



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Small Business Assistance Program	Number 24-12AM
Originating Department Economic Development	Effective Date

Montgomery County Regulation on:

SMALL BUSINESS ASSISTANCE PROGRAM

Department of Economic Development

Issued By: County Executive

Regulation Number: 24-12AM

Authority: Montgomery County Code, Section 20-76B

Council Review: Method 2 Under Code Section 2A-15

Register Volume 32, Issue 10

Sunset Date: None

Effective Date:

SUMMARY:

The regulation provides for the award process and criteria for the provision of loans and grants from the Small Business Assistance Program, a sub-program of the Economic Development Fund.

ADDRESS:

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Rockville, Maryland 20850

STAFF CONTACT:

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(240) 777-2008

BACKGROUND INFORMATION:

The Small Business Assistance Program has been created as a sub-program of the Economic Development Fund to assist certain small businesses located in the County who are adversely impacted by a County Redevelopment Project or a Redevelopment Project located on County property by providing loans, grants, or conditional grants from the Economic Development Fund.



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Section 1. AUTHORITY.

In accordance with the procedures authorized in Section 20-76[[]]B of the Montgomery County Code [[1994]]2004, as amended, the following Executive Regulation establishes an award process and criteria to administer the Small Business Assistance Program as a sub-program of the Economic Development Fund.

Section 2. DEFINITION[[.]]

Redevelopment Project – means any construction, alteration, or improvement in an urban renewal area or Enterprise Zone where the existing land use is commercial or industrial and is:

- (a) Located on property owned by the County; or
- (b) Financed in whole or part by the County.

Adverse Impact – means a loss of revenue resulting from a Redevelopment Project.

Small Business – means a privately owned business that meets the requirements of 11B-65(a) and the following size requirements:[[.]]

<u>Business Type</u>	<u>Employee Less Than</u>	<u>OR</u>	<u>Prior 3 Years' Average Sales Less Than</u>
<u>Retail</u>	<u>30</u>	<u>or</u>	<u>\$5,000,000.00</u>
<u>Wholesale</u>	<u>30</u>	<u>or</u>	<u>\$5,000,000.00</u>
<u>Service</u>	<u>50</u>	<u>or</u>	<u>\$5,000,000.00</u>
<u>Construction</u>	<u>50</u>	<u>or</u>	<u>\$14,000,000.00</u>
<u>Manufacture</u>	<u>40</u>	<u>or</u>	<u>\$14,000,000.00</u>

Financially Healthy Small Business – means a Small Business that meets any one of the following conditions:

- (a) At least one[[two]] of the three immediately previous years' federal income tax returns shows a net profit;



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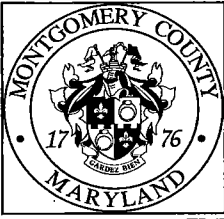
- (1) If a Small Business is a C Corporation or an LLC filing taxes as a C corporation, the corporate tax return can show a net loss, but the Small Business owner's individual tax return must show that federal and the state income taxes have been paid in one[[two]] of the three immediately previous years; or
 - (2) If a Small Business is a partnership, single member LLC, S Corporation or a sole proprietorship, the business income reported in schedule C must exceed the Small Business expenses resulting in a positive net income derived from the Small Business's operations, and federal and the state income taxes must have been paid by the Small Business in one[[two]] of the three immediately previous years; or
- (b) If the Small Business has been in operation less than three years, the most recent year's federal income tax return for the Small Business must show a net profit; or
 - (c) If federal income tax returns have never been filed by the Small Business, then the interim financial statement of the Small Business, submitted together with the Small Business' bank statements for the corresponding operating period, must show a net profit[[profitable operation]].

Assistance – means the commitment of money in the form of a grant or conditional grant from the Economic Development Fund to an Adversely Impacted Financially Healthy Small Business, in order to partially or entirely offset the Adverse Impact. The conditional grant will remain as a grant upon the recipient business' satisfactory adherence to the terms of the conditional grant, such as not closing the business within a certain time from receiving the conditional grant. Otherwise, all or part of the conditional grant will convert to a loan, repayable to the County, according to the terms set forth in the conditional grant agreement.

Technical Assistance – means [[a]]training directly related to operating a Small Business, provided by an educational institution or a non-profit organization approved by the Director of the Department of [[Economic Department]]Finance (the "Director").

Section 3. ELIGIBILITY[[.]]

