

City of Atwater



OFFICE OF THE MAYOR
750 BELLEVUE ROAD
ATWATER, CA 95301
(209) 357-6300

September 15, 2020

Congressman Doug LaMalfa
Congressman Kevin McCarthy
Congressman Tom McClintock
Congressman Ken Calvert
Congressman Devin Nunes
Congressman Paul Cook
Congressman Mike Garcia

Dear Members of Congress:

We thank you for your efforts to put Governor Newsom on notice that he has no right to withhold federal funds for local governments that do not capitulate to his ever-shifting demands (see attached July 13, 2020 Letter). We also thank you for your recent call for the U.S. Treasury Department's Inspector General to audit California's misuse of CARES Act funds.

We join you in your fight to hold the Governor accountable and urge that you do everything in your power to help the City of Atwater receive the CARES Act money it deserves.

As you know, on July 23, 2020, the Governor's Office of Emergency Services withheld federal funds due to our COVID-19 Sanctuary City status for businesses (see attached OES Letter and City's Resolution). We have been told that, unless we "formally rescind" our resolution, California will not pass-through the federal government's money.

The federal funds that have been held hostage by the Governor due to our Sanctuary City status is an illegal, punitive, and spectacularly hypocritical act of reprisal.

This is political hypocrisy *par excellence*. As is well known, California, as a "sanctuary" jurisdiction, has enacted laws that limit its law enforcement authority to assist in the enforcement of immigration. In a lawsuit filed against the Trump Administration, the Governor argued that it was illegal for the federal government to withhold federal funds due to California's sanctuary policies:

"These conditions are part of Defendants' escalating effort to unilaterally and fundamentally remake formula grant structures created by Congress into discretionary funding streams to be exploited for the Administration's immigration enforcement priorities. The conditions placed on these grants are unauthorized by Congress and are unrelated to the purposes of these otherwise salutary programs. The imposition of all of these immigration enforcement requirements in contravention of congressional intent is unlawful and unconstitutional, and should be halted."¹

¹ Complaint for Declaratory, Injunctive, and Mandamus Relief at 1, California v. Barr, No. 3:19-cv-06189 (N.D. Cal. Sep. 30, 2019).

We would submit that the Governor's very same words, with only slight modification, apply with equal force against him here:

"These conditions are part of [Governor's] escalating effort to unilaterally and fundamentally remake the [CARES Act eligibility] structures created by Congress into discretionary funding streams to be exploited for the [Governor's COVID-19] enforcement priorities. The conditions placed on these [CARES Act funds] are unauthorized by Congress and are unrelated to the purposes of this otherwise salutary program. The imposition of all of these [COVID-19] enforcement requirements in contravention of congressional intent is unlawful and unconstitutional, and should be halted."

But this is more than just high-handed hypocrisy — this is illegal. The Governor has illegally added California-specific conditions to a federal funding stream *that itself has no such conditions*.² Even though the City incurred qualified COVID-19 expenses —due to our solidarity and support for local businesses (which does not contradict any state orders) — we stand to lose what is rightfully ours.

The City of Atwater would have received the money from the federal government if it had 500,000 or more people in it — it could have certified directly with the federal government and received the money already. Nothing about the federal certification process would have precluded us from receiving these funds. However, due to the City's small size, we had to certify with California instead, and as a result, failed the political test uniquely imposed by Newsom. We have been ruled "ineligible" under these *ad hoc, post hoc* illegally-imposed California conditions. Congress' intent for safe passage of these funds has been blatantly defied, and there are now two very different sets of rules being imposed in California.

So, we ask that you please hold the Governor accountable to ensure the federal money flows rightfully to local governments, like ours.

Very truly yours,



Paul Creighton, Mayor
City of Atwater

² Under the CARES Act, funding eligibility is simple for cities as long as the expenses are: (1) 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. The City's Resolution, attached, is supportive of local businesses and does not directly violate any state orders. The City has successfully balanced the economic and public health tension and incurred many qualified expenses to help slow the spread of COVID-19. We are happy to demonstrate our track record in this regard.

Congress of the United States
Washington, DC 20515

July 13, 2020

The Honorable Gavin Newsom
Governor of California
1303 10th Street, Suite 1173
Sacramento, CA 95814

Governor Newsom:

We are writing today in response to reports from our local health officials that your office has given notice to several counties that Federal funding from the Coronavirus Aid, Relief and Economic Security (CARES) Act would be withheld if they do not fully comply with mandates created by the State. All of us, as Members of the California Congressional Delegation, share your concern with the rising number of active COVID-19 cases in California. Choosing this moment to threaten local government funding is unhelpful and counterproductive.

