

**Document Code No.:** ACO-8-24-PR

**Title:** Emergency Rule for Nonprofits Applying to Employee Giving Program

**Effective Date:** June 8, 2020

**Authorities:** King County Code 3.36, Public Rule PRE 8-1, RCW 19.09

**Keywords:** Employee Giving, Donations, Emergency

**Sponsoring Agency:** Department of Human Resources, King County Employee Giving Program

**Signature:**



**Date signed:** June 5, 2020



**King County**

---

## I. Purpose

King County Code (K.C.C.) 3.36.030.B.1 and B.2 authorize the Employee Giving Program Committee to adopt rules necessary for conduct of the program, including eligibility rules for participation in the Annual Drive. Public Rule PRE 8-1 outlines those eligibility rules and supplements requirements set forth in K.C.C. 3.36.045.

The purpose of this emergency rule is to waive Public Rule 8-1 Section 7.1.2.6, requiring tiered financial reviews, for nonprofit organizations applying to participate in the 2020 Annual Drive this fall and to automatically rollover 2019 qualified nonprofit applications for the 2020 year.

On February 29, 2020, the governor of Washington declared a state of emergency in response to the novel coronavirus (COVID-19). On March 1, 2020, King County Executive Constantine issued a Proclamation of Emergency regarding the significant health emergency caused by COVID-19 in King County. On March 23, 2020, the governor of Washington issued a “Stay Home – Stay Healthy” order prohibiting all people in the state from leaving their homes unless for essential activities and business.

As a result, extraordinary economic conditions currently exist in King County, causing unprecedented stress on nonprofit organizations. Given that the average cost of an independent financial review is \$10,000, the effect of section 7.1.2.6 of Public Rule PRE 8-1 is to further strain limited nonprofit resources. Requiring this independent financial review is especially burdensome during the COVID-19 emergency and in particular for small and medium-sized nonprofit organizations, many of which are run by women and people of color. Waiving this requirement provides short-term financial and operational relief for nonprofit organizations involved in the Annual Drive, which will benefit the public.

Internal Revenue Service (IRS) Notices 2020-18, 2020-20, and 2020-23 have extended tax filing deadlines for most individuals and many entities, and PRE 8-1 7.1.2.6 outlines a tiered financial review requirement that is more stringent than the financial review required by RCW 19.09.541. The King County Employee Giving Program Manager and Committee believes that removing this requirement, which involves a higher standard than what is required for charitable organization status under Washington state law, would relieve organizations of added expenditures while maintaining fiscal stewardship. Each nonprofit in the Annual Drive is required to meet the legal financial review requirements in RCW 19.09.541. Finally, due to the filing delay, social distancing requirements, and closing of some organizations not deemed essential, nonprofits may not even be able to fulfill this requirement.

Quick and decisive activation of county resources, including the Employee Giving Program, for the COVID-19 response delayed the opening of the nonprofit application cycle and has required a change in operations away from in-person service and assistance. Additionally, due to the economic downturn, emergency restrictions, and for some organizations providing basic needs and serving vulnerable populations, sharp increase in service demand, have strained already thin resources. Allowing their approved 2019 applications to rollover to 2020 will reduce administrative burdens on the nonprofits and the Employee Giving Program.

It is imperative that the county act quickly to respond to and mitigate this emergency. Immediate amendment of PRE 8-1 to waive the requirement for an independent financial review is necessary for the preservation of the general welfare. Given the circumstances with COVID-19 and the upcoming Annual Drive, observing the requirements of notice and opportunity to present views on this amendment would be contrary to the public interest.

### **Applicability and Audience**

This rule applies to nonprofit organizations applying to take part in the 2020 Employee Giving Program Annual Drive and other program activities associated with this application cycle.

## **II. Definitions**

- A. Annual Drive: The annual solicitation of contributions from county employees by representatives of Qualified Nonprofit Organizations and federations through oral presentations, printed materials, audio or video media, or other similar means.
- B. Employee Giving Program: The year-round, King County-sanctioned, employee-based program that provides the process and infrastructure for administration of employee-directed giving to Qualified Nonprofit Organizations and federations through the Annual Drive, natural disaster relief solicitations, volunteering, and other charitable solicitations and that is administered by the Employee Giving Program Committee in accordance with King County Code and rules adopted for the program.
- C. Qualified Nonprofit Organization: A nonprofit organization or federation that applies to participate in the Annual Drive and meets the eligibility criteria as provided in King County Code and any rules adopted herein.

## **III. Policy**

- A. The following financial review requirements in Public Rule PRE 8-1 7.1.2.6 are modified as follows:

Entities with an annual gross income of less than \$1,000,000 need not provide a review of a certified public accountant. These entities must certify that they have an internally produced complete financial statement.