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



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- (a) Be an existing Financially Healthy Small Business located near an ongoing or future Redevelopment Project that is planned to begin construction in less than 12 months from the time of application submission for assistance and is Adversely Impacted as a result.
- (b) Own[[s]] a commercial property or has a commercial lease with[[for]] at least 12 months remaining on the lease term. If the lease is of a shorter duration[[,]] or if the business intends to relocate to another part of the County, the small business must submit a letter of commitment for a lease renewal on the same premise or purchase or lease in a new location within the County with a term of at least 12 months.
- [[c) A Financially Healthy Small Business that receives assistance under this Program will not be eligible to receive additional assistance under the Program, unless the duration of the Redevelopment Project is at least 12 months or longer, and the County Council through an appropriation resolution authorizes additional assistance to the same business entity.]]

Section 4. [[FUNDING CRITERIA]]PRIORITY CONSIDERATION

[[The Director will provide Assistance to a Financially Healthy Small Business that meets the eligibility criteria, from monies from the Economic Development Fund designated for the Program, based on criteria defined in this Executive Regulation.]]Priority consideration for Assistance through this program will be based on proximity to the Redevelopment Project.

- (a) Priority will be given to eligible Financially Healthy Small Businesses [[having locations, that due to their proximity to the Redevelopment Project,]]that can demonstrate through documentation in their application[[an impediment in their customer's accessibility, including]]:
 - (1) A reduction in previously available public parking space(s) within a three hundred feet radius of the business premise; or
 - (2) An alteration to the pedestrian walkway that leads to the entrance of the business premise, or
 - (3) Obstruction to the view of the business' signage and/or business' premise by the Redevelopment Project.
- (b) [[If no evidence linking the Adverse Impact experienced by the Financially Healthy Small Business to the Redevelopment Project due to proximity exists, the]]Any Financially Healthy Small Business that does not receive Priority Consideration may



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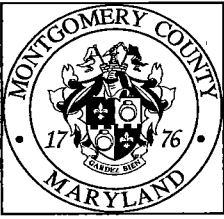
apply for the assistance under this program by presenting clear evidence of how the Redevelopment Project Adversely Impacts or will impact its business operations in their application.

Section 5. DETERMINATION OF FUNDING AMOUNT ASSISTANCE

- (a) Each small business must provide the documentation, such as federal income tax returns, with their application that demonstrates the magnitude of their loss in net profit from the Redevelopment Project before Assistance is provided.
- (b) Assistance will be based on the documentation provided and actual loss in net profit calculated for the duration of the Redevelopment Project, up to a maximum of \$75,000 per eligible Financially Healthy Small Business.
- (c) Eligible Financially Healthy Small Businesses may only receive Assistance once through this program.

Each fiscal year the Program is active, the County Executive must recommend an appropriation for the Small Business Assistance Program to the County Council. The recommended appropriation will be based on the extent and the duration of the current or planned Redevelopment Project(s) during the given fiscal year, and must either specify a maximum assistance amount awarded to any individual eligible Financially Healthy Small Businesses, or specify that the total recommended appropriation be divided among all eligible small businesses in a proportional manner based on the relative magnitude of the adverse impact. The County Executive's recommended appropriation is subject to County Council approval.

- (a) If a maximum assistance amount per eligible Financially Healthy Small Business is approved for a given fiscal year:
 - (1) Based on the review and analysis of the application, a Financially Healthy Small Business will be awarded a conditional grant, upon execution of the Small Business Assistance Program Agreement, and based on the actual or projected Adverse Impact on the eligible Financially Healthy Small Business, up to the maximum assistance amount under the Program, as set by the County Council's appropriation resolution.



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(2) Applicants that are reviewed and approved for assistance but not funded during a given fiscal year due to Program fund depletion will be funded during the subsequent fiscal year before any new applicants are awarded, in order of the application approval date. Those applications that were not processed due to fund depletion will be reviewed in the new fiscal year in the order of the date of receipt by the County.

(b) If the assistance amount is approved as a percentage method of appropriation for a given fiscal year:

(1) The application deadline date for assistance under the Program for any give fiscal year will be announced at least 120 days before the annual cutoff date. The total Adverse Impact of all eligible applicants submitting application by the cutoff date, which are approved for assistance, will be calculated. Each applicant's Adverse Impact amount will be compared to the total adverse impact of all approved applicants and converted to a percentage of the total Adverse Impact. The final assistance amount to the applicant will be determined by multiplying the applicant's calculated percentage times the given fiscal year's appropriation for the Program;

(2) Applicants missing the cutoff date will not be accepted and must resubmit their application the following year, unless the County Council appropriates additional funds to the Program during that fiscal year.

(3) If funds are added during a given fiscal year, a new application submission deadline will be announced and the percentage distribution method described above will apply only to the new applications submitted in time for the new deadline, and using only the additional appropriations.

(c) A formal application (using the to be developed County Form), with all required supporting documents, showing how the Redevelopment Project has or will have an Adverse Impact on the applicant small business, must be submitted by the applicants before an in-depth review of the assistance will be undertaken by the Department of Economic Development.]]

