



2021 CDBG BUSINESS ASSISTANCE LOAN PROGRAM GUIDELINES

TO BE FUNDED BY: 20-CDBG-12041 AND CDBG PROGRAM INCOME

Adopted by City Council: July 7, 2021

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1. Description of Business Assistance Activity

The City of Ukiah is proposing to utilize CDBG 2020 NOFA funds for the purpose of establishing a business assistance revolving loan fund. The purpose of the revolving loan fund is to provide flexible low interest forgivable loans to small and medium sized businesses in the City of Ukiah to offset the negative impacts of the COVID-19 Shelter In Place (SIP) order and to assist these businesses with financial recovery. The repayment schedule for each loan will be based on an analysis of the anticipated debt service capacity of the business during the COVID-19 recovery period.

Loan forgiveness will be based on the business retaining full time equivalent positions of which 51% are to be filled by members of low/moderate income households during the recovery period. Loan payments may be deferred for a period of time based on a month by month annual financial forecast of debt service capacity utilizing the required six HUD CDBG under writing criteria. A key element of this analysis will be a review of the past two years business tax returns, to determine past business viability, and a review of recent in-house, bookkeeper, or CPA-prepared profit and loss and balance sheet statements measuring the impacts of the Shelter in Place order on the business. The next step will be the development of a month by month one-year financial forecast, based on the business history, combined with the evolving relaxation of the order on the business future cash flow. The forecast will determine the loan repayment and loan deferral schedule.

In order to provide additional technical and objective expertise, the program operator will utilize the services of the regional NorCal Small Business Development Finance Center to help the borrower prepare the one year forecast statements and to assist with the financial evaluation process. The business owner will prepare the forecast with assistance from the NorCal SBDC Finance Center consulting team.

The loan fund design is based on meeting CDBG National Objective and Public Benefit requirements in the COVID-19 recovery period. It is based on the retention of jobs. It is also designed to complement existing local and regional lending activities by filling a gap in the availability of low interest, flexible business loans. The program will provide loan funds in cooperation with private lenders, including but not necessarily limited to Umpqua Bank, Tri Counties Bank, Bank of the West, West America Bank, and Savings Bank of Mendocino County. These banks will provide referrals to the city loan fund operator. The nonprofit lenders, which include Mendocino Economic Development Finance Corporation, the Arcata Economic Development Corporation, and the SBA, will also provide referrals to the program. The goal will be to arrange companion loans when possible to leverage other loan funds and extend the City loan program capacity to serve more businesses.

In some cases, the WEST Business Development Center, utilizing resources being made available through the Business Innovation and Resiliency Fund for Mendocino County, may award grants to support micro businesses that participate in working groups and one on one consulting activities. These activities are designed to help small businesses

survive during the recovery period. The WEST Business Development Center will also provide referrals and, in some cases as a condition of the loan, provide follow up technical assistance as needed to improve the likelihood of the borrower's success. The WEST Business Development Center may also provide business support services to help program borrowers rebuild their businesses. Because the WEST Business Development Center is part of the traditional SBDC family of service providers, its consultants can serve a variety of small businesses with follow up technical assistance.

2. Program Overview

Administration

The City will administer the program with in-house experienced CDBG staff administrators. The City will assist the program operator, Community Development Services, in implementing the program.

City of Ukiah CDBG Administrator: Craig Schlatter, Director of Community Development
Department: Community Development
Address: 300 Seminary Ave. Ukiah, CA 95482
Phone Number: (707) 463-6219
Email Address: cschlatter@cityofukiah.com

Implementation

Community Development Services will be responsible for working with the banks, public lenders, originating and underwriting business loans, documenting compliance with CDBG regulations, and preparing the loan closing documents.

Principal Program Operator: Jeff Lucas, Principal
Agency: Community Development Services
Address: 3895 Main St. Kelseyville, CA 95451
Phone Number: (707) 279-1540
Email Address: jefflucas@mchsi.com

CDBG Program Requirements

Eligible Applicants

CDBG funds under this Program can only be expended on the eligible activity authorized under Title I of the Housing and Community Development Act of 1974 (hereafter called "Act"), section 105(a)(17): special economic development, providing direct financial assistance to private for-profit businesses.