Entities with an annual gross income of more than \$1,000,000 but less than \$3,000,000 may provide either (a) federal financial reporting form (990, 990PF, 990EZ, 990T) the organization normally files with the IRS which must be prepared by a certified public accountant or other professional who normally prepares such forms in the ordinary course of their business; or (b) An audited financial statement prepared by an independent certified public accountant for the preceding accounting year.

Entities with more than three million dollars in annual gross income averaged over the preceding three years must provide an independent, third-party audit of their financial records for the preceding tax year.

However, the following eligibility requirements shall remain in effect:

On their application for the Annual Drive, organizations will indicate their annual gross income for the review period and what level of financial review, if any, was completed.

The annual eligibility verification requirement in Public Rule PRE 8-1 7.4.1 is waived for Qualified Nonprofit Organizations that participated in the Employee Giving Program's annual drive in 2019.

All other provisions of PRE 8-1 remain in full force and effect.

#### **IV. Implementation Plan**

- A. This rule becomes effective immediately upon filing with the department responsible for archives and records management functions. The Employee Giving Program is responsible for implementation of this policy.
- B. This rule will apply to the application period for nonprofits participating in the 2020 Annual Drive and other Employee Giving Program opportunities in the 2020 program year. Nonprofits who are approved through this application period, and who receive pledges during the Annual Drive, will continue to receive distribution of funds from those pledges until the first quarter 2022.
- C. This rule does not affect future application cycles for the Annual Drive.

#### **V. Maintenance**

- A. This rule will be maintained by the King County Employee Giving Program.
- B. This rule will automatically expire 150 days after the date of signature.

#### **VI. Consequences for Noncompliance**

- A. See PRE 8-1, section 7.3.

**Appendix:** Public Rule PRE 8-1.

# Appendix

# Public Rule

# PRE 8-1



King County

<p>Title</p> <p>Rules for Nonprofit Participation in the King County Employee Giving Program</p>	<p>Document Code No.</p> <p>PRE 8-1 (PR)</p>
<p>Department/Issuing Agency</p> <p>Department of Executive Services/Employee Giving Program</p>	<p>Date</p> <p>January 15, 2013</p>
<p>Approved</p> <p><i>Caroline L. Whalen</i></p>	

- 1.0 SUBJECT TITLE: Rules for Nonprofit Participation in the King County Employee Giving Program <sup>RW</sup>
- 1.1 EFFECTIVE DATE: ~~March 19, 2013~~ February 22, 2013
- 1.2 TYPE OF ACTION: New
- 1.3 KEY WORDS: Annual Drive, Employee Giving Program, Workplace Giving, Eligibility, Nonprofit, Charity, Natural Disaster, Donation
- 2.0 PURPOSE: King County Code ("K.C.C.") 3.36.030.B.1 and B.2 authorize the Employee Giving Program (EGP) Committee to adopt rules necessary for the conduct of the EGP, including eligibility rules for participation in the Annual Drive. These eligibility rules supplement the eligibility requirements set forth in K.C.C. 3.36.045.
- 3.0 ORGANIZATIONS AFFECTED: Nonprofit organizations wishing to participate in the King County Employee Giving Program Annual Drive
- 4.0 REFERENCES:
  - 4.1 K.C.C. 3.36
  - 4.2 Better Business Bureau Wise Giving Alliance Standards for Charity Accountability
  - 4.3 Charity Navigator
- 5.0 DEFINITIONS:
  - 5.1 "Annual Drive" means the annual solicitation of contributions from county employees by representatives of qualified nonprofit organizations and federations through oral presentations, printed materials, audio or video media or other similar means.

[Division]  
Effective Date:

- 5.2 "Employee Giving Program" or "EGP" means the King County sanctioned, employee-based program that provides the process and infrastructure for administration of employee-directed giving to qualified nonprofit organizations and federations through the Annual Drive and natural disaster relief solicitations, and is administered by the EGP Committee in accordance with the K.C.C. and rules adopted for the program..
- 5.3 "Federation" means a nonprofit organization that solicits and distributes contributions on behalf of its member nonprofit organizations.
- 5.4 "Government unit" means a political subdivision of the state of Washington.
- 5.5 "Qualified nonprofit organization" means a nonprofit organization or federation that applies to participate in the Annual Drive and meets the eligibility criteria as provided in K.C.C. and any rules adopted herein.

6.0 POLICIES:

6.1 The rules set forth in this document support compliance with K.C.C. section 3.36 in general, and specifically detail additional steps required in support of the application process referenced in K.C.C. 3.36.045 "Campaign participants - requirements - notice in campaign materials."

7.0 PROCEDURES:

Action By: Federations, nonprofit organizations, and governmental units

Action:

7.1 Annual Drive Participation Eligibility Rules

7.1.1. Each federation and each independent nonprofit organization must submit an on-time and complete application, including all required attachments, during the annual nonprofit application cycle as announced by the program.

