



Recommendation for Action

File #: 20-1747, **Agenda Item #:** 88.

3/26/2020

Posting Language

Approve a resolution authorizing the creation of a temporary Austin Economic Injury Bridge Loan Program and guidelines to permit the use of available Section 108 funding to provide economic injury disaster loans to small and non-profit businesses in accordance with the U.S. Housing and Urban Development and U.S. Small Business Administration guidelines and regulations.

Lead Department

Economic Development Department

Fiscal Note

Funding in the amount of \$5,704,577 is available in the FY 2019-2020 HUD Section 108 Family Business Loan Program Special Revenue Fund.

Prior Council Action:

May 24, 2012 - Council approved Resolution 20120524-015 creating the Family Business Loan Program and Ordinance 20120524-016 to authorize the Family Business Loan Program's fees; August 29, 2013 - Council approved Resolution 20130829-027 authorizing the acceptance of \$8,000,000 in grant funds from the U.S. Department of Housing and Urban Development (HUD) Section 108 Family Business Loan Program; February 25, 2016 - Council approved Resolution No. 2016 0225-013 authorizing issuance of a note and contract with HUD in an amount not to exceed \$3,000,000 to fund the program; August 31, 2017 - Council approved Resolution No. 20170831-010 authorizing issuance of a note and contract with HUD in an amount not to exceed \$5,000,000 to fund the program.

For More Information:

Veronica Briseño, Director, Economic Development (512) 974-2156

Additional Backup Information:

The global spread of Covid-19 has resulted in unprecedented health and economic impact to Austin's citizens and small business community. Consistent with guidance from the U.S. Centers for Disease Control and Prevention (CDC), State and local public health authorities, and in the interest of safeguarding our community, the City of Austin, like cities across the globe, has instituted social distancing measures to slow the progression of Covid-19, in an effort to reduce the overall impact and duration of the virus.

For many local Austin businesses, the economic impact began with the cancellation of Austin's Annual SXSW event, which was estimated to generated \$355.9 million in economic benefit to Austin's economy in 2019.

To address the economic impact to local businesses and provide support to retain employees until a recovery can begin the Economic Development Department is executing an Economic Injury Disaster Loan Program

The Economic Injury Disaster Loan program provides working capital loans for up to \$35,000 subject

to need for small businesses located in one of Austin's 10 districts, and that can demonstrate economic injury associated with COVID-19 global pandemic.

The program offers low-interest loans at extended terms to provide an economically injured business the ability to distribute a loss over an extended period of time, thus mitigating a sudden impact and injecting vital working capital to retain employees into a recovery period.

The Austin EIDLDP is designed to work as gap financing in conjunction with an applicant's request for federal assistance from the Small Business Administration (SBA) Economic Injury Disaster Loans as funding become available.

In FY 2019-20, the Family Business Loan Program Fund has \$1.2M available for loans.

Strategic Outcome(s):

Economic Opportunity and Affordability.

1 **RESOLUTION NO.**

2 **BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**

3 A temporary *Austin Economic Injury Bridge Loan Program* is created, and program guidelines
4 and criteria as set forth on Exhibit A to this resolution are approved.

5
6 **ADOPTED:** _____, 2020

ATTEST: _____

7 Jannette S. Goodall
8 City Clerk

DRAFT

EXHIBIT A

THE CITY OF AUSTIN SECTION 108 Austin Economic Injury Bridge Loan Program CRITERIA

**A Program Financed Under the U.S. Department of Housing & Urban Development
Section 108 Loan Program in Association with the U.S Small Business Administration and
Private Banks and Credit Unions**

**Administered by the:
The City of Austin Economic Development Department (EDD)**

This program is being carried out under Section 108 of Title I of the Housing and Community Development Act of 1974, as amended. The 108 loans are intended to support and stimulate business development and investment by the private sector and aid nonprofit organizations who meet U.S. Small Business Administration (SBA) eligibility for disaster relief. The Program Criteria applies to all sources of 108 loans funding from the U.S. Department of Housing and Urban Development (HUD).

I. MISSION STATEMENT AND PROGRAM OBJECTIVES, AUSTIN ECONOMIC INJURY BRIDGE LOAN PROGRAM

The mission of the City of Austin Economic Injury Bridge Loan Program (AEIBL) is to provide bridge loan financing for small businesses and non-profits requiring short-term working capital until replaced with SBA disaster relief assistance.

The objective of the Program is to:

Provide short-term, working capital loans intended to “bridge the gap” between the time a major catastrophe hits and when a business has secured longer term recovery resources, such as federal disaster assistance.

The AEIBL is not designed to be the primary source of assistance to affected small businesses, which is why eligibility is linked to pursuit of SBA disaster assistance. **Note:** Loans made under this program are short-term debt loans made by the City of Austin in accordance with HUD and SBA regulations and requirements; funding under this program is not a grant. Austin Economic Injury Bridge Loans are required to be repaid by the approved applicant from SBA federal disaster assistance proceeds.

II. PROGRAM REQUIREMENTS

A) Guidelines

The AEIBL will follow the HUD and the SBA Economic Injury Loan Program guidelines for eligibility and underwriting criteria.

B) National Objectives

The program is designed to meet the urgent needs of the community and provide economic stability during disasters for small businesses and non-profits.