An eligible applicant is:

- an existing business legally operating, with any required local business license, insurance, permits per local, state and federal requirements;

- an applicant with a non-operating start-up business may not have all required licenses or insurance, so these items will be made a condition of loan closing;
- a person or persons wishing to buy an existing business;
- a business leasing tenant space or owner-occupied business in the service area.

The loan applicant must provide documentation that the proposed project will meet CDBG eligibility criteria of national objective and public benefit requirements. The loan applicant must provide documentation of meeting reasonable commercial underwriting criteria outlined in below in these guidelines as well as HUD CDBG mandated six underwriting standards. These mandated criteria are described below.

Specific ineligible loan applicants include:

- a business operating a private “exclusive” recreational facility;
- non-profit businesses are not eligible under this program;
- a businesses or person(s) with unresolved state / federal tax liens;
- a business or person in bankruptcy process are not eligible until bankruptcy process is complete.

3. Eligible Project Costs

The following list is provided for reference in order to clarify that CDBG funds will only be used for CDBG eligible activities. The primary purpose of the loan program will be to retain businesses and retain jobs. CDBG funds are non-discretionary and restricted to certain eligible costs.

- operating capital and inventory;
- furniture fixtures and equipment (FF&E), with or without installation costs;
- project site improvements, new construction or rehabilitation of leased space or owned building;
- engineering and architectural plans and required permits or fees;
- purchase of manufacturing equipment (with or without installation costs);
- refinancing of existing business debt when done in conjunction with restructuring of other existing private financing debt(s);
- purchase of real property, when it provides positive cash flow for new jobs;
- relocation grants for persons displaced due to funding of the project;
- purchase of an existing business, including documented value of good will.

Ineligible Costs

CDBG funds are non-discretionary, limited to certain eligible costs described in the section above. Some ineligible costs are:

- costs incurred prior to submittal of BA loan application and environmental review completion;
- costs associated with residential housing development, i.e. on mixed use project;
- costs associated with supporting “other” businesses the applicant owns;

- costs on a funded project not meeting a national objective;
- personal expenses such as cars, home repairs, not directly associated with the business;
- costs of paying off personal credit cards;
- costs of paying off any personal debt not directly associated with business;
- cash payments of any kind made directly to the assisted business owner(s) (wages or draws) from loan proceeds;
- costs associated with a funded project when the owner(s) or business is found to be on federal debarred list;
- public infrastructure in support of the business;
- research and development costs for future production (speculative).

Once approved, loan funds cannot be shifted from one approved type of cost to another without formal written approval from the City. If there is a substantial change in the project scope of work or underwriting, then the loan must be re-evaluated by the City, per state and federal regulations, prior to loan closing or disbursement of CDBG funds.

4. Meeting National Objective Standards

All eligible activities funded under this program must meet a CDBG “National Objective” as described in the Act, Section 104(b)(3) and federal regulations 24 CFR Part 570.483. Projects not documented as meeting a national objective are an ineligible activity. Below is a general description of documenting how a project meets the national objective of benefit to low - moderate income (LMI) persons. The City will use Department specific guidance for ensuring each eligible project funded is documented as meeting a national objective.

Projects normally meet a national objective standard when they create or retain jobs and provide over half; at least fifty one percent (51%), of the new job positions or retained positions to low/moderate income (LMI) qualified persons. Businesses proposing to retain or create jobs to LMI persons must agree to allow the City, or their designated representative, to meet with each job applicant prior to hiring or returning to work and complete a Self-Certification of Income Form. Payrolls must be collected by the City and compared before and after the loan closing to prove over half of job positions are provided to low-moderate income persons. This will prove the project’s job retention met the national objective of principally benefiting LMI persons.

5. Meeting Public Benefit Standards

All eligible project activities funded under this program must meet a minimum CDBG “Public Benefit Standard” as described in the Act, section 104(b)(17) and federal regulations; 24 CFR Part 570.483(f)(g). Public Benefit is provided by the loan recipient in return for use of subsidized federal funds, and provides a funding limit or “cap”.

