



Committee: Directly to Council
Committee Review: N/A
Staff: Gene Smith, Legislative Analyst
Purpose: Final action – vote expected
Keywords: EDF, economic development

AGENDA ITEM #2C
July 21, 2020
Action

SUBJECT

Introduction/Action/Suspension of Rules – Extension of Executive Regulation 9-20T, Public Health Emergency Grant Program

EXPECTED ATTENDEES

None

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- N/A

DESCRIPTION/ISSUE

The Executive submitted temporary regulations to implement the Public Health Emergency Grant Program on April 15, 2020. The regulation expired on July 15, 2020. The Executive requested a one-time extension for the temporary regulation on July 14, 2020. The Council must approve the extension for the temporary regulation to remain effective. If approved, the resolution will extend the temporary regulation retroactively from July 15, 2020.

SUMMARY OF KEY DISCUSSION POINTS

- County Code allows temporary regulations due to a public emergency to be effective for 90 days following receipt by the Council. The 90-day period provides an opportunity to implement a regulation needed because of a public emergency while a permanent regulation is adopted.
- The Executive may request a one-time extension for a temporary regulation. The Executive must provide a compelling reason for the extension.
- The Council must approve the extension for a temporary regulation. The extension remains in effect for 90 days from the Council's approval.
- A temporary regulation may not be extended a second time.

This report contains:

Executive's transmittal of temporary executive regulation	© #1-9
Executive's request to extend temporary executive regulation	© #10
Proposed resolution	© #11-12

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OFFICE OF THE COUNTY EXECUTIVE
Rockville, Maryland 20850

Marc Elrich
County Executive

MEMORANDUM

April 15, 2020

TO: Sidney Katz, President
Montgomery County Council

FROM: Marc Elrich, County Executive 

RE: Temporary Executive Regulation 9-20T, Public Health Emergency Assistance Program

Attached is Temporary Executive Regulation 9-20T for the implementation and administration of the Public Emergency Assistance Program as required by Bill 16-20 Economic Development Fund – Public Health Emergency Grant Program which the County Council enacted on March 31, 2020. The Program is being created as a result of the Covid-19 pandemic in order to address significant adverse impact to local businesses and non-profits and in turn, adverse economic impact to the County.

Due to the current public health emergency I am issuing a temporary executive regulation as authorized under Article II Sec. 2A-15 (j) (1) (a) of the County Code. This temporary regulation is being implemented without the opportunity for public comment. As required by County Code, a permanent regulation which will supersede this temporary regulation and allow for public comment will be published in the County Register within 90 days.



MONTGOMERY COUNTY EXECUTIVE REGULATION

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Subject Public Health Emergency Grant Program	Number 9-20T
Originating Department Finance	Effective Date April 15, 2020

Montgomery County Regulation on:

PUBLIC HEALTH EMERGENCY BUSINESS ASSISTANCE PROGRAM

Department of Finance

Issued By: County Executive

Regulation Number: 9-20T

COMCOR

Authority: Montgomery County Code, Section 20-76F

Council Review: Under Code Section 2A-15, Subsection (j)(1) (a)

Sunset Date: None

Effective Date: April 15, 2020

SUMMARY:

The regulation provides for the award process and criteria for the provision of grants, or conditional grants, from the Public Health Emergency Grant Program, a sub-program of the Economic Development Fund.

ADDRESS:

Department of Finance
101 Monroe Street
Rockville, Maryland 20850

STAFF CONTACT:

Peter McGinnity
(240) 777- 2011

BACKGROUND INFORMATION: On March 5, 2020 a Public Health Emergency and Existence of Catastrophic Health Emergency ("Public Health Emergency") was declared in the State of Maryland. The Public Health Emergency Grant Program has



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been created as a sub-program of the Economic Development Fund to assist the continued operation of certain local for-profit small businesses and non-profit organizations located in the County that are experiencing significant adverse impact due to the spread of a communicable disease in the County that resulted in a Federal, State, or County Public Health Emergency order restricting business operations in the County. Assistance from the Public Health Emergency Grant program will be in the form of a grant or a conditional grant.

Section 1. AUTHORITY

In accordance with the procedures authorized in Section 20-76F of the Montgomery County Code 2004, the following Executive Regulation establishes an award process and criteria to administer the Public Health Emergency Program as a sub-program of the Economic Development Fund.

