

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend, on an emergency basis, the Coronavirus Support Congressional Review Emergency Amendment Act of 2020 and certain other laws to clarify provisions relating to tenant payment plans, commercial rent increases during a public health emergency, small business microgrant eligibility, grants for promoting coronavirus awareness, rules for serving alcohol on expanded outdoor restaurant seating, and COVID-19 leave; and to provide provisions related to emergency credit alerts, living wills, approval of a contract under Council review, and the designation of the Black Lives Matter plaza.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Coronavirus Support Clarification Emergency Amendment Act of 2020”.

Sec. 2. The Coronavirus Support Congressional Review Emergency Amendment Act of 2020, effective June 8, 2020 (D.C. Act 23-328; 67 DCR ___), is amended as follows:

(a) Section 205(d) (D.C. Official Code § 48-641(d)) is amended by striking the phrase “food delivery platform as a term of a contract or agreement between the platform and the restaurant in connection with the restaurant’s use of the platform” and inserting the phrase “food delivery platform” in its place.

(b) Section 402 (D.C. Official Code § 42-3281) is amended as follows:

(1) Subsection (a) is amended as follows:

(A) Paragraph (1) is amended by striking the phrase “gross rent that comes due during” and inserting the phrase “gross rent and any other amounts that come due under the lease during” in its place.

(B) Paragraph (4) is amended by striking the phrase “due to a default on the monetary amounts due during the lease period; provided, that the tenant does not default on the terms of” and inserting the phrase “by entering into” in its place.

(2) Subsection (d)(1) is amended to read as follows:

“(1) Demonstrates to the provider evidence of a financial hardship resulting directly or indirectly from the public health emergency, regardless of an existing delinquency or a future inability to make rental payments established prior to the start of the public health emergency; and”.

(3) Subsection (h)(1) is amended to read as follows:

“(1) “Eligible tenant” means a tenant that:

“(A) Has notified a provider of an inability to pay all or a portion of the rent due as a result of the public health emergency;

“(B) Is not a franchisee unless the franchise is owned by a District resident; and

“(C) Has leased from a provider:

“(i) A residential property;

“(ii) Commercial retail space; or

“(iii) Commercial space that is less than 6,500 square feet in size and that comprises all or part of a commercial building.”.

(c) Section 406(b) (D.C. Official Code § 42-3202.01(b)) is amended to read as follows:

“(b)(1) Notwithstanding any other provision of law, a rent increase for a commercial property shall be prohibited during a period for which a public health emergency has been declared pursuant to section 5a of the District of Columbia Public Emergency Act of 1980, effective October 17, 2002 (D.C. Law 14-194; D.C. Official Code § 7-2304.01), and for 30 days thereafter.

“(2) For the purposes of this subsection, the term “commercial property” means:

“(A) A commercial retail establishment; or

“(B) Leased commercial space that is less than 6,500 square feet in size and that comprises all or part of a commercial building.

“(3) Any increase of rent on a commercial property made by a landlord between March 11, 2020, and June 9, 2020, shall be null and void and any excess rent paid by a tenant shall be credited to the tenant.”.

Sec. 3. Section 2316(e)(2) of the Small and Certified Business Enterprise Development and Assistance Act of 2005, effective June 8, 2020 (D.C. Act 23-328; D.C. Official Code § 2-218.16(e)(2)), is amended to read as follows:

“(2) “Eligible small business” means a business enterprise eligible for certification under section 2332, a nonprofit entity, or an independent contractor or self-employed individual determined ineligible for unemployment insurance by the Director of the Department of Employment Services, unless the independent contractor or self-employed individual is eligible for and receiving unemployment insurance benefits unrelated to their self-employment or independent contractor work, and is otherwise eligible for a grant pursuant to this subsection.”.

Sec. 4. The District of Columbia Public Emergency Act of 1980, effective March 5, 1981 (D.C. Law 3-149; D.C. Official Code § 7-2301 *et seq.*), is amended by adding a new section 5b to read as follows:

“Sec. 5b. Public health emergency response grants.

“(a) Upon the Mayor’s declaration of a public health emergency pursuant to section 5a, and for a period not exceeding 90 days after the end of the public health emergency, the Mayor may, notwithstanding the Grant Administration Act of 2013, effective December 24, 2013 (D.C. Law 20-61; D.C. Official Code § 1-328.11 *et seq.*), and in the Mayor’s sole discretion, issue a grant or loan to a program or organization to assist the District in responding to the public health emergency, including a grant or loan for the purpose of:

“(1) Increasing awareness and participation in disease investigation and contact tracing;

“(2) Purchasing and distributing personal protective equipment;

“(3) Promoting and facilitating social distancing measures;

“(4) Providing public health awareness outreach; or

“(5) Assisting residents with obtaining disease testing, contacting health care providers, and obtaining medical services.