For projects meeting national objective via jobs provided to LMI persons, the Public Benefit standard is jobs, and the maximum CDBG loan funding available is limited to

\$35,000 per job. The City will require loan applicants to provide an estimate of public benefit generated by investment of CDBG funds into the business via the **Job Tracking Form**. **The jobs retained must also be included in the business forecast spread sheet as a business expense.** This proposed level of public benefit will be verified after investment of CDBG funding.

CDBG public benefit requirements of the program will be disclosed by the City program operator at the start of the application process. The City will use **HUD CDBG financial underwriting** to identify the need for a CDBG loan and determine the reasonable public benefit that will be generated from the loan.

6. Meeting CDBG Underwriting Requirements

In addition to documenting that the project meets CDBG public benefit standard, the loan must also be documented as meeting six HUD CDBG underwriting standards, per federal regulation 24 CFR Part 570.483(e). These underwriting standards are required to document a minimum “due diligence” of the City and ensure projects are financially sound enough to meet public benefit and national objective job retention standards. The six underwriting standards are general, qualitative, and are supported in part by commercial underwriting standards defined below.

The Six Underwriting Standards are:

- project costs are documented as reasonable (typically, third party cost estimates);
- all sources of funding for the project are documented with final commitments;
- to the extent practicable, CDBG funds are not substituted for private (non-federal) funds;
- documentation that project is financially feasible (based on cash flow projections to support jobs and debt service, etc.);
- to the extent practicable, the return of the owner's equity investment is not unreasonable (based on level of equity and proposed CDBG loan terms);
- to the extent practicable, CDBG funds are disbursed on a pro-rata basis with other financing provided for the project.

7. Meeting Other Federal Program Requirements

Since these loans are provided from a federal funding source, there are a number of federal laws and requirements which are triggered by their use. The City will require loan applicants to provide information which allows them to make a compliance determination. Applicants are required to sign loan disclosures and work with City staff to ensure each project is in compliance with any of the triggered, applicable regulations listed below. The sections below are program requirements.

National Environmental Policy Act (NEPA): Every project funded under the program must be reviewed under HUD NEPA regulations 24 CFR Part 58 and the City's NEPA Certifying Officer must sign and certify an Environmental Review Record (ERR) for each project

prior to approval or disbursement of loan funds. The City is required to sign and certify the correct NEPA ERR, per current Environmental Review Requirements.

The ERR level of review is based on the project's "aggregated" scope of work, which includes all proposed project funding. Any construction or equipment installation proposed will require more review work on the ERR. The ERR will be done early in application process, as soon as the project is deemed eligible and scope of work is finalized. No costs will be charged to the Borrower for this process. Applicants must sign Department certification form that no "choice limiting action" under NEPA regulations has or will take place.

Prevailing Wage Compliance: If a project proposes to use CDBG funds to pay costs for any construction project, then federal and state labor standards compliance must be documented. Davis-Bacon Act (40 USC 276a - 276a-5) and related laws are "triggered" when any CDBG funding is used to pay for any project construction costs. Lender will follow *Department guidance in current Labor Standards Chapter of the GMM* for prevailing wage compliance on funded projects.

Additional labor costs will be added to projects proposing to use CDBG to pay for new construction, rehabilitation, or equipment installation. The City will work with loan applicants to ensure project compliance. The additional time and work required by prevailing wage regulations will be disclosed to the borrower as soon as possible. Any additional costs resulting from this regulation will be incorporated into the CDBG loan approval.

Acquisition and Relocation Laws: All applicants proposing to use CDBG funds for purchase of real property must comply with 49 CFR Part 24 Acquisition laws. The City will provide required Seller Disclosure for execution as part of meeting this requirement.

All applicants proposing projects which trigger relocation compliance i.e. result in displacement of persons per Uniform Relocation Act (URA), must work with City to ensure compliance with this law. Additional costs associated with relocation compliance will be disclosed to the applicant prior to CDBG loan approval and included in project loan approval.