Section 2. DEFINITIONS

Adjusted Revenue – means Revenue adjusted for deferred rent or payroll expenses.

Adverse Impact – means a loss of revenue resulting directly or indirectly from a public health emergency, including the declared Public Health Emergency for the State of Maryland on March 5, 2020.

Assistance – means the commitment of money in the form of a grant or conditional grant from the Economic Development Fund to an adversely impacted local for-profit business or non-profit organization, in order to partially or entirely offset the adverse impact. The conditional grant will remain as a grant upon the recipient's satisfactory adherence to the terms of the conditional grant. Otherwise, all or part of the conditional grant will become repayable to the County, according to the terms set forth in the conditional grant agreement.

Local business - *Local business* means a for-profit or non-profit entity that:

- (1) has its principal place of business in the County; and
- (2) employs 100 or less full-time-equivalent employees.



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Non-profit entity - means an organization dedicated to furthering a particular social cause or advocating for a shared point of view. In economic terms, it is an organization using its surplus of revenues to further achieve its objective rather than distributing its income to the organization's shareholders, leaders or members.

Principal place of business in the County - means a regular course of business commerce in the County by a business, along with any of the following:

- (1) the business has its physical business location(s) only in the County; or
- (2) the business has physical business locations both in and outside of the County, and the County-based location(s) account for over 50% of the business's total number of employees, or over 50% of the business's gross sales.

Public Health Emergency - means a situation caused by the spread of a communicable disease in the County that results in a Federal, State, or County Public Health Emergency order restricting business operation in the County.

Restaurant - means any lunchroom, café, or other establishment located in a permanent building for the accommodation of the public, equipped with a kitchen containing facilities and utensils for preparing and serving meals to the public, and outfitted with a public dining area. A restaurant includes a business with a license to serve alcoholic beverages for consumption on its premises.

Retail storefront establishment - means a business engaged in the retail sale of goods or services to the public from a physical location in the County. Retail establishment includes a convenience store, shop, hair salon, barber shop, food truck, or restaurant, and any other sales outlet where a customer can buy goods or services in person.

Revenue – means all income received in exchange for the provision of goods and/or services as well as all income received from grants or donations.

Significant Financial Loss – For purposes of the Economic Development Fund Public Health Emergency Grant Program, Significant Financial Loss means Adjusted Revenue loss of 50% or greater for a certain financial period that is attributable to the Public Health Emergency.

Section 3. ELIGIBILITY



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Based on the information submitted by the applicant in its application for assistance, the applicant must meet all of the following eligibility conditions:

- (a) Be a privately owned local for profit business or non-profit organization having its principal place of business in the County as defined in Section 2 of this Executive Regulation.
- (b) Be in existence prior to March 5, 2020 and in Good Standing with the State of Maryland.
- (c) Employ 100 or less full-time or full-time equivalent employees.
- (d) Demonstrate a Significant Financial Loss for a certain financial period, caused directly or indirectly by the Public Health Emergency when compared to a financial period of equal duration prior to the Public Health Emergency.
- (e) All grants or conditional grants awarded are subject to appropriation and the availability of funds.

Section 4. PRIORITY CONSIDERATION

- (a) As required by Section 20-76F (g) of the Montgomery County Code one-quarter of the funds appropriated for the Public Health Emergency Grants Program are reserved for local businesses that operate a restaurant or a retail storefront establishment.
- (b) \$10,000,000.00 of funds appropriated for this Program are reserved for businesses or non-profit organizations that demonstrate Significant Financial Loss. The initial grant award disbursed under this component of the Program is \$10,000. The remaining amount of Significant Financial Loss demonstrated by these businesses and non-profit organizations may be disbursed subsequently, subject to the availability of funds

Section 5. ASSISTANCE

- (a) Each for-profit business or non-profit organization must provide documentation, such as federal income tax returns and Profit and Loss Statements, with their application that demonstrate revenue for a certain financial period immediately prior to the Public Health Emergency and corresponding financial documentation demonstrating the significant loss



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of revenue incurred as a result of the Public Health Emergency.

