emergency Non-Congregate Sheltering During the COVID-19 Public Health Emergency \(Interim\) Version 3](#), is in effect through July 1, 2022. On July 2, 2022, FEMA will transition to a modified approach to sheltering for all open Public Assistance (PA) and Fire Management Assistance Grant (FMAG) declarations. This decision is based on Centers for Disease Control and Prevention (CDC) indicators of COVID-19 community levels, the significant percentage of the U.S. population vaccinated against COVID-19, and partners such as the Red Cross returning to a strategy of congregate sheltering as the first level of sheltering.

On July 2, 2022, FEMA will utilize established policy on sheltering in the [Public Assistance Program and Policy Guide](#) (PAPPG) Version 4, with the additional flexibilities described below. As per the PAPPG, to be eligible for PA funding, non-congregate sheltering (NCS) must be approved by FEMA's Assistant Administrator for Recovery in advance of the sheltering action. Such approval is generally limited to 30 days. FEMA will implement the PAPPG policy with the following flexibilities:

- FEMA will waive the requirement in the PAPPG for Recipients/Applicants to obtain pre-approval before conducting NCS activities in traditional settings, i.e., hotels/motels, dormitories, retreat camps.
 - This waiver does not apply to non-traditional NCS setting such as the use of Recreational Vehicles (RVs) to provide NCS. The use of non-traditional methods to provide NCS (including RVs) requires pre-approval by FEMA's Assistant Administrator for Recovery; see additional information on RVs below.
- Applicants are required to notify FEMA Headquarters and the appropriate Regional Administrator, through the Recipient, within five days of initiating NCS operations for a declared incident (if sheltering is conducted prior to a federal declaration, then the notification requirement applies as 5-days post declaration).

- For NCS conducted for more than 30 days, the Applicant must submit a time extension request, through the Recipient, to the appropriate FEMA Regional Administrator.
 - Time extensions are granted in 30-day increments.
 - Time extension requests should be submitted at least seven days before the expiration date of the currently approved period of performance.
- Regional Administrators may provide time extensions up to 6 months from the declaration date.
- Time extensions beyond 6 months must be approved by FEMA's Assistant Administrator for Recovery.
- If an applicant needs to establish NCS in non-traditional facilities, such as use of RVs, the applicant must request this specifically and such requests must be approved by FEMA's Assistant Administrator for Recovery. NCS provided in any setting other than a hotels/motels, dormitories, and retreat camps are subject to additional incident-specific requirements and guidance.
- For NCS conducted for more than 30 days, Recipients and Applicants will be required to use data regarding the individuals and households sheltered. This will ensure that only individuals and households with a demonstrated need for continued emergency sheltering remain in NCS facilities. FEMA will use the criteria below to determine eligibility of NCS work and costs beyond the first 30 days:
 - Each household must:
 - Be in an area declared for Individual Assistance (IA);
 - Be registered with IA for disaster assistance;
 - Have not requested to withdraw its IA registration;
 - Be able to document pre-disaster status as an owner or renter of the primary residence; and
 - Have their primary residence determined not to be habitable.
 - The Applicant may determine a household's habitability status using IA information, Home Assessment information, or a habitability assessment process developed by the Applicant. The Applicant must submit the habitability determination method with the time extension request. Additionally, the Applicant should maintain information about the basic habitability of each individual and household in NCS during the period for which the Applicant is requesting a time extension.
- When conducting NCS, FEMA expects Applicants to develop and maintain a reporting system that captures the following data elements for individuals and households to ensure the eligibility of the work and costs:
 - FEMA IA Registration ID (if available)
 - Head of household: First and last Name and phone number (mobile or other)
 - Number of individuals in the household

- Damaged dwelling: Street Address, City, State, Zip Code
- Pre-incident residence habitability status

Applicants should inform individuals and households that information collected may be shared with FEMA. FEMA PA staff will not collect the data on behalf of the Recipient or Applicant. Recipients are expected to ensure Applicants are prepared to provide the information to substantiate eligibility based on the above criteria and submit the defined data elements to FEMA on a weekly basis, if requested.

When providing NCS, as a condition of assistance, Recipients and Applicants must comply with all statutes, regulations, and Executive Orders, including those that require non-discrimination and equitable delivery of FEMA funding to underserved communities. These include, but are not limited to, the Stafford Act Section 308 (42 U.S.C. 5151), the Americans with Disabilities Act, the Architectural Barriers Act, Title VI of the Civil Rights Act, and Title 44 of the Code of Federal Regulations Part 7. FEMA monitors compliance with these laws when granting assistance. Failure to adhere to these laws may result in the termination of or refusal to grant or to continue Federal financial assistance.

If you have any questions, please contact [Ana Montero](#), Director, Public Assistance Division.