All applicants must sign a Certification of No Job Pirating. Job pirating is prohibited per CDBG federal regulation 24CFR 570.482 (h). Job pirating is defined as using CDBG public funds to facilitate the moving of a business and associated jobs from one jurisdiction to another (business attraction). As such, CDBG federal funds cannot be used to attract / subsidize a business to move from one labor market area to another or keep a business from moving out of a labor market by making a retention argument. The County will require all applicants to sign a non-job pirating certification.

Loan applicants will sign a Certification of No Conflict of Interest. In accordance state and federal regulations, no member of the governing body and no official, employee or agent of the local government, nor any other person who exercises policy or

decision-making responsibilities (including members of the loan committee and officers, employees, and agents of the loan committee, the administrative agent, contractors and similar agencies) in connection with the planning and implementation of the CDBG program shall directly or indirectly be eligible for this program. The City will require all applicants to sign a non-conflict of interest certification, any questions about state conflict of interest laws will be referred to City's legal council for final determination.

All program applicants must obtain a DUN's number, if they do not already have one. The DUN's number is free and can be obtained online. In addition, prior to loan approval, the Lender will document that the business being assisted and all owners and affiliated businesses are verified as not on the federal debarred contractors list. HUD also requires that the Department and the City collect certain income and demographic data from the business and any beneficiaries of CDBG funds.

8. Loan Processing and Approval

Fair Lending Compliance

The City CDBG Business Loan Program will be implemented in a way that is consistent with the City's commitment to fair lending laws. No person or business shall be excluded from participation in, denied the benefit of, or be subjected to discrimination under any program or activity funded in whole or in part with CDBG funds on the basis of his or her religion or religious affiliation, age, race, color, ancestry, national origin, sex, marital status, familial status (number or ages of children), physical or mental disability, sexual orientation, or other arbitrary cause. All personal and financial information of loan applicants will be kept confidential.

Loan Application Processing

Certain key anchor businesses within the City will be given initial priority to determine their need for financing. Once this process is completed, loan applications will be processed on a first come first served basis. The City will accept loan applications and review them for initial eligibility. Applicants that do not meet basic CDBG requirements of the program will be sent a letter or email of explanation. All applications received will be kept on file to document fair lending standards. Applications that meet basic eligibility requirements will be contacted for a site visit and collection of additional information.

Loan files will be set up as applications are received and compliance information gathered. The business will be required to provide accurate financials for past, current and future projection of the business operations. All owners will have credit checks conducted as part of loan underwriting. The City may arrange to provide sample financial Excel forms (balance / cash flow sheets, profit and loss, personal financial statements, and proforma) and coordinate the use of these tools with the NorCal Small Business Finance Center who will assist the loan applicant with preparing the month by month one-year financial forecast. This arrangement will provide an objective source of guidance to the applicant, and accelerate the lending process.

Loan applicants are responsible for providing accurate and timely information to the City as part of the loan process. This may include:

- disclose all business owners with twenty percent or more ownership;
- disclose all other businesses the owners have an ownership interest of twenty percent (20%) or more;
- provide current personal financial statements for each owner;
- disclose sources of collateral and security;
- provide business historic financial information, including year to date;
- disclose sources of cash for any equity investment proposed;
- provide third party documentation of eligible project costs;
- provide market study or document basis of future sales projections;
- provide management capacity documentation for ability to execute;
- provide necessary information to clear federal overlays.

The City and its program operator will assist the loan applicants with meeting these requirements where applicable in the most fundamental and expeditious manner possible. Once the City and program operator have compiled a complete loan file with all the credit, financial, and underwriting information needed to show the loan is eligible under these guidelines, then a loan proposal will be prepared. The proposal will be submitted to City Loan Committee for their approval. Once approved, the City program operator will craft loan closing documents for signing by the borrower and then the City. Funds will be provided to the borrower in accordance with CDBG distribution requirements.