“(b) The Mayor may issue one or more grants to a third-party grant-managing entity for the purpose of issuing or administering grants on behalf of the Mayor in accordance with the requirements of this section.

“(c)(1) The Mayor, and any third-party entity chosen pursuant to subsection (b) of this section, shall maintain a list of all grants and loans awarded pursuant to this section with respect to each public health emergency for which grants or loans are issued. The list shall identify, for each award, the grant or loan recipient, the date of award, the intended use of the award, and the award amount.

“(2) The Mayor shall publish the list online no later than 60 days after the first grant or loan is issued under this section with respect to a specific public health emergency and shall publish an updated list online within 30 days after each additional grant or loan, if any, is issued with respect to the specific public health emergency.

“(d) The Mayor, pursuant to section 105 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505), may issue rules to implement the provisions of this section.”.

Sec. 5. Title 25 of the District of Columbia Official Code is amended as follows:

(a) Section 25-113(a) is amended by adding a new paragraph (6) to read as follows:

“(6)(A) An on-premises retailer’s licensee, class C/R, C/T, D/R, D/T, C/H, D/H, C/N, D/N, C/X, or D/X, including a multipurpose facility or private club, or a manufacturer’s licensee, class A or B, with an on-site sales and consumption permit, or a Convention Center

food and alcohol business may register with the Board at no cost to sell, serve, and permit the consumption of beer, wine, or spirits on new or expanded temporary ground floor or street level outdoor public or private space not listed on its existing license. Board approval shall not be required to register; provided that the licensee:

“(i) Registers with the Board and receives written authorization from ABRA prior to selling, serving, or permitting the consumption of alcoholic beverages on the proposed outdoor public or private space;

“(ii) Registers with DDOT prior to operating on any proposed outdoor public space or receives written approval from the property owner prior to utilizing any proposed outdoor private space; and

“(iii) Agrees to follow all applicable DCRA, DOH, and DDOT laws and regulations and Mayor’s Orders.

“(B) An on-premises retailer’s licensee, class C or D, or a manufacturer’s licensee, class A or B, with an on-site sales and consumption permit or a Convention Center food and alcohol business that has registered with the Board to sell, serve, and permit the consumption of beer, wine, and spirits to seated patrons on outdoor public or private space not listed on its existing license in accordance with subparagraph (A) of this paragraph shall:

“(i) Place tables on the outdoor public or private space serving separate parties at least 6 feet apart from one another;

“(ii) Ensure that all outdoor dining customers are seated and place orders and are served food or alcoholic beverages at tables;

“(iii) Prohibit events and activities that would require patrons to cluster or be in close contact with one another, including dancing, playing darts, video games, or other outdoor games;

“(iv) Prohibit patrons from bringing their own alcoholic beverages;

“(v) Prohibit self-service buffets;

“(vi) Have a menu in use containing a minimum of 3 prepared food items available for purchase by patrons;

“(vii) Require the purchase of one or more prepared food items per table;

“(viii) Ensure that prepared food items offered for sale or served to patrons are prepared on the licensed premises or off-premises at another licensed entity that has been approved to sell and serve food by the Department of Health;

“(ix) Ensure that the proposed outdoor public or private space is located in a commercial or mixed-use zone as defined in the District’s zoning regulations;

“(x) Restrict its operations, excluding carry-out and delivery, and the sale, service, or the consumption of alcoholic beverages outdoors for on-premises consumption to the hours between 8:00 a.m. and midnight, Sunday through Saturday;

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“(xi) Not have more than 6 individuals seated at a table or a joined table during Phase One of Washington D.C.’s reopening, as that term is utilized in Mayor’s Order 2020-067, issued on May 27, 2020;

“(xii) Require patrons to wait outside at least 6 feet apart until they are ready to be seated;

“(xiii) Not provide live music or entertainment, except for background or recorded music played at a conversational level that is not heard in the homes of District residents;

“(xiv) Not serve alcoholic beverages or food to standing patrons;

“(xv) Prohibit standing or seating at an outdoor bar provided tables or counter seats that do not line up to a bar may be used for patron seating as long as there is a minimum of 6 feet between parties;

“(xvi) Prohibit the placement of alcohol advertising, excluding non-contact menus, on outdoor public space;

“(xvii) Provide and require that wait staff wear masks;

“(xviii) Request that patrons wear masks while waiting in line outside of the restaurant or while traveling to use the restroom or until they are seated and eating or drinking;

“(xix) Implement a reservation system by phone, on-line, or on-site and consider keeping customer logs to facilitate contact tracing by the Department of Health;

“(xx) Implement sanitization and disinfection protocols including the provision of single use condiment packages; and

“(xxi) Have its own clearly delineated outdoor space and not share tables and chairs with another business.

