

NOTICE OF MEETING OF THE MCLENNAN COUNTY COMMISSIONERS COURT

NOTICE IS HEREBY GIVEN that the McLennan County Commissioners Court will conduct a special meeting on **Tuesday, April 28, 2020 at 9:00 o'clock a.m.** and act on the items on the following agenda

No physical meeting open to the public will be held. A temporary suspension of portions of the open meetings act to allow telephone or video conference public meetings has been granted by Governor Greg Abbott pursuant to Executive Order No. GA-08. These actions are being taken to mitigate the spread of Covid-19 by avoiding meetings that bring people into a group setting and in accordance with Section 418.016 of the Texas Government Code.

The opportunity to view and hear the meeting as well as the process if one wishes to address the Commissioners Court is available at: <https://tx-mclennancounty.civicplus.com/1121/Commissioners-Court-Online-Meeting-Infor>

AGENDA

A. Proof of Posting of Notice

B. Moment of Silence / Invocation and Pledge

C. Public Comments

D. Consideration of and/or Action on the Following Items:

1. Discussion and/or Action on Addendum to the Order Declaring a Local State of Disaster and Public Health Emergency regarding Covid-19 and Shelter in Place Order to Reflect Changes Enacted by the Governor's Executive Orders
2. Consideration and Action on Economic Development Program under Section 381.004 of the Texas Local Government Code being more Specifically the Small Business Emergency Recovery Fund Program, including Approving the Use of \$207,500 of Waco McLennan County Economic Development Corporation Funds for the Program Representing the County's Share; said Program to Provide for Grants not Exceeding \$5,000 to Small Businesses Adversely Affected by the COVID-19 Pandemic which also meet other Eligibility Requirements
3. Consideration and Action on Interlocal Cooperation Agreement between the County and the City of Waco to Create the Small Business Emergency Recovery Fund, and Providing for the Administration of the County's Small Business Emergency Recovery Fund Program by the City of Waco
4. Discussion and/or Action on Matters Regarding Covid-19 including but not limited to Staffing, Emergency Appropriations, Precautions and Plans, Restrictions to Prevent the Spread of COVID-19, Personnel Compensation and Benefit Matters, Health and Safety Procurements, Technology Procurements for Criminal Justice System to Allow for Operations to Continue Safely, Technology Procurements to Allow for Remote Meeting Participation, Reports on Progression of COVID-19, and related matters

E. Executive/Closed Session

1. ***Section 551.071 of the Government Code (V.C.T.A.):*** An executive/closed session will be held so that the Commissioners Court can seek and receive legal advice from its attorneys regarding pending or threatened litigation, settlement offers, claims, or other matters for which the attorneys' duties to their client under the Texas State Bar Disciplinary Rules of Professional Conduct Conflicts with the Open Meetings Act (Ch.551, Gov. Code) if necessary for a subject contained on this agenda, and advice dealing with pending litigation, administrative claims or notices, and legal effects, liabilities, and legal options including but not limited to claims arising from Opioid Litigation, Civil Rights Cases, Tort Claims, or Other Pending or Threatening Litigation
2. ***Section 551.072 of the Government Code (V.C.T.A.):*** Regarding Real Property, including, but not limited to: (1) Right-Of-Way Acquisitions re: Expansion / Repair Project/s; and/or (2) Real Estate Purchase / Sale / Transfer / Trade / Offers to Purchase, Acquisition / Value / Donations of Real Property / Leases relative to Real Property, including, but not limited to, Potential Properties for Use by County / Public Facilities & Valuation of Current Property for Trade or Sale
3. ***Section 551.074 of the Government Code (V.C.T.A.):*** Regarding Personnel Matters including but not limited to: Personnel Review / Evaluation of Commissioners Court Appointed Department Heads; Employment, Appointment, Termination, Hearing Grievances Against Employees or Public Officials; Incentive Pay; Deliberations regarding Assigning Interim Director for Health Services Department; Personnel Matters Identified in any Open Session Item if Necessary, and related matters
4. ***Section 551.076 of the Government Code (V.C.T.A.):*** Deliberations regarding Security Devices or Security Audits
5. ***Section 551.087 of the Government Code (V.C.T.A.):*** Regarding Economic Development Negotiations including, but not limited to (1) Discussion of Commercial / Financial Information Received from a Business Prospect/s; (2) Pending Negotiations / Potential Prospects and Projects; and/or (3) Discussion re: Offers of Financial or Other Incentives to Business Prospect/s