Loan Approval Process

The Loan Committee shall be made up of three (3) individuals from the local nonprofit and/or for-profit lending community. The City of Ukiah's Deputy City Manager/Economic Development Lead will serve as a fourth Loan Committee member, and a fifth Loan Committee member will include an associate planner, senior planner, or planning manager from the Community Development Department. The two City staff members serving on the loan committee will also assist as alternates if one of the primary loan committee members has a conflict due to the provision of matching lending on a Business Assistance loan program transaction. Loan Committee meetings will be scheduled as loan proposals are ready for presentation. Members may request additional information and/or attach conditions on closing or funding of the loan. If the loan is approved, then the City can move forward with loan closing.

Applicant Confidentiality

Persons involved in the loan process for this Program will not disclose any of applicants' business or personal confidential information as part of loan review and approval process. All confidential information of businesses will only be disclosed to persons required to view the information as part of loan review and approval. All personal and business

confidential information of loan applicants will be kept in a locked secured storage facility and are not available to persons outside of the program.

9. Dispute Resolution/Appeals Process

Any business applying for assistance through this program has the right to appeal if their application is denied. The appeal must be made in writing to the City Community Development Department. The Department will then schedule an appeal meeting for the applicant that will be heard by the Director of Community Development. If the application is denied a second time then the person may ask to have their appeal presented to the City Council for a final decision.

Exceptional Circumstances

Exceptions are defined as any action, which would depart from policy and procedures stated in the guidelines. The City may initiate consideration of an exceptional/special circumstance to the policies in these guidelines as long as it does not violate CDBG federal / state requirements. A written analysis of the exception will be prepared and submitted with loan approval request. This analysis shall contain a narrative, including the staff's recommended course of action and any written or verbal information supplied by the applicant. The loan approval shall be made after review and acceptance of the exceptional/special circumstances request.

10. Loan Closing Process

After approval, the City's program operator will prepare for the loan closing with an Escrow Company if real property is involved. All loan document signings will be witnessed by a Public Notary. The loan closing documents are Laser Pro documents, which are the standard loan documents used by Banks and lenders. The borrower will sign all the necessary documents and agreements. Then the City will sign the documents. The original loan documents will be kept in a fire proof safe at City Hall.

Determination of Loan Amount

The Program has a minimum loan amount of \$35,000. The maximum loan amount is \$70,000. The actual loan amounts will be based on the business's need for capital to recover from the Shelter in Place order and retain employees. Loan amounts may be increased based on Loan Committee approval.

Determination of Loan Term

The loan term is tied directly to the debt service capacity of the borrower, the use of funds, and what security is being pledged for the loan. If a business needs operating capital, equipment, inventory, or supplies, then the term of the loan can be amortized over seven years to minimize monthly loan payments. If the loan is for real property improvements and can be secured on real property, then the terms can be extended out to 10 years. The key element of this loan program is to provide for loan balance forgiveness when the business has met its job retention requirements. The measurement for the meeting this

requirement is based on the business retaining one full time equivalent job for every \$35,000 loaned for a period of two years. The job retained must be filled from a member of a low to moderate income household. Once the business has done that, the loan balance can be forgiven. This policy will encourage the business to retain employees during the anticipated COVID-19 recovery period.

Determination of Interest Rate

The loan interest rate will be one percent (1%).

Loan Processing Fees

The program provides administration funds to pay for loan processing and servicing costs. No direct loan fees will be charged to the borrower. Also, there is no pre-payment penalty on the loans under this Program.

11. Loan Application Evaluation

Each project/business will be evaluated based on the how it has performed in the past and its future financial forecasts. Specifically, the following questions will be asked upon receipt of the loan application. The loan application has been vetted by HCD staff and designed to obtain the information and documentation necessary to determine loan eligibility.

- Is business an eligible applicant?
- Are the proposed project costs eligible?
- Will project meet a CDBG national objective?
- Will business meet public benefit jobs retention?
- Does project appear to meet six HUD underwriting standards?
- Are federal overlays triggered that will adversely impact project development?
- Are the business and all owners' credit worthy?
- Does the business and owner pay bills on time, collect on time?
- Does owner have documented market demand for projected sales?
- Does owner have management capacity to operate the business?
- Does owner have financial accounting capacity to operate the business?
- Is the owner contributing a reasonable amount of equity?
- Is the owner able to get conventional bank financing, if not, why not?
- Was the business financially viable in the past (net income covers debt)?
- Are there reasonable financial assumptions for future viability/success?
- Is there enough collateral available to secure the proposed loan?
- Is the owner's personal financial status stable?

