

Introduced by: Ms. Hartley-Nagle
Date of Introduction: July 28, 2020

ORDINANCE NO. 20-084

AMEND THE GRANTS BUDGET: APPROPRIATE \$5,000,000 FROM THE UNITED STATES DEPARTMENT OF TREASURY TO THE CORONAVIRUS RELIEF FUND GRANT FOR HAZARD PAY FOR ELIGIBLE INDIVIDUALS EMPLOYED BY GOVERNMENTAL ENTITIES CONSISTENT WITH GUIDANCE OF THE U.S. DEPARTMENT OF TREASURY AND ANY OTHER APPLICABLE LAW RELATED THERETO, TO BE ADMINISTERED BY THE OFFICE OF FINANCE

WHEREAS, the Centers for Disease Control and Prevention (the “CDC”) has determined that a novel coronavirus SARS-CoV-2, which causes a coronavirus disease named COVID-19, is a serious threat to public health, and has advised the public to minimize interactions with others and employ social distancing practices to help mitigate community spread of the COVID-19 virus; and

WHEREAS, on March 12, 2020, Governor Carney declared a state of emergency (the “Emergency Declaration”), which subsequently has been extended four times, most recently on July 7, 2020 until further notice, due to the public health threat of COVID-19; and

WHEREAS, the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”) was signed into law on March 27, 2020; the CARES Act established the Coronavirus Relief Fund (“CRF”), which provides monies to state governments and units of local government with populations of 500,000 or more to cover costs that:

1. are necessary expenditures incurred due to the COVID-19 public health emergency;
2. were not accounted for in the government’s budget most recently approved as of March 27, 2020; and
3. were incurred during the period March 1, 2020 through December 30, 2020; and

WHEREAS, the CARES Act requires the United States Department of Treasury (the “Treasury”) to regulate, administer, and disburse CRF monies; and

WHEREAS, New Castle County government is an eligible recipient of CRF monies because its population exceeds 500,000, and New Castle County government received \$322,766,668.80 of CRF grant monies from the Treasury; and

WHEREAS, recent appropriation and administration of a portion of the CRF grant monies of approximately \$85 Million was necessary to respond to the ongoing public health emergency created by the COVID-19 pandemic, but expressly did not include funding for “hazard pay;” and

WHEREAS, appropriation and administration of an additional portion of the CRF grant monies of approximately \$5 Million is necessary to respond to the ongoing public health emergency created by the COVID-19 pandemic particularly in relation to individuals who are working in hazardous duty conditions on behalf of governmental entities; and

WHEREAS, in the *Coronavirus Relief Fund Guidance for State, Territorial, Local, and Tribal Governments, updated June 30, 2020*, the Treasury advised that, although a workforce bonus is an example of an ineligible expenditure, “hazard pay” is an example of an eligible expenditure of payment from the CRF; and

WHEREAS, in the *Coronavirus Relief Fund Frequently Asked Questions, Updated as of June 24, 2020*, the Treasury defined “hazard pay” to mean “additional pay for performing hazardous duty or work involving physical hardship, in each case that is related to COVID-19;” and

WHEREAS, Treasury Guidance further provides that funding may be used to meet payroll expenses for public safety, public health, health care, human services, and similar employees whose services are substantially dedicated to mitigating or responding to the COVID-19 public health emergency; pursuant to Treasury Guidance, “hazard pay” is a form of payroll expense and is subject to this limitation, so Fund payments may only be used to cover hazard pay for such individuals; and

WHEREAS, the Delaware Attorney General (in the *Attorney General’s Guidance Memorandum No. 2 Regarding the Eligibility of Government Expenditures for Funding or Reimbursement from the Coronavirus Relief Fund as established by the CARES Act*, dated May 7, 2020) (hereafter, with any amendments thereto, the “AG’s Guidance”) opined that government entities are likely permitted to access CRF funding “hazard duty” pay so long as these expenses are caused by the government entity’s response to the Coronavirus pandemic and not accounted for in the government entity’s last budget act; and

WHEREAS, the AG’s Guidance observes that most government entities have previously defined the term “hazardous duty,” either by statute, ordinance, regulation, rule, or collective bargaining agreement, and that a deviation from any existing definition of “hazardous duty” for the purpose of evading CRF ineligibility would result in significant liability and certain recoupment efforts by the Treasury; and

WHEREAS, the AG’s Guidance notes that merely calling a bonus “hazardous duty” pay does not make it an eligible expenditure; and

WHEREAS, the Attorney General observed that hazardous duty pay must be tied to a *quantifiable* amount of actual work already performed, as opposed to a stipend provided to a class of employees based solely on their status and without respect to a quantifiable measure of work already performed; and

WHEREAS, New Castle County believes it is appropriate and just to compensate all eligible individuals employed by governmental entities who, in strict conformity with Guidance from the Treasury and any other applicable law, satisfy the legal requirements for “hazard pay;” and

WHEREAS, County Council finds that this Ordinance is necessary to meet the public emergency created by the COVID-19 pandemic which has severely affected the life, health, safety, property, and the public peace of New Castle County’s Citizens.

NOW, THEREFORE, THE COUNTY OF NEW CASTLE HEREBY ORDAINS:

Section 1. Subject to the following conditions, New Castle County Council hereby appropriates \$5,000,000.00 of the \$322,766,668.80 originally received from the Treasury, for the purpose of facilitating the use of such funds to respond to the public health emergency created by COVID-19 by providing for “hazard pay” for eligible individuals employed by governmental entities who satisfy the legal requirements established by Guidance issued by the Treasury and any other applicable law.

Section 2. The Grants Budget as adopted by Ordinance No. 75-173 is hereby amended by adding the material on the attached Exhibit “A,” which shall be considered underscored in its entirety, attached hereto and incorporated herein by reference, and made a part thereof.