7.1.2. An official of each federation and each independent nonprofit organization that is not represented by a federation must certify the following as true on its application and provide any supporting documentation that may be specifically required by the application.

- 1) The organization has been providing or conducting real services, benefits, assistance or program activities at least the previous three years;
- 2) The organization is directed by an active governing body whose members have affirmed adherence to a conflict of interest policy and a majority of whom serve without compensation. Governmental units are exempt.

- 3) Compensated governing body members do not serve as the governing body's chair or treasurer. Governmental units are exempt.
- 4) The organization's publicity and promotional activities are based upon the actual program and operations, are truthful and non-deceptive, and make no exaggerated or misleading claims.
- 5) The organization has an annual financial statement prepared in accordance with generally accepted accounting principles.
- 6) Within the fiscal period ending not more than 18 months prior to the January of the year of the Annual Drive for which the organization is applying, the organization's financial statement has been audited per the following: If the organization's total annual gross income exceeds \$1,000,000, their annual financial statement has been audited in accordance with generally accepted auditing standards; if annual gross income is less than \$1,000,000, a review by a certified public accountant has been conducted; if the annual gross income is less than \$250,000, an internally produced, complete financial statement was produced. Governmental units are exempt.
- 7) The organization will prohibit the sale, lease or distribution of King County contributor lists.
- 8) For a federation, the federation has the express permission of an authorized official of each of its member nonprofit organizations to use the nonprofit organization's name and to participate in the Annual Drive.
- 9) For a federation, the federation has verified and accurately declared that each member organization meets all EGP eligibility requirements.

7.1.3. A federation, each nonprofit organization represented by a federation, and each independent nonprofit organization, shall make available upon request by the EGP Committee, the King County Council, or the County Executive:

- 1) its most recent IRS Form 990 or IRS Pro Forma 990;
- 2) its most recent annual report, including an annual financial statement;
- 3) a disclosure for the most recent annual report period of the total dollar value of support from all sources received on behalf of the charitable purposes of the organization; and
- 4) the total dollar amounts applied to charitable purposes, fundraising costs and all other expenses during the most recent annual report period.

7.1.4. Nonprofit organizations that submit separate applications under a common Tax Identification Number (TIN) must provide information to establish clearly distinguishable, separate identities for each organization in order to be listed separately in the Annual Drive. The information supplied by nonprofit organizations with a common TIN must establish that they are not simply a parent organization and a program(s) of the parent organization. Provision of information does not guarantee separate listings. Such information may include:

- 1) separate accounting, including independent financial statements;
- 2) separate advisory/governing bodies;
- 3) clearly defined geographical service areas such as local chapters of a national organization; or
- 4) independent branding including website and marketing materials.

## 7.2 Governmental Unit Participation

7.2.1. A state of Washington governmental unit may apply for inclusion in the Annual Drive if a contribution for the purpose specified by the governmental unit would constitute a "charitable contribution" under Section 170 of the Internal Revenue Code of 1986. Under Section 170, a charitable contribution to a state or political subdivision must be "for exclusively public purposes." In order to establish eligibility, a governmental unit must include with its application the following:

- 1) Documentation that the governmental unit is authorized to solicit and accept donations for the purpose identified in the application.
- 2) Documentation of a separate fund or account that designates that its uses are limited to donations made for the purpose identified in the application; and
- 3) A legal review stating that a contribution to the separate fund or account would meet the definition of "charitable contribution" under Section 170.

## 7.3 Revocation of Eligibility

7.3.1. The EGP Committee shall revoke a determination of eligibility if one or more of the following occurs:

- 1) fraud;
- 2) failure of an applicant to inform the EGP Committee of any fact that would affect the EGP Committee's determination about the applicant's eligibility; or



- 3) an applicant is ineligible under K.C.C. 3.36.045 or rules adopted for the program.

#### 7.4 Eligibility Verification

7.4.1. The EGP is responsible for annually verifying that nonprofits applying for inclusion in the Annual Drive meet the eligibility criteria established by K.C.C. and rules adopted for the program. The EGP may review:

- 1) certifications and documentation submitted by independent nonprofit organizations, and
- 2) certifications, processes and documentation used by federations to confirm that their member nonprofit organizations meet Annual Drive eligibility criteria.

#### 7.5 Nonprofit Expenditure of Donations

7.5.1: A nonprofit organization receiving donations from King County employees through the Annual Drive must expend those moneys, for the announced purposes of the nonprofit organization, within the twelve month period following receipt.

#### 7.6 Federation Disbursement of Donations to Member Nonprofits

7.6.1. Federations shall make distributions to their member charitable organizations as designated by contributors.

### 8.0 RESPONSIBILITIES:

- 8.1 The EGP Committee will conduct the EGP in accordance with these rules and will update the rules as needed through the rulemaking process.
- 8.2 Nonprofits applying to and participating in the EGP will adhere to these rules.

### 9.0 APPENDICES: None