By collecting enough initial application information to answer the above list of questions, the City will have a good sense of how strong a borrower is, and how successful they will be, if assisted with a CDBG loan. Most of this information is collected on the loan application form and verified verbally at the initial site visit with the owner. By meeting

the borrower and asking these questions the City will know what additional information/documentation needs to be collected to provide a clear picture and documentation of how CDBG funds can be used to retain the business and its jobs.

Personal and Business Credit

Each applicant will have third party credit reports obtained showing credit scores and payment history. All owners and their spouses with twenty percent (20%) or more interest in the business will get credit reports reviewed. If the personal credit reporting service, Sarma, which provides detailed credit history from Transunion, Experian, and Equifax, provides low credit scores or shows poor credit history, applicants must provide a written explanation of their current credit situation to clarify their situation.

Personal and Business Financial Information

Personal financial statements will be required for each person who owns 20% or more of the business. Financial statements need to show all assets and liabilities of the person. In addition to these statements, federal tax return statements for owners and the business for the past two years are needed to give a historic perspective of income.

For the business fiscal year, historic financial statements will be required. These will consist of past two year's balance sheets and cash flow statements, generated from past tax returns. These statements should be put together by the person responsible for doing the bookkeeping and finance management for the business.

A budget showing how the funds will be used must be provided so we understand how the CDBG funds will be used. Using the information in these financial statements, along with any back up documentation required, will provide the information necessary to prepare the loan proposal.

Collateral Requirements

When possible, loans under this program will be collateralized using commercial lending standards. However, the City understands that some borrowers will not have the collateral available to meet conventional lending standards. In these cases, we will determine if the borrower is fully committed to the loan and has provided as much collateral as possible as security for the loan. In addition, the City recognizes that CDBG funding is typically in a subordinate position to banks and other lenders.

It is the goal of the Program to get the best lien position possible to ensure loan repayments. Types of collateral may include:

- Secured liens on real property,
- UCC liens on machinery, equipment, or other fixtures,
- Lease assignments, as appropriate,
- Personal and corporate guarantees, as appropriate, and
- Life insurance assignment and other collateral, as appropriate.

Appraisal of assets may be required as part of determining how to obtain the best lien positions for the CDBG loan. Combined loan to value ratio on collateral for the typical CDBG loan should not exceed ninety percent (90%). Equipment and inventory secured should be properly discounted to reflect actual resale value when doing loan to value calculations.

Business Experience and Management Capacity

The loan applicant will provide brief management histories to show the experience of business owners and their management staff in successful operation of the existing business or something comparable.

12. Loan Servicing

The City will retain all original project files within locked storage. Original legal documents will be kept in locked fire proof filing system for future loan servicing. The City will provide annual income tax statements to the borrower for their tax purposes and other documentation as required within the loan closing documents. All loan payment will be made directly to the City and deposited into a CDBG Program Income Revolving Loan Fund account. City staff will inform the loan program operator if payments are late and the program operator will follow up.

The City will require periodic financial statements, annual tax returns, and proof of insurance annually from the borrower during the course of the loan term. Upon reviewing the borrower's financial statements, the City may require the business to take actions that improve the business cash flows. In some cases, the borrower will need to update the city program operator on how the businesses is doing. In these situations, the NorCal SBDC Finance Center will provide vitiations and assistance as needed to help the business and maintain open communication with the City.

The borrower must disclose any sale of equipment or assets that are used as loan security by the Lender. The borrower may submit a written request to the City to change the CDBG loan terms, if the business is not able to fully service CDBG debt repayments or if they wish to pre-pay the loan by making one or more larger payments.

Demand Projections

It is anticipated that eight loans will be made within eighteen months of program implementation.

13. Readiness

The City has an existing contract with Community Development Services, (CDS) to assist with CDBG related activities. This firm has over 30 years of experience with CDBG business loan programs and is ready to implement the program once approved by HCD.