Congress intended for the Coronavirus Relief Fund (CRF) authorized and appropriated in the CARES Act to serve as an immediate \$150 billion line of aid to every State and local government in the nation. California received, by far, the largest allocation in the country: \$15.3 billion, of which \$9.5 billion was disbursed directly to the State. California's 2020 Budget tepidly directs \$1.8 billion in Federal funding to cities and counties, including those that already received direct payments from the U.S. Treasury. This funding is needed to help counties and cities train contact tracers, expand local healthcare capacity, and provision any other assistance needed. Yet as of July 1st, California has delivered almost none of this Federal aid to local governments and counties.

By withholding CRF payment disbursements from these localities, the State is creating winners and losers. In addition, guidance issued by the U.S. Department of the Treasury regarding implementation of the CRF clearly says that States cannot impose restrictions on transfers of funds to local governments that go beyond requirements outlined in Section 601(d) of the Social Security Act. Accordingly, we believe that the State may be inappropriately withholding CRF funds to localities by imposing conditions on such disbursements that are inconsistent with the Treasury Department's guidance and Section 601(d) of the Social Security Act.

As COVID-19 positive cases in California increase once again, our local governments are left with fewer options and less funding than they had earlier this year. Rather than continue to withhold Federal funding in exchange for compliance with State mandates, and to ensure that the State is in full compliance with the Treasury Department's guidance and the law, we ask that you expeditiously release this funding to our local officials.

Sincerely,


DOUG LaMALFA
Member of Congress


KEVIN McCARTHY
Member of Congress


TOM McCLINTOCK
Member of Congress


KEN CALVERT
Member of Congress


DEVIN NUNES
Member of Congress


PAUL COOK
Member of Congress


MIKE GARCIA
Member of Congress



July 23, 2020

Ms. Lori Waterman
City Manager
City of Atwater
750 Bellevue Road
Atwater, CA 95301
LWaterman@atwater.org

Dear Ms. Waterman:

On March 4, 2020, Governor Newsom proclaimed a State of Emergency to exist statewide due to the threat of COVID-19. Since that time, COVID-19 has spread throughout California, requiring further action to protect the public health and safety. On March 19, 2020, Governor Newsom issued Executive Order N-33-20, which incorporated the State Public Health Officer's Stay-at-Home Order. This Order continues to apply statewide and remains necessary for the preservation of public health and safety. On May 4, 2020, the Governor issued Executive Order N-60-20. The Order allows local jurisdictions to take measured and meaningful steps to modify public health directives where public health data supports such a decision.

All of these actions were, and remain, necessary to preserve public health and safety. Merced County is no exception, as it has been on the county monitoring list for 24 days with elevated disease transmission and a test positivity rate of 16.7%. Additionally, hospitalizations in the county continue to increase. COVID-19 does not stop at administrative boundaries and one community's failure to follow public health orders will negatively impact other communities.

The State of California is providing and distributing financial support to assist local governments in responding to the impacts of the unprecedented COVID-19 pandemic. This funding is conditioned on the jurisdiction's adherence to federal guidance and the state's stay-at-home requirements and other health requirements as directed in gubernatorial Executive Order N-33-20, subsequent executive orders or statutes, and all State Department of Public Health orders, directives, and guidance issued in response to the COVID-19 public health

emergency.¹ Local governments must certify compliance to the Department of Finance when they apply for this funding. In the certification, the jurisdiction must affirm it has not enacted any ordinances or resolutions that are inconsistent with the state's stay-at-home order. This is necessary to ensure that all jurisdictions are adhering to public health directives and ensure for the protection of public health and safety.

As you are aware, on May 15, 2020, the City of Atwater passed Resolution number 3148-20, declaring the City of Atwater "a sanctuary city for all businesses." This Resolution, which is inconsistent with the state's public health directives, threatens the public health and safety of the City of Atwater's residents and renders the City ineligible for up to \$387,428 in state assistance in accordance with the FY 20-21 State Budget Act.

It is our goal to ensure that every eligible jurisdiction in California, including the City of Atwater, receives this funding. In order to be eligible for funding, assuming it meets the other prescribed criteria, the City would need to rescind this resolution. I ask that you please advise once the City has formally rescinded this Resolution and has moved forward to expeditiously implement and enforce state public health guidelines. Thank you for your anticipated cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark S. Ghilarducci", with a long horizontal flourish extending to the right.

