

CITY OF GAITHERSBURG, MARYLAND  
PUBLIC NOTICE OF EXECUTIVE ORDER TEMPORARILY SUSPENDING  
FOR THE CITY OF GAITHERSBURG THE LEGAL TIME REQUIREMENTS  
REGARDING MARYLAND PUBLIC INFORMATION ACT TIMELINES

This notice is given by the City Manager of the City of Gaithersburg acting pursuant to the Proclamation of Governor Lawrence J. Hogan, Jr. (the “Governor”) dated March 5, 2020 proclaiming a state of emergency and a catastrophic health emergency related to COVID-19, as it may be amended or renewed from time to time, and the Order of the Governor dated March 12, 2020 entitled “Extending Certain Licenses, Permits, Registrations, and Other Governmental Authorizations, and Authorizing Suspension of Legal Time Requirements,” as it may be amended from time to time (altogether, “Governor’s Order”), after finding that the action(s) described herein will not endanger the public health, welfare, or safety.

Due to the Governor’s Order, the City Manager of the City of Gaithersburg on March 13, 2020 issued an order closing City facilities, followed by an order on March 16, 2020 requiring the majority of City staff to work from home. As a result, most City staff are not physically present to access documents and records subject to a Public Information Act request.

The Maryland Public Information Act at Md. General Provisions Code Ann., 4-101 *et seq.*, contains several specific timelines that cannot be satisfied until the state of emergency and catastrophic health emergency specified in the Governor’s Order is lifted and City facilities have reopened at least for City staff. These timelines include:

- Md. General Provisions Code Ann., Sec. 4-203(a) specifies that requests for documents and records must be granted or denied “promptly, but not more than 30 days after receiving the application.”
- Md. General Provisions Code Ann., Section 4-203 (b)(1) further requires that public records included in approved applications be provided “not more than 30 days after receipt of the application,” and if the request “reasonably believes that it will take more than 10 working days to produce the public record,” must notify the applicant by that time (i) the amount of time anticipated to produce the public record; (ii) the estimated range of applicable fees; and (iii) the reason for the delay.
- Md. General Provisions Code Ann., Section 4-203(c) requires, for public record applications which are denied, that applicants received within 10 working days of the application a statement giving the reason for the denial or why the denial is necessary under Section 4-343, the legal authority for the denial, a brief description of the undisclosed record, and notice of remedies under the Public Information Act by which the denial can be reviewed.

The Governor’s Order authorizes the head of the City government to suspend the effect of any legal or procedural deadline, due date, time of default, time expiration, period of time, or other time of an act or event described within any State or local statute, rule or regulation that the City administers, upon a finding that such suspension will not endanger the public health, welfare or safety; after notification to the Governor; and contingent upon the provision of public notice.

I therefore find that due to the Governor's Order, the closing of City facilities, the lack of presence of City staff at those facilities and the inability of City staff to access documents and records subject to Public Information requests, the City cannot comply with the above Public Information Act timelines which the City administers until after the expiration of the state of emergency declared in the Governor's Order.

The Governor's Order has been interpreted to allow political subdivisions of the State to temporarily suspend the Public Information Act's timelines as they apply to each local government, and I find that this power applies to local governments, including the City, per Section III of the Governor's Order. I therefore conclude that the City administers its Public Information program in compliance with the Public Information Act. The Governor's Office has found that each State agency and local government administers its own Public Information program, as does the City. I therefore conclude that the City is considered the local administrator for City compliance with the Public Information Act.

I further find that the temporary suspension of those timelines that the City administers until after the termination of the state of emergency and rescission of the catastrophic health emergency will not deprive any person of their due process rights.

I finally find that the temporary suspension of those timelines will not endanger the public health, welfare or safety, as I find that not temporarily suspending those timelines may require numerous City staff members to enter the closed City facilities in order to satisfy Public Information Act requests and may therefore endanger the public health, welfare or safety, given the state of emergency and proclamation of catastrophic health emergency, and on that basis I hereby:

ORDER that the applicable timelines under the Maryland Public Information Act, Maryland General Provisions Code Ann., Section 4-203 as specified herein are, as to their administration by the City of Gaithersburg, hereby temporarily suspended for the City of Gaithersburg for thirty (30) days following the lifting of the state of emergency and proclamation of catastrophic health emergency specified in the Governor's Order, based on my finding that such suspension will not endanger the public health, welfare or safety; and further

ORDER that to the extent that documents and records requested pursuant to the Maryland Public Information Act are available for City staff to access remotely, staff shall use its best efforts to timely respond to requests during the pendency of the state of emergency and proclamation of catastrophic health emergency specified in the Governor's Order; and further

ORDER that reasonable public notice of this Notice be provided, by posting this Order on the City's website; including this Notice in an email communication to all residents receiving email notifications from the City and all individuals with open public information requests, and by posting of this Notice at City Hall; and further

ORDER that this Order have no effect until the next business day after the Governor is notified of this Order Suspending for the City the Legal Time Requirements Regarding Maryland Public Information Act Timelines, on which day following such notice to the Governor this Order shall

go into effect and shall remain in effect until thirty (30) days after the Governor's Order has been terminated and the state of emergency and proclamation of the catastrophic health emergency therein stated has been rescinded.

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Signed: City Manager

03/27/2020 | 13:33 PDT

Dated