F. Adjourn

Signed this 24th day of April, 2020

Scott M. Felton – original signed
SCOTT M. FELTON, County Judge

STATE OF TEXAS *
COUNTY OF McLENNAN *

I, J.A. "ANDY" HARWELL, County Clerk, and the Ex-Officio Clerk to the Commissioners Court, hereby certify that the above and foregoing is a true and correct copy of a NOTICE OF MEETING posted by me at the Courthouse door in Waco, McLennan County, Texas, where notices are customarily posted this 24th day of April, 2020.

Witness my hand and seal of office at Waco, McLennan County, Texas the 24th day of April, 2020 at 3:00 p.m.

(SEAL) J. A. "ANDY" HARWELL, County Clerk
McLennan County, Texas

BY: Myrce'tez Gowan Perkins (Deputy)

Notice: Persons with disabilities in need of auxiliary aide or services may contact the County Judge's Office, (254) 757-5049, prior to the meeting date

ORDER ADOPTING ECONOMIC DEVELOPMENT PROGRAM

WHEREAS, the improvement and diversification of the economy in McLennan County is a goal that should be pursued for both the current and future welfare of the citizens of McLennan County; and

WHEREAS, changes in the statutory laws applying to County economic development powers, and past experience in economic development projects make it advisable and necessary to update and expand the County's economic development tools; and

WHEREAS, economic development and diversification, the elimination of unemployment or underemployment, and the development of transportation and commerce in the State of Texas are public purposes pursuant to Article III, §52-a of the Texas Constitution; and

WHEREAS, the Commissioners Court has express and implied authority to establish a program to stimulate business and commercial activity in the County, and to create and retain jobs in the County; and

WHEREAS, Article III, §52-a of the Texas Constitution and §381.004 of the Texas Local Government Code authorizes the Commissioners Court to establish a program for economic development, and to stimulate, encourage and develop business location and commercial activity in the County; and

WHEREAS, the Commissioners Court finds it advisable and in the best interest of the citizens of the County to adopt a program to incorporate the full extent of the economic development powers of the County; and

WHEREAS, the COVID-19 pandemic and the resulting Shelter in Place Orders have been devastating to many small businesses and their employees; and

WHEREAS, without assistance many small businesses will be forced to close or will be unable to put employees back to work once restrictions on their particular business-type are lifted; and

WHEREAS, a Small Business Emergency Recovery Fund Program is proposed that will allow the County to participate with the City of Waco in authorizing the funding of grants through the Waco-McLennan County Economic Development Corporation ("WMCEDC") to assist small businesses in remaining in operation and retaining jobs.

NOW, THEREFORE, IT IS ORDERED BY THE MCLENNAN COUNTY COMMISSIONERS COURT THAT THE FOLLOWING PROGRAM IS HEREBY ADOPTED AND APPROVED:

MCLENNAN COUNTY ECONOMIC DEVELOPMENT PROGRAM---SMALL BUSINESS EMERGENCY RECOVERY FUND PROGRAM

1. GENERAL PROGRAM STATEMENT

1.1 The following economic development Program is for the general purpose of developing and diversifying the economy and developing transportation and commerce in the state of Texas, and, more specifically, McLennan County, Texas, and for the purpose of eliminating unemployment and underemployment. The specific purpose of the Small Business Emergency Recovery Fund Program (hereinafter "Program") is to help small businesses stay in business for purposes of the local economy that would otherwise potentially close without assistance from this Program, and in circumstances where jobs would otherwise be lost without assistance from the Program.

