

## **COVID-19 Update (No. 207)**

All pandemic-related updates, including information about the American Rescue Plan's city-related provisions, will be in the [Legislative Update Newsletter](#) from now on.

### **ARPA Funding Agreements for Non-Entitlement Cities**

TML has received inquiries from a few non-entitlement cities (cities under 50,000 population) regarding potential unanticipated consequences that might flow from acceptance of the [American Rescue Plan Act / Coronavirus Local Fiscal Recovery grant funding](#). Specifically, concerns have been raised that acceptance of these funds will obligate cities who accept the funds (Recipient Cities) to enforce potential future state or federal COVID-19 vaccine mandates or other regulations. The bottom line is that whether a city will be subject to future state or federal rules and regulations is disconnected to accepting ARPA/CLFR funds today.

To receive the ARPA/CLFR funds, a non-entitlement Recipient City must enter an American Rescue Plan Act Coronavirus Local Fiscal Recovery Fund Agreement (Agreement) with the Texas Division of Emergency Management (TDEM). That Agreement sets the terms by which the non-entitlement Recipient City receives its allotment of ARPA/CLFR funding. The questions TML has received relate to the scope of statements in the Agreement such as “the Recipient and the Division will be governed by all applicable state and federal laws, rules and regulations” as well as, “... other applicable federal statutes, regulations, and executive orders” and whether such statements will be used to force a state or federal COVID-19 vaccine mandate on non-entitlement Recipient Cities. The short answer to the question is likely “no,” and a few reasons are discussed below.

1. Texas cities are already subject to “applicable” state and federal law. The Agreement does not create new laws to apply to Texas cities; rather, it restates the current rule: Texas cities must follow applicable state and federal law. Keep in mind as well that future legislation or regulation need not be tied to receipt of ARPA/CLFR funds to be binding. Declining ARPA/CLFR grant funding guarantees only that the city will not receive those funds. It does not guarantee protection from future legislation.
2. The Agreement is quite specific with regard to much of the “applicable” law. The Agreement cites specific sections of the Code of Federal Regulation that apply to all federal grant funding, the Americans with Disabilities Act, the Civil Rights Act of 1964, and the American Rescue Plan Act as being specifically applicable, and as stated above, those laws are already applicable to Texas cities. There are no additional specific requirements related to COVID-19 vaccinations or masking contained in the Agreement. The Agreement states that the Department of the Treasury may impose additional conditions on the receipt of a “subsequent tranche” of future award funds, and if that is the case, Texas cities will know in advance and can reject the funds if those additional terms are too onerous.
3. There are currently no federal COVID-19 mandates that apply to Texas cities, and ARPA funding does not change this. The current Presidential Executive Orders related to federal contracting and the Presidential directive related to mandatory COVID-19 vaccination are likely not applicable to Texas cities. Please review [TML's previous analysis of the](#)

[President's Executive Orders](#) related to federal contracting and COVID-19 vaccines, which likely do not directly apply to Texas cities.

4. The Agreement is between the non-entitlement Recipient City and TDEM, and TDEM is the agency that enforces the Agreement. The Agreement does not create a contractual relationship between the non-entitlement Recipient City and any department or division of the federal government.

Ultimately, the Agreement and the receipt of ARPA/CLRF funding likely does not increase a city's exposure to regulations from the state or federal governments, and declining the funds does not insulate cities, either. The truth is that if the state or federal government wishes to mandate COVID-19 vaccines or other regulations, they can attempt to do so regardless of whether a city has accepted these grant funds. We encourage city officials to read through their city's Agreement and call their city attorney or the TML Legal Services Department with any questions or concerns.

### **American Rescue Plan Act Funds**

As a reminder, the Texas Division of Emergency Management maintains its [Coronavirus Local Fiscal Recovery Fund FAQ](#) with guidance related to the ARPA/CLFR fund program.

The U.S. Treasury Department's Coronavirus State and Local Fiscal Recovery Funds FAQ contains a number of questions and answers related to eligibility for recovery funds and eligible uses of recovery funds and can be accessed [here](#).

The National League of Cities also maintains an ARPA-related FAQ which can be found [here](#).

**Reminder:** TML Coronavirus materials are archived by date here and by subject here.

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