- (b) Assistance up to a maximum amount of \$75,000.00 will be based on the documentation provided by the applicant that demonstrates the actual loss in revenue per eligible local for-profit business or non-profit organization. All applicants shall apply on-line.
- (c) Assistance up to a maximum amount of \$2,500.00 may be provided to a for-profit or a non-profit local business for the cost of purchasing technology equipment and software to facilitate employee teleworking during a public health emergency. All applicants shall apply on-line.
- (d) Eligible local for-profit businesses and nonprofit organizations businesses may receive assistance through this Program in the form of multiple disbursements, subject to appropriation and availability of funds. Each additional individual disbursement will be based upon demonstrated loss of additional revenue since the most recent prior disbursement. No local for-profit business or non-profit organization may receive assistance from this Program greater than \$75,000 in the aggregate that relates to loss of revenue.
- (e) The amount of assistance shall be determined in the following manner:
 - A) Determine that the applicant's decrease in revenues demonstrates Significant Financial Loss:
 - 1. Determine the Annual Historical Average for the business or non-profit prior to the Public Health Emergency. This is based upon the required documentation stated in item (a) of this Section.
 - 2. Divide the average annual revenue for the business by 12 to determine the Monthly Historical Average. For a financial statement of less than 1 year, divide the revenue for that period by the number of months the financial statement represents to get average monthly revenue. For purposes of this Program, the Monthly Historical Average will serve as the baseline for determining revenue loss during the Public Health Emergency.



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3. Determine whether the revenue for the financial period reported after the Public Health Emergency (PHE Revenue) and the duration of that financial period is monthly or quarterly. If quarterly, create a Quarterly Historical Average as a baseline by multiplying the Monthly Historical Average by 3.
4. If the application indicates that payroll expenses or rent have been deferred, add the amount deferred (the amount by which the expenses were REDUCED) to the PHE Revenue to create Adjusted Revenue. If no expenses were deferred, PHE Revenue will equal Adjusted Revenue.
5. Subtract the Adjusted Revenue from the relevant historical average (Monthly Historical Average for monthly Adjusted Revenue, Quarterly Historical Average for quarterly Adjusted Revenue). Divide the result by the relevant historical average to create a Percentage Decline. If the Percentage Decline is greater than 50%, the applicant is deemed to have incurred Significant Financial Loss and is considered eligible for assistance under this Program.

B) Determine the amount of financial assistance available to the applicant:

6. Business that have suffered Significant Financial Loss will be eligible for an immediate disbursement of up to \$10,000. If the Percentage Decline is 50% or greater, Subtract the Adjusted PHE Revenue from the relevant historical average (Monthly Historical Average for monthly Adjusted PHE Revenue, Quarterly Historical Average for quarterly Adjusted PHE Revenue) to get the Recommended Grant Amount, up to a maximum of \$10,000.
7. Subtract the Adjusted PHE Revenue from the relevant historical average (Monthly Historical Average for monthly Adjusted PHE Revenue, Quarterly Historical Average for quarterly Adjusted PHE Revenue) to get the Recommended Grant Amount, up to a maximum of \$75,000.
8. Subject to the availability of funds, once the initial \$10,000,000 reserve has been committed, applicants who qualified for more than an initial disbursement of \$10,000 and applicants who qualify for a grant that have not received funding will be evaluated and the remaining balance will be disbursed.



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- (e) In order to receive financial assistance under the Program, a local business must enter into a grant agreement with the County, which includes
 - (1) the County’s right to audit financial records of the grantee;
 - (2) the grantee’s reporting obligations to the Director of the Department of Finance;
 - (3) the grantee’s obligation to remit to the County any unused or improperly used funds; and
 - (4) a certification by the grant applicant, under penalty of perjury, that the grant application and all documentation and statements in support of eligibility for funds are true and correct, and that the applicant understands that they may be prosecuted for any false statements made as part of the application.
- (f) Grant funds from this Program that are used for any expenses that have been or will be reimbursed by Covid-19 related Federal and/or State government assistance programs must be repaid.
- (g) Grant funds from this Program cannot be used to reimburse a business for losses that are reimbursed through an insurance policy purchased by the business.
- (h) Grant funds from this Program cannot be used reimburse a business for wages paid to an employee for a time period the employee is eligible for unemployment insurance benefits.