“(C) Registration under subparagraph (A) of this paragraph shall be valid until October 25, 2020. The Board may fine, suspend, or revoke an on-premises retailer’s licensee, class C or D, or a manufacturer’s licensee, class A or B, with an on-site sales and consumption permit, and shall revoke the registration to sell, serve, or permit the consumption of beer, wine, or spirits on outdoor public or private space not listed on the license, if the licensee fails to comply with subparagraph (A) or (B) of this paragraph.

“(D)(i) Notwithstanding subparagraph (B) of this paragraph, the Board shall interpret settlement agreement language that restricts sidewalk cafés or summer gardens as applying only to those outdoor spaces that are currently licensed by the Board as sidewalk cafés or summer gardens.

“(ii) The Board shall not interpret settlement-agreement language that restricts or prohibits sidewalk cafés or summer gardens to apply to new or extended outdoor space, the use of which is now permitted under this paragraph.

“(iii) The Board shall not interpret settlement-agreement language that restricts or prohibits the operation of permanent outdoor space to mean prohibiting the temporary operation of sidewalk cafés or summer gardens.

“(iv) The Board shall require all on-premises retailer licensees, class C or D, or manufacturer licensees, class A or B, with an on-site sales and consumption permit, to delineate or mark currently licensed outdoor space from new or extended outdoor space authorized by the District Department of Transportation or the property owner.

“(v) With regard to existing outdoor public or private space, parties to a settlement agreement shall be permitted to waive provisions of settlement agreements that address currently licensed outdoor space for a period not to exceed 180 days.

“(E) For purposes of this paragraph, ground floor or street level sidewalk cafés or summer gardens enclosed by awnings or tents having no more than one side shall be considered outdoor space. Areas enclosed by retractable glass walls and other forms of operable walls shall not be considered outdoor dining. Temporary unlicensed rooftops and summer gardens not located on the ground floor or street level shall not be eligible for registration under subparagraph (A) of this paragraph.

“(F) A manufacturer’s licensee, class A or B, with an on-site sales and consumption permit or a retailer’s licensee class C/T, D/T, C/N, D/N, C/X, or D/X, may partner with a food vendor during its operating hours to satisfy the requirement of subparagraph (B)(vi) of this paragraph; provided, that patrons are seated when ordering and ordered food is delivered by the licensee or the food vendor to the seated patron.”.

(b) Section 25-113a is amended by adding a new subsection (c-1) to read as follows:

“(c-1) Notwithstanding subsection (c) of this section, an on-premises retailer’s licensee, class C or D, or manufacturer’s licensee, class A or B, with an on-site sales and consumption permit may conduct business on ground floor or street level outdoor public or private space, including the sale, service, and consumption alcoholic beverages; provided, that the licensee complies with § 25-113(a)(6).”.

Sec. 6. Section 3a of the District of Columbia Family and Medical Leave Act of 1990, effective June 8, 2020 (D.C. Act 23-328; D.C. Official Code § 32-502.01), is amended to read as follows:

“Sec. 3a. COVID-19 leave.

“(a) During the COVID-19 public health emergency, an employee shall be entitled to leave if the employee is unable to work due to:

“(1) A recommendation from a health care provider that the employee isolate or quarantine, including because the employee or an individual with whom the employee shares a household is at high risk for serious illness from COVID-19;

“(2) A need to care for a family member or an individual with whom the employee shares a household who is under a government or health care provider’s order to quarantine or isolate; or

“(3) A need to care for a child whose school or place of care is closed or whose childcare provider is unavailable to the employee.

“(b)(1) An employee may use no more than 16 weeks of leave pursuant to this section during the COVID-19 public health emergency.

“(2) The right to leave pursuant to this section expires on the date the COVID-19 public health emergency expires.

“(c) An employer may require reasonable certification of the need for COVID-19 leave as follows:

“(1) If the leave is necessitated by the recommendation of a health care provider to the employee, a written, dated statement from a health care provider stating that the employee has such need and the probable duration of the need for leave.

“(2) If the leave is necessitated by the recommendation of a health care provider to an employee’s family member or individual with whom the employee shares a household, a written, dated statement from a health care provider stating that the individual has such need and the probable duration of the condition.

“(3) If the leave is needed because a school, place of care, or childcare provider is unavailable, a statement by the head of the agency, company, or childcare provider stating such closure or unavailability, which may include a printed statement obtained from the institution’s website.

“(d) Notwithstanding section 17, this section shall apply to any employer regardless of the number of persons in the District that the employer employs.

“(e)(1) Except as provided in paragraphs (2) and (3) of this subsection, leave under this section may consist of unpaid leave.

“(2) Any paid leave provided by an employer that the employee elects to use for leave under this section shall count against the 16 workweeks of allowable leave provided in this section.

“(3) If an employer has a program that allows an employee to use the paid leave of another employee under certain conditions and the conditions have been met, the employee may use the paid leave and the leave shall count against the 16 workweeks of leave provided in this section.