1.2 This is a Program is imperative to the health of the local economy. The Program will be administered by the City of Waco pursuant to an Interlocal Agreement between the City of Waco and the County.

1.3 Under no circumstance shall any incentive or benefit be provided under this Program without specific contractual protections and guarantees, and the continuing supervision of the Commissioners Court or its designee to assure: (a) the public purpose of economic development, development of transportation and/or commerce, economic diversification and the elimination of unemployment and underemployment is to be served; (b) that the public purpose is accomplished; (c) that there is sufficient protection and verifiable accountability of the handling of public money; and (d) that the WMCEDC receives adequate consideration in the form of benefits to the WMCEDC and the County's citizens.

2. ECONOMIC DEVELOPMENT POWERS

2.1 Section 381.004 of the *Texas Local Government Code* authorizes the County to:

- a) use County employees or funds,
- b) make loans or grants of public money, and
- c) provide personnel and services of the County

to support the Program and carry out its purposes. See §381.004(c) (3) & (h), *Texas Local Government Code*. The County may also accept contributions, gifts, or other resources to develop and administer the Program. *Id.* at (c) (4).

2.2 The Small Business Emergency Recovery Fund Program fits within the authority of the County under §381.004 of the *Texas Local Government Code*.

3. PROGRAM DESCRIPTION

3.1 **Funding.** Funding for this Program consists of:

- 1) \$415,000.00 from the Waco McLennan County Economic Development Corporation (funded ½ by McLennan County and ½ by the City of Waco); and

- 2) \$415,415.00 from Community Development Block Grants (“CDBG”), received by the City of Waco.

In the future, it is possible that additional funds may be provided to support the Program. Nothing herein shall imply that the City is under any obligation to provide any economic development. The Program has been developed and designed to comply with Chapter 380 of the Texas Local Government Code and with federal law. This is a temporary Program that unless extended by the City Council, shall expire on August 1, 2020.

3.2 Definitions

"Agreement" means the contractual agreement between City and the grantee(s) for the purpose of a grant(s).

“Eligible Industry” means a retail establishment, restaurant, coffee shop, art gallery, automobile maintenance or detailing business, car wash, personal care businesses such as a barber shop, nail salon, spa, hair salon, health/wellness business, or any business defined as an “Essential Business” pursuant to City of Waco Resolution No. 2020-247.

“Funding Advisory Committee” is the committee that will make recommendations on the grant of the Program funds and shall be comprised of the following:

1. John Bible, Centex African American Chamber of Commerce, Inc. – McLennan County;
2. Dustin Chapman, McLennan County;
3. Kris Collins, Greater Waco Chamber of Commerce;
4. Deidra Emerson, City of Waco;
5. Jon Passavant, Waco Entrepreneurial Ecosystem Collaborative, Inc. d/b/a Start Up Waco;
6. Alfred Solano, Centex Hispanic Chamber of Commerce; and
7. Galen Price, City of Waco (non-voting, staff liaison).

The Committee’s recommendation is to the City Manager, who shall have the authority to make all decisions on grants under this Program. The Committee’s recommendations are advisory and do not bind the City Manager.

“Funding Priority” means length of time in operation in McLennan County prior to February 15, 2020; lack of receipt of emergency funding from the Small Business Administration or through the Economic Injury Disaster Loan Emergency Advance Act; Small Business is a Historically Underutilized Business; location in a CDBG area; or operation out of a store front that is located in McLennan County.

“Full-time” means a job that requires a minimum of forty (40) hours of work per week; or eighty (80) hours of work per two weeks, and is hired to work full-time year-round (2080 hours per year).