MARK S. GHILARDUCCI
Director

Enclosure: City of Atwater Resolution 3148-20

cc: Assemblymember Adam Gray
Senator Anna Caballero
Representative Jim Costa

¹ http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB89



**CITY COUNCIL
OF THE
CITY OF ATWATER**

RESOLUTION NO. 3148-20

**A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF ATWATER AFFIRMING THE CITY'S
COMMITMENT TO FUNDAMENTAL RIGHTS OF
LIFE, LIBERTY, AND PROPERTY, AND
DECLARING THE CITY OF ATWATER A
SANCTUARY CITY FOR ALL BUSINESSES**

WHEREAS, the City of Atwater recognizes that the Constitution of the United States enshrines certain rights of all Americans, including those fundamental liberty interests set forth in the Fourteenth Amendment that prohibit any state from depriving any person of life, liberty, or property, without due process of law; and

WHEREAS, the City of Atwater recognizes that the Declaration of Independence advanced the "inalienable rights" of life, liberty, and the pursuit of happiness in the face of tyrannical governmental overreach; and

WHEREAS, each of the City of Atwater duly elected or appointed public servants have sworn to defend and uphold the United States Constitution and the Constitution of the State of California; and

WHEREAS, recent state and county orders have been issued which have deemed certain businesses as "essential" and ordered all other businesses to stay shuttered, closed, forcing them perilously on life support as they fight for their very economic survival and livelihood; and

WHEREAS, the City of Atwater welcomes, honors, and respects the contributions of all businesses, regardless of their size, and regardless of whether or not they have been deemed "essential" by state or county bodies; and

WHEREAS, the City of Atwater's diverse businesses positively contribute to the economic, cultural, and social fabric of the City; and

WHEREAS, all businesses in the City have not only been a catalyst for the City's recent economic recovery, but have been the backbone of the City throughout its 98-year history; and

WHEREAS, the City of Atwater's businesses are socially responsible, and are able and willing to maintain effective social distancing and health protocols to ensure the City remains one of the strongest COVID-19 success stories in California; and

WHEREAS, fostering a relationship of trust, respect, and open communication between City officials and businesses is essential to the City's mission of delivering effective public services in partnership with the community, thereby advancing a high quality of life for residents; and

WHEREAS, the City of Atwater seeks to foster trust, not fear, between City officials and businesses, while properly allocating limited local resources and encouraging cooperation and open communication, to ensure public safety and due process for all, irrespective of business status; and

WHEREAS, the City of Atwater desires to demonstrate its commitment to its businesses by providing a safe community and by assuring them that, in accordance with federal and state laws and all state licensing authorities, the City will not of its own accord abridge such freedoms and rights; and

WHEREAS, the City of Atwater recognizes the inalienable rights of individuals, as individuals, to earn a living, to employ others or be employed, to provide income for their families, to give back to the community, to treat neighbors with respect and care, and contribute to the overall health and well-being of the community, without the need for undue governmental overreach and coercion.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Atwater does hereby resolve as follows:

SECTION 1: City of Atwater shall not, in accordance with state and federal law, and in order to properly allocate limited local resources and optimize cooperation and communication to ensure public safety and due process for all, irrespective of business status, actively join forces with other agencies solely for the purpose of enforcing state or county COVID-19 orders; and

SECTION 2: City of Atwater shall not, in accordance with state and federal law, take any direct action against any businesses or individuals based solely on their actual or perceived business status; and

SECTION 3: The City of Atwater recognizes that state and county authorities directly license, permit, and regulate some businesses within the City and nothing in this Resolution is intended to abridge such authorities from overseeing applicable license regulations and restraints on such City businesses; and

SECTION 4: Subject to the foregoing, the City of Atwater hereby declares that it is a Sanctuary City for All Businesses.

The foregoing resolution is hereby adopted this 15th day of May 2020.

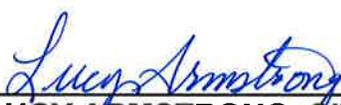
AYES: Vierra, Raymond, Cale, Creighton
NOES: None
ABSENT: Ambriz

APPROVED:



PAUL CREIGHTON, MAYOR

ATTEST:



LUCY ARMSTRONG, CITY CLERK