Section 3. The Office of Finance, in consultation with the New Castle County Auditor and the Office of Law shall review all potential expenditures related to hazard pay prior to such expenditures being made to ensure strict compliance with the restrictions set forth in the Guidance of the United States Treasury, including but not limited to the *Coronavirus Relief Fund Guidance for State, Territorial, Local, and Tribal Governments, June 30, 2020* and the *Coronavirus Relief Fund Frequently Asked Questions Updated as of June 24, 2020*, including prior and subsequently issued guidance (all of which hereafter is collectively defined as “*Treasury Guidance*”) and any other applicable law.

Section 4. Subject to the above, the Office of Finance is hereby authorized to administer and expend \$5,000,000 of the Coronavirus Relief Fund Grant monies as more fully identified on Exhibit “A” for the purpose of “hazard pay,” as defined in and authorized by the *Treasury Guidance* and any other applicable law, but not for bonuses, so long as such expenditures: 1. are 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 for New Castle County; and 3. were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020.

Section 5. This Ordinance shall become effective immediately upon its adoption by County Council and approval by the County Executive, or as otherwise provided by 9 *Del. C.* § 1156.

Adopted by County Council of
New Castle County on:

President of County Council
of New Castle County

Approved on:

County Executive
of New Castle County

SYNOPSIS: This Ordinance, if approved, will appropriate an additional \$5,000,000 of the \$322,766,668.80 originally received from the U.S. Department of Treasury to the Coronavirus Relief Fund grant for purposes of “hazard pay,” which will be administered by the Office of Finance, in consultation with the New Castle County Auditor and the Office of Law to ensure strict compliance of such expenditures with the restrictions established in the several Guidance issued by the United States Treasury, including but not limited to the *Coronavirus Relief Fund Guidance for State, Territorial, Local, and Tribal Governments, June 30, 2020* and the *Coronavirus Relief Fund Frequently Asked Questions Updated as of June 24, 2020* (and any prior and subsequently issued Guidance), and any other applicable law.

To avoid any doubt, the *Treasury Guidance* defines “hazard pay” as “...additional pay for performing hazardous duty or work involving physical hardship, in each case that is related to COVID-19.” New Castle County government is obligated to expend CRF funds in conformity with and subject to the *Treasury Guidance* and any other applicable law.

Subject to the above restrictions, New Castle County government is authorized to expend Coronavirus Relief Fund grant monies for “hazard pay,” but not for bonuses, to cover costs related to employees of governmental entities that:

1. are necessary expenditures incurred due to the public health emergency with respect to COVID-19;
2. were not accounted for in the budget most recently approved as of March 27, 2020 for New Castle County; and
3. were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020.

Subject to the restrictions in the CARES Act, as explained in the *Treasury Guidance*, New Castle County government is permitted to use the grant monies for payroll expenses for employees of governmental entities whose services are substantially dedicated to mitigating or responding to the COVID-19 public health emergency and who satisfy all other requirements set forth in the *Treasury Guidance* and any other applicable law.

FISCAL NOTE: This Ordinance, if approved, will amend the Grants Budget by appropriating \$5,000,000 from the U.S. Treasury to the Coronavirus Relief Fund grant. The fiscal impact of this Ordinance, if approved, will be an increase in the authorized spending authority of the Grants Budget of \$5,000,000 to be used exclusively in funding “hazard pay.” This increase will affect FY2021 since the targeted program completion date is December 30, 2020. There will be no fiscal impact beyond FY2021, however, as a result of this grant award. There will be no fiscal impact on the Operating Budget as a result of approving this grant.

DEPARTMENT:

EXHIBIT "A"

PROGRAM TITLE: Coronavirus Relief Fund

Ordinance No. 20-084

Federal: \$5,000,000.00

Object Level	Federal		County		State		Total	
	<i>Initial</i>	<i>Revised</i>	<i>Initial</i>	<i>Revised</i>	<i>Initial</i>	<i>Revised</i>	<i>Initial</i>	<i>Revised</i>
11-Salaries and Wages	\$2,000,000.00						\$2,000,000.00	
15-Employee Benefits								
22-Training/Civic Affairs								
23-Comm/Utilities								
24-Materials/Supplies								
25-Contractual Services								
26-Equip Replacement								
27-Grants/Fixed Charges	\$3,000,000.00						\$3,000,000.00	
28-Land and Structures								
29-Contingencies								
Total:	\$5,000,000.00						\$5,000,000.00	

Supplemental Information

**Estimated Program
Initiation: TBD**

**Estimated Program Completion:
12/30/2020**

**Local Match: N/A
Code #:**

Found in:

Ordinance Passed: TBD

Date Revised:

DEPARTMENT:

EXHIBIT "A"

PROGRAM TITLE: Coronavirus Relief Fund

Ordinance No. 20-084

Federal: \$5,000,000.00

PROGRAM EXPENDITURES – Eligible expenditures, as determined pursuant to and subject to *Treasury Guidance* and any other applicable law, as follows:

11 - Salaries and Wages

“Hazard pay” for eligible individuals employed by governmental entities, as determined consistent with *Treasury Guidance* and any other applicable law.

15 - Benefits

Related benefit expenses for Salaries and Wages

27 - Grants

“Hazard pay” for eligible individuals employed by governmental entities, as determined consistent with *Treasury Guidance* and any other applicable law.

PROGRAM DESCRIPTION:

Funding will be used by the New Castle County Department of Administration to fund “hazard pay” expenditures that 1. are necessary expenditures incurred due to the COVID-19 public health emergency; 2. were not accounted for in the government's budget most recently approved as of March 27, 2020; and 3. were incurred between March 1, 2020 and December 30, 2020.