DATE: 3/20/2020

TO: John Bingaman, Office of the Governor

FROM: Matthew Stackpole, NMDHSEM General Counsel

SUBJECT: Local Municipalities Declaring an Emergency as Part of Their COVID-19 Response

I. Should Local Municipalities Create An Emergency Declaration as Part of their COVID-19 Response?

Yes. The Department of Homeland Security and Emergency Management strongly recommends that local municipalities declare an emergency and then submit that declaration to the State Emergency Operations Center (SEOC) within 30 days of the President’s Federal Emergency Declaration on March 11, 2020. Due to the extreme nature of this event, a deadline of within 60 days may be expected in some cases.

The Department of Homeland Security and Emergency Management (DHSEM) also recommends that local municipalities activate their local EOC.

II. Why Should the Local Municipalities Create an Emergency Declaration?

While it is not clear that the Federal Emergency Declaration requires local municipalities to create an Emergency Declaration, DHSEM strongly recommends that local municipalities do so. This will have the practical effect of local municipalities being able to make available their existing emergency funds. It will also have the additional benefit of clearly demonstrating the local municipalities’ need for reimbursement (and potentially their exhausting of all local and surrounding resources) within the directives listed within the Federal Public Assistance Program and Policy Guide.

It should be clearly communicated that no upfront costs are going to be received, rather, New Mexico can expect to receive 75% reimbursement on all actual and eligible Category B (Emergency Protective Measures) costs. See 42 U.S.C.A. § 5193. Eligible emergency protective measures listed in the Public Assistance Program and Policy Guide include, but are not limited to:
i. Transporting and pre-positioning equipment and other resources for response
ii. Emergency Operation Center (EOC)-related costs
iii. Supplies and commodities
iv. Medical care and transport
v. Evacuation and sheltering, including that provided by another State or Tribal government
vi. Child care
vii. Safety inspections
viii. Security, such as barricades, fencing, or law enforcement
ix. Use or lease of temporary generators for facilities that provide essential community services
x. Dissemination of information to the public to provide warnings and guidance about health and safety hazards using various strategies, such as flyers, public service announcements, or newspaper campaigns
xi. Searching to locate and recover human remains
xii. Storage and interment of unidentified human remains

By local municipalities declaring an emergency it allows the State of New Mexico to ensure compliance with FEMA’s Public Assistance Program Guide, and helps to justify local municipalities costs associated with responding to the COVID-19 emergency. Furthermore, in the event that the State of New Mexico makes a Major Disaster Declaration, the above documentation is required by FEMA, and its absence could delay critical emergency funding.

**Conclusion:**

DHSEM recommends the local municipalities:

a. Draft an emergency declaration.
b. Execute the declaration.
c. Submit the declaration to nm.eoc@state.nm.us
d. Activate their EOC.
e. Track all costs through the forms and spreadsheets that have been provided by the Recovery Unit at SEOC (DHSEM).