“Historically Underutilized Business” is a business in which at least 51% of the business is owned by Asian Pacific American, Black American, Hispanic American, Native American, American woman and /or a Service Disabled Veteran with a Service related disability of 20% or greater, who resides in Texas and actively participates in the control, operations and management of the entity's affairs.

“HUD” means the U.S. Department of Housing and Urban Development.

“Low- to moderate-income” means the income requirements established by HUD for CDBG funding.

“Qualifying Expenses” means expenses for the business operations in McLennan County which are limited to the following;

1. Rent, triple net lease payments, mortgage interest payments, all made for properties in which the Small Business is located;
2. Payroll expenses, including salary, commission, wage, cash tip or equivalent, insurance and benefits, or paid leave for employees;
3. Payment of state or local tax assessed on employee compensation;
4. Utilities such as phone, internet, water, solid waste disposal;
5. Purchase of supplies to enable remote working or capacity to serve customers in new ways (curbside pickup, delivery, shipping, technology for remote access, etc.); or
6. Purchase of supplies, services, or training related to COVID-19 for employee or customer protection.

A qualifying expense must be documented. For those receiving CDBG funding, such funding may only be used for business operations in Waco, Texas. However, this is a Countywide Program and businesses from outside the City of Waco shall be given fair consideration for grants from the WMCEDC portion of the funding of the Program.

“Small Business” means a business with ten or less Full-Time employees or Full Time Equivalents (“FTEs”), including the owner of the business, as of February 15, 2020.

3.3. Eligibility Criteria

A Small Business is eligible for the Program if:

1. The Small Business is:
 - a. Located in McLennan County;
 - b. Operational in McLennan County on or before February 15, 2020;
 - c. Current on local, state, and federal taxes;
 - d. Committed to remain open and operational through July 17, 2020;
 - e. Committed to maintaining the workforce that the Small Business had as of the date of application through July 17, 2020;
 - f. In an Eligible Industry; and
2. The Small Business can demonstrate that it has suffered a loss in revenues due to COVID-19 that has jeopardized its ability to continue to operate or ability to make payroll; and
3. The Small Business has current liability insurance.

To receive CDBG funding, the Small Business must also:

1. Be located in Waco, Texas; and

2. Be owned by a person of low- to moderate-income or maintain 51% of its employees as low- to moderate-income or any other HUD criteria.

A Small Business is not eligible for the Program if:

1. It is a:
 - a. Franchisee of a national franchise;
 - b. Part of a national chain;
 - c. A real estate holding company;
 - d. Business that is located in a residential home;
 - e. Non-profit entity;
 - f. Governmental entity;
 - g. “Side Gig” Business, like a transportation service;
 - h. Sexually oriented business as defined in Chapter 20 of the Code of Ordinances, City of Waco, Texas;
 - i. Credit Access Business, Indoor Amusement Facility, Pawnbroker, Secondhand Goods Dealer, or Nightclub as defined in Chapter 13 of Code of Ordinances, City of Waco, Texas;
 - j. Bail Bond business;
 - k. A business whose primary retail sales are of cannabis or cigarettes, cigars, or other smoking-related items;
2. It had questionable consumer practices during the COVID-19 pandemic, such as price gouging;
3. It, its owners, or partners currently are undergoing bankruptcy proceedings; or
4. It or one of its employees has received a citation or is a defendant in a civil lawsuit with the City for operating the Small Business in violation of the emergency declarations of the Governor, McLennan County, or the City of Waco during the COVID-19 pandemic.

3.4. **Possible Grant**

A Small Business that is eligible for the Program may receive a grant amount not to exceed \$5,000.00 to pay for Qualifying Expenses that the Small Business incurred between March 17, 2020 and April 30, 2020.

Upon approval of the grant by the Funding Committee, the Small Business will receive the grant within 10 business days.