Section 6. PROGRAM OPERATIONS

- (a) The Director of Finance must establish a separate account in the Economic Development Fund to track all activities of the Public Health Emergency Grant Program.
- (b) The Program account will consist of: (1) funds appropriated to it by the County Council; (2) all repaid grant funds from the Program’s funding activities, and (3) all funds received from other public or private sources.



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- (c) The County Executive may recommend an appropriation based on the anticipated number of eligible local for-profit businesses and non-profit organizations and their anticipated lost revenues so that assistance may be provided as applications are received and verified.
- (d) For each conditional grant awarded, the Director will establish appropriate closing documents for all applicants and will require that grant recipients adhere to the terms of the conditional grant, including repayment in the event of non-compliance.
- (e) The Director will designate an individual to coordinate outreach efforts to for-profit and non-profit business organizations. Subject to compliance with the County's procurement laws, the Director, from time to time, may use various means of outreach and marketing mediums, in addition to public announcements to inform businesses of the Program, availability of assistance, and other pertinent process and deadline information.

Section 7. EFFECTIVE DATE

This Temporary Executive Regulation takes effect upon notification to the County Council.

Handwritten signature of Marc Elrich in cursive script.

Marc Elrich
County Executive

Approved as to form and legality:

Handwritten signature of Taggart Hutchinson in cursive script.

Taggart Hutchinson
Associate County Attorney

Date: 4/14/2020




OFFICE OF THE COUNTY EXECUTIVE
Rockville, Maryland 20850

Marc Elrich
County Executive

MEMORANDUM

July 14, 2020

TO: Sidney Katz, President
Montgomery County Council

FROM: Marc Elrich, County Executive 

RE: Extension of Temporary Executive Regulation 9-20T, Public Health Emergency
Business Assistance Program

I am requesting a one-time extension of Temporary Executive Regulation 9-20T, as permitted under Article II, Section 2A-15 (j) (4) (A) as Temporary Executive Regulation 9-20 T will expire on July 15, 2020. I transmitted Temporary Executive Regulation 9-20, Public Health Emergency Grant Program to the Council on April 15, 2020. These temporary regulations provide guidelines for the administration of Bill 16-20, Economic Development Fund - Public Health Emergency Grant program which Council established on March 31, 2020.

The one-time extension will provide for continuity of this regulation until the permanent regulation can be posted in the Executive Register. Given the continued dialogue between myself and the Council as to how the Public Health Emergency Grant Program might provide optimal impact to small businesses affected by the Public Health Emergency, the proposed Permanent Executive Regulations have taken longer than anticipated but will be published in the Executive Register for August.

ME/pmg

Resolution No.: _____
Introduced: _____
Adopted: _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

Lead Sponsor: County Council

SUBJECT: Approval of Extension for Temporary Executive Regulation 9-20T, Public Health
Emergency Grant Program

Background

1. On April 15, 2020, the County Council received Temporary Executive Regulation 9-20T, Public Health Emergency Assistance Program.
2. Section 2A-15 (j) of the County Code permits the Executive to adopt a temporary regulation under certain conditions. The Executive cited the public health emergency due to COVID-19 as the reason a temporary regulation was required.
3. Section 2A-15 (j) (3) (B) states a temporary regulation is effective for 90 days after receipt by the County Council.
4. Section 2A-15 (j) (4) allows the Executive to request a one-time extension for a temporary regulation. The Executive must provide a compelling reason to extend the temporary regulation, and the County Council must approve the extension. The one-time extension of a temporary regulation is effective for 90 days following the Council's approval.
5. Temporary Executive Regulation 9-20T expired on July 15, 2020, 90 days after the County Council's receipt. On July 14, 2020, the County Council received the Executive's request to extend the effective date for Temporary Executive Regulation 9-20T, citing that the proposed regulation has taken longer than anticipated to be published in the Register.

Action

The County Council for Montgomery County, Maryland approves the following resolution:

Extension of Temporary Executive Regulation 9-20T, Public Health Emergency Grant Program is approved. This extension takes effect retroactively on July 15, 2020 and extends 90 days from that date.

This is a correct copy of Council action.

Selena Mendy Singleton, Esq.
Clerk of the Council