Section 6. PROGRAM OPERATIONS[[:]]



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[[a) Accounting]]

- (a)[(1)] The Director must establish a separate account in the Economic Development Fund to track all activities of the Small Business Assistance Program.
- (b)[(2)] The Program account will consist of: (1) funds appropriated to it by the County Council; (2) all repaid principal and interest earned from the Program's funding activities, and (3) all funds received from other public or private sources.
- [(3) The County Executive must notify the County Council at least five working days (or ten working days during a Council recess) before making an offer of assistance valued at more than \$100,000, specifying the proposed nature of the assistance including the repayment provisions. The Council President, by notification to the County Executive, may request an additional two working days (or five working days during Council recess) for Council comments before the assistance is conveyed to the applicant.]]
- (c) The County Executive may recommend an appropriation based on the anticipated number of eligible Financially Healthy Small Businesses and their anticipated loss in net profit so that Assistance may be provided as applications are received and verified.
- (d)[(3)] For each conditional grant transaction, the Director [[and the County Attorney's Office]] will negotiate appropriate closing and security documents [[(or use the preapproved template documents)]]with the applicant [[requiring]]and will require that the applicant [[to]]adhere to the terms of the conditional grant, including the repayment and the agreed rate of interest should some or all of the conditional grant convert to a loan. Based on the review of the application, the Director will require some eligible Financially Health Small Business to take one or more Technical Assistance courses as a condition of receiving the conditional grant.
- [(5) The County Executive must report to the County Council by March 31 of each year on the status, use, and the impact of the Program in mitigating Adverse Impacts on Financially Healthy Small Businesses. The report at a minimum must include the number of Financially Healthy Small Businesses assisted by the Program, the number and the dollar amount of the conditional grants made, and



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an evaluation of the effectiveness of each conditional grant on mitigating the Adverse Impact on the operations of the Financially Healthy Small Business.]]

[[(b) Administration

- (1) The Department of Economic Development shall be responsible for administering the Program, including the determination of eligibility, analysis of Adverse Impacts, credit and background check, amount and form of assistance, requiring certain technical assistance and/or other conditions of funding, structuring of the repayment terms, preparation of necessary documents, and post-assistance monitoring. If necessary, the Department of Economic Development may form a multi-agency application review committee, or solicit inputs from the Technical Assistance providers or community based small business resource organizations.
- (2) The Department of General Services shall be responsible for providing written notice to the Director of Department of Economic Development at least twelve (12) months before construction is scheduled to begin, including projected construction start and completion dates, any road closures and detours that will be in force during construction, and any public parking facility closures.
- (3) Subject to compliance with the County's procurement laws, the Department of Economic Development may, on a case-by-case basis, utilize the services of outside consultants in validating certain assumptions and facts used in assessing the Adverse Impact to the applicant, or to assist in the review of an application and the applicant's financial record, the cost of which will be charged to the Program. The Department of Economic Development and the Department of General Services may also hire a consultant to conduct a comprehensive needs assessment of the businesses that are in close proximity to the currently planned Redevelopment Project, the cost of which will be charged to the County CIP (Capital Improvement Project) that is tied to the Redevelopment Project.]]

(e)[[(4)]] Subject to compliance with the County's procurement laws, the Director[[of Department of Economic Development]], from time to time, may use various means of outreach and marketing mediums, in addition to public announcements to inform businesses of the Program, notifications relating to Redevelopment Project(s), availability of assistance, and other pertinent process and deadline information, the cost of which will be charged to the Program.



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[[5) Subject to compliance with the County’s procurement laws, the Director may, from time to time, develop and execute marketing and paid advertising program – including the provision of outdoor and public signage – if that program will supplement the efforts of the majority of the Adversely Impacted Financially Healthy Small Businesses to retain or attract customers. The cost of developing and implementing such a marketing program will be charged to the Program.]]

(f)[[6)] The Director must compile and maintain a list of approved technical training courses on the County’s website. The Director may also list the name and contact information of non-profit community resource organizations that can offer pro-bono assistance, or are under contract with the County to provide free assistance to eligible Financially Healthy Small Businesses, in order to prepare or mitigate the adverse impact of the Redevelopment Project.

[[Section 7. CLARIFICATION.

This confirms that the provisions of Chapter 11B, Procurement, do not apply to the selection of a grant or loan recipient or any agreement entered into with a grant or loan recipient pursuant to Article XIII of Chapter 20 of the Montgomery County Code of 1994, as amended.]]

Section 7[[8)]. EFFECTIVE DATE[[.]]

This Executive Regulation takes effect upon approval by the County Council.

Isiah Leggett
County Executive

Approved as to form and legality:

[[John J. Fisher]]Clifford Royalty
Assistant County Attorney

9/23/15
Date