3.5. **Procedural Process**

1. The City will work with the Greater Waco Chamber of Commerce, the Centex African American Chamber of Commerce, Centex Hispanic Chamber of Commerce, and Startup Waco to inform Small Businesses of the Program. In addition, these entities will work with Small Businesses on completing the application and may recommend a Small Business for approval.

2. Applicants for a grant must submit a completed application and Agreement to the City of Waco Housing Department. No filing fee will be required for the Program. Incomplete applications will not be considered. All documents received by the City of Waco (physically or electronically) may be subject to public disclosure under certain circumstances.

3. City of Waco staff will ensure the completeness of the application, the eligibility of the Small Business, and the compliance, when applicable, to HUD rules. Completed applications of eligible Small Businesses will be forwarded to the Funding Advisory Committee.

4. The Funding Advisory Committee will evaluate an application. The Funding Advisory Committee shall consider the Funding Priorities when making its funding recommendations to the City Manager. The City Manager is the final decision maker on whether to enter into a Program Project Agreement with the Small Business. Because of the urgent need for these grants, and to allow for prompt response to the emergency, a Program Project Agreement shall not require approval of the Commissioners Court, the City Council, or the WMCEDC Board.

3.6. **Compliance Verification**

For the term of the Agreement, City staff will ensure compliance with the term of the Agreement, including review of quarterly reports by the Small Business. City staff also may make an inspection of the Small Business and its records. The City will hold and process any information that is received or viewed in accordance with all applicable laws and regulations.

3.7. **Recapture**

For any violation of the Agreement, the City reserves the right to cancel and/or modify the Agreement and/or require repayment of all or some of the grant(s) received under the Agreement. Terms of the Agreement which may result in recapture include the following:

1. Failure to utilize the grant on Qualifying Expenses;
2. Failure to remain open and operational through July 17, 2020;
3. Failure to maintain the workforce that the Small Business had as of the date of application through July 17, 2020; and
4. Failure to submit quarterly reports on a form to be provided by the City, including an employee roster, to the City for a period of up to 9 months after the grant.

Repayment of grant funds shall be made by the Small Business within sixty (60) days of written demand by the City.

4. THIRD PARTY ADMINISTRATION

As authorized by Section 381.004 (c) of the *Texas Local Government Code*, the County is contracting with the City of Waco to administer and carry-out this Program, including the determinations on grant applications.

5. DISCLAIMER

No Small Business shall have a right or property interest in receiving a grant. This Program is temporary. The Program expires August 1, 2020. Furthermore, when the grant funding is exhausted the Program ends, even if the expiration date has not been reached.

6. SEVERABILITY CLAUSE. If any section, subsection, sentence, clause or phrase of this Order is for any reason held to be unlawful, such decision shall not affect the validity of the remaining portions of this Order, and all the remainder of this Order not so declared to be invalid shall continue to be in full force and effect. The Commissioners Court of McLennan County, Texas, hereby declares that it would have entered this Order and each section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.

PASSED AND SIGNED THIS _____ DAY OF _____, 2020.

MCLENNAN COUNTY, TEXAS

By: _____
Scott M. Felton, County Judge

ATTEST:
J.A. "Andy" Harwell, County Clerk
McLennan County, Texas

By: Deputy County Clerk

INTERLOCAL AGREEMENT FOR ECONOMIC DEVELOPMENT

This Interlocal Cooperation Agreement (hereinafter “Agreement”) is entered into by and between McLennan County, Texas (hereinafter “County”) and the City of Waco, Texas (hereinafter “City”) in accordance with Chapter 791 of the *Texas Government Code*.