“(4) An employee shall not be required, but may elect, to use leave provided under this section before other leave to which the employee is entitled under federal or District law or an employer’s policies, unless otherwise barred by District or federal law.

“(f) The provisions of section 6 shall apply to an employee who takes leave pursuant to this section.

“(g) An employer who willfully violates subsections (a) through (e) of this section shall be assessed a civil penalty of \$1,000 for each offense.

“(h) The rights provided to an employee under this section may not be diminished by any collective bargaining agreement or any employment benefit program or plan; except, that this section shall not supersede any clause on family or medical leave in a collective bargaining agreement in force on the applicability date of this section for the time that the collective bargaining agreement is in effect.

“(i) For the purposes of this section, the term “COVID-19 public health emergency” means the emergencies declared in the Declaration of Public Emergency (Mayor’s Order 2020-045) together with the Declaration of Public Health Emergency (Mayor’s Order 2020-046), declared on March 11, 2020, including any extension of those declared emergencies.”.

Sec. 7. Living will declaration.

The Natural Death Act of 1981, effective February 25, 1982 (D.C. Law 4-69; D.C. Official Code § 7-621 *et seq.*), is amended as follows:

(a) Section 2 (D.C. Official Code § 7–621) is amended as follows:

(1) A new paragraph (2B) is added to read as follows:

“(2B) “Electronic presence” means when one or more witnesses are in a different physical location than the declarant but can observe and communicate with the declarant and one another by using technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities, to the same extent as if the witnesses and declarant were physically present with one another.

(2) A new paragraph (5A) is added to read as follows:

“(5A) “Sign” means with present intent to authenticate or adopt a record to:

“(A) Execute or adopt a tangible symbol; or

“(B) Affix to or associate with the record an electronic signature.”.

(b) Section 3 (D.C. Official Code § 7–622) is amended as follows:

(1) Subsection (a)(4) is amended by striking the phrase “Signed in the presence” and inserting the phrase “Signed in the presence or, during a period of time for which the Mayor has declared a public health emergency pursuant to section 5a of the District of Columbia Public Emergency Act of 1980, effective October 17, 2002 (D.C. Law 14-194; D.C. Official Code § 7-2304.01), the electronic presence” in its place.

(2) A new subsection (d) is added to read as follows:

“(d) During a period of time for which the Mayor has declared a public health emergency pursuant to section 5a of the District of Columbia Public Emergency Act of 1980, effective October 17, 2002 (D.C. Law 14-194; D.C. Official Code § 7-2304.01), any signature required by this act may be an electronic signature.”.

(c) Section 5(a)(3) (D.C. Official Code § 7–624(a)(3)) is amended by striking the phrase “in the presence of a witness” and inserting the phrase “in the presence or, during a period of

time for which the Mayor has declared a public health emergency pursuant to section 5a of the District of Columbia Public Emergency Act of 1980, effective October 17, 2002 (D.C. Law 14-194; D.C. Official Code § 7-2304.01), electronic presence of a witness” in its place.

Sec. 8. COVID-19 Emergency credit alert.

Section 28-3871 of the District of Columbia Official Code is amended as follows:

(a) A new subsection (b-1) is added to read as follows:

“(b-1) No user of a credit report shall consider adverse information in a report that was the result of an action or inaction by a consumer that occurred during, and was directly or indirectly the result of, a public health emergency declared pursuant to § 7-2304.01 if the credit report includes a personal statement pursuant to subsection (a) of this section.”

(b) A new subsection (h) is added to read as follows:

“(h) This section shall not be enforced until July 1, 2020.

Sec. 9. Excluded workers contract approval.

Pursuant to section 451(c) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51(c)), and section 202 of the District of Columbia Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.02), the Council approves Contract No. SO-20-002-0001986 with the Greater Washington Community Foundation for critically needed financial assistance to workers in the District of Columbia who have been excluded from federal stimulus efforts and are experiencing financial hardship due to the COVID-19 pandemic, for a contract term of the date of execution through September 30, 2020, in the not-to-exceed amount of \$5.15 million.

Sec. 10. Black lives matter plaza designation.

Pursuant to sections 401 and 403a of the Street and Alley Closing and Acquisition Procedures Act of 1982, effective March 10, 1983 (D.C. Law 4-201; D.C. Official Code §§ 9-204.01 and 9-204.03a) (“Act”), and notwithstanding section 423 of the Act (D.C. Official Code § 9-204.23), the Council symbolically designates 16th Street, N.W., between H Street, N.W., and K Street N.W., in Ward 2, as Black Lives Matter Plaza.

Sec. 11. Applicability.

This act shall apply as of June 9, 2020.

Sec. 12. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Budget Director as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 13. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)).

Chairman
Council of the District of Columbia

Mayor
District of Columbia