RECITALS

WHEREAS, in December 2019, a novel coronavirus, now designated Coronavirus disease 2019 (COVID-19), was detected in Wuhan City, Hubei Province, China; and

WHEREAS, on March 11, 2020, the World Health Organization declared COVID-19 as a pandemic and urged that all countries take urgent and aggressive action; and

WHEREAS, on March 13, 2020, the President of the United States declared a national emergency regarding COVID-19; and

WHEREAS, on March 13, 2020, Governor Greg Abbott declared a state of disaster due to COVID-19; and

WHEREAS, on March 17, 2020, McLennan County Judge Scott Felton and Mayor Kyle Deaver issued declarations of local disaster and public health emergency after determining that extraordinary and immediate measures had to be taken to respond quickly to prevent and slow down community spread of COVID-19; and

WHEREAS, subsequent orders of the Governor, the County Judge, and the Mayor required persons to stay at home, except for essential activities, essential government functions, or to operate essential businesses, all defined terms under the orders. Only essential businesses could remain operational, and even for some of essential businesses, the business operations were reduced either to comply with the orders or as a result of reduced, customer demand; and

WHEREAS, while all of these actions were necessary and essential to slowing community spread of COVID-19, and thus, to protect the health, safety, and welfare of Waco and McLennan County, there has been an impact to our economy; and

WHEREAS, business retention and survival of small businesses are key components of economic development; and

WHEREAS, the McLennan County Commissioners Court and the Waco City Council desire to provide economic development incentives and to establish various programs to ensure that McLennan County remains competitive in the marketplace, encourage the increase and retention of quality jobs, and encourage the maintenance and creation of revenue streams from a diverse business community, including small businesses; and

WHEREAS, in our distressed neighborhoods, the continued operation of these small businesses is the key to services to the residents and employment of the residents of those communities; and

WHEREAS, the County and the City have joined forces to commit funding to a Small Business Emergency Recovery Fund (“Program”); and

WHEREAS, the Waco McLennan County Economic Development Corporation (“WMCEDC”) is recommending that \$415,000.00 in WMCEDC funds (“WMCEDC Funds”) be utilized in the Program; and

WHEREAS, one-half of all WMCEDC funds are allocated by the County and one-half are allocated by the City; and

WHEREAS, an additional \$415,000.00 of Community Development Block Grants (“CDBG”), received by the City of Waco, will be used in the Program; and

WHEREAS, the City has authority pursuant to Chapter 380 of the Texas Local Government Code to utilize WMCEDC Funds for the Program; and

WHEREAS, the County has authority pursuant to Section 381.004 of the Texas Local Government Code to utilize WMCEDC Funds for the Program; and

WHEREAS, the Interlocal Cooperation Act provides for local government entities to perform services for one another where such results in the more efficient and/or effective operation of government functions or protection of the public health, safety and welfare; and

WHEREAS, the County and the City desire to enter into this Agreement for the funding allocation and administration of the Program,

NOW THEREFORE, the County and the City agree as follows:

1. The parties incorporate the foregoing recitals and adopt them as findings of fact.
2. The County agrees to fund the Small Business Emergency Recovery Fund (“Program”) with \$207,500.00 of its WMCEDC funds.
3. The City agrees to fund the Program with \$207,500.00 of its WMCEDC funds and with \$415,000.00 from CDBG funds.
4. In addition, the City will utilize City employees for the administration of the Program at no cost to the Program. The City will administer the Program in compliance with the City of Waco Guidelines and Policy Statement attached as Exhibit A, and the Order Adopting Economic Development Program attached as Exhibit B. Exhibits A and B are attached hereto and incorporated herein by reference.
5. This Agreement is not a mutual aid agreement, and an employee or officer of the City does not become an employee or officer of the County by virtue of the Agreement.

6. This Agreement is solely between the parties hereto and no third party is an intended beneficiary hereof.

7. No waiver of either party's governmental immunity is intended by this Agreement.

8. This Agreement is effective as of the date of full execution shown by the date of the last party to sign.

McLENNAN COUNTY, TEXAS

ATTEST:

By _____
SCOTT M. FELTON
County Judge

County Clerk

Date: _____

CITY OF WACO, TEXAS

ATTEST:

WILEY STEM III
City Manager

City Secretary

Date: _____