C) Loan Review Committee

A Loan Review Committee (**LRC**) comprised of 2 representatives from EDD, 1 representative from the Financial Services Department and 1 representative of the Department of Neighborhood Housing and Community Development, will review all of the AEIBL loan applications presented by the Loan Administrator and make the recommendation to approve or disapprove the loan application. The following criteria are in full alignment with federal guidelines and will be the benchmark for approval or denial of loans. A quorum of the LRC shall be fifty-one percent (51%) or two (2) of the appointed members. A quorum must be present to review and act upon any application.

The LRC will review each application with the required financial information to determine:

- o Number of jobs to be retained
- o Amount of AEIBL fund participation necessary
- o Amount of SBA financing for Disaster Assistance
- o Ability of loan applicant(s) to repay the loan
- o Collateral or security available

No loan shall be made without the favorable recommendation of the LRC.

III. PROGRAM DETAILS

A) General Terms and Conditions

1. Area

Business must be located in one or more of Austin's 10 districts as amended by the City Charter and approved by the residents of Austin on November 6, 2012.

Period of Eligibility:

- The later of the initial "incident period" as declared by the SBA Disaster Declaration or January 31, 2020.

Program Operating Period:

- Loan applications will be accepted up until May 8, 2020 unless an extension is approved by the Austin City Council.

Additional Requirements:

- Negative impact of the disaster to the business must be verifiable.
- Loan amount must not exceed the lesser of 3 months of demonstrated cash operating expenses for the 1st quarter of 2020 or \$35,000.00 maximum.
- Personal guarantee required of all owners with 20% or more interest in the company.
- Personal credit score under 575 will require an exception.
- A lien will be required on all assets of the business to secure the loan.
- No prepayment penalty.
- Ineligible businesses include companies involved in real estate investment, multi-level marketing, adult entertainment, cannabis or firearms. Companies with past due tax liabilities or tax liens or currently in bankruptcy (Corporate or Personal) are not eligible.
- Approved applicants shall be required to submit proof that a completed application was submitted to the SBA Economic Injury Loan Program prior to funding.
- Repayment Ability – Business must be able to show repayment ability based on last quarter financials.

Program Restrictions:

- Interest rate and terms. The applicant and EDD will discuss the appropriate rate and terms for the declaration.
- Use of Federal Tax Returns. The applicant will be required to provide Federal tax returns from the IRS. Tax returns will be required for the business, principals, and affiliates, if any.
- Relocation. Funds are for working capital purposes only and may not be used to pay for the relocation of the business or business assets.
- Amount of AEIBL eligibility. Economic injury will be determined at the time of processing, using the applicant's financial information and a review of the SBA Application for Disaster Relief.
- Insurance Coverage and Proceeds. AEIBL prohibited from aiding applicants whose losses are covered by insurance or other compensation. You must disclose if any business interruption insurance coverage was in force and if a settlement was received or is expected.

- Insurance Requirements on Approved Loans. If a loan is approved, City may require the borrower to purchase and maintain hazard and/or flood insurance.
- Refinancing. AEIBL funds may not be used to refinance outstanding debt.
- Only one loan may be made per eligible business. All previous bridge loans received MUST be paid in full.
- Applicant must not have any outstanding state or federal taxes in arrears.
- Borrower must submit a completed SBA Application for disaster relief to be reviewed by staff. Staff may assist applicants with this.

2. Eligible Applicants

- Private, for-profit businesses and non-profits that have been engaged in industrial, retail or distribution activities for at least two (2) years and are able to demonstrate sufficient profitability. An applicant must be a sole proprietorship or any other legally organized business registered with the State of Texas. The business must meet the size standards of the SBA and must be a closely held entity.
- All qualified applicants must have been established prior to March 1, 2020, and suffered economic injury as a result of the designated disaster. Qualified small business applicants must be an employer business with 2 to 100 employees.

B) Loan Interest Rate

The interest rate is 3.75% for small businesses without credit available elsewhere; businesses with credit available elsewhere are not eligible. The interest rate for non-profits is 2.75%.

D) Terms of Loans

- Working Capital –Up to the lesser of the period of time it takes to close applicant’s SBA loan or 1 year, whichever occurs first.

E) Eligible Uses

- Working Capital for fixed debt, payroll, accounts payable and other billers affected by the Covid-19 health event.

F) Job Preservation

- One job must be preserved per \$25,000 loaned under the AEIBL program.

G) Underwriting

In considering an application for a AEIBL, the following procedure is used for all applicants:

1. Underwriting Criteria

Cash Flow:

- (a) Borrowers shall be required to furnish the last two years financial statements in the form of income tax statements to the lender. In the case of a business that has been in business for less than two years, all of the income tax returns as filed, must be submitted.
- (b) Borrowers shall be required to furnish an interim statement, not less than 90 days old, internally prepared.
- (c) Projections must be supplied for a period of three years, and on a monthly basis up to 90 days beyond break even. Technical assistance provider recognized by the lender must have assisted in preparing all projections as determined by program staff.
- (d) Projections should also include balance sheets, sources, and uses statement of cash flow.
- (e) Consideration of outside income, such as the income of a spouse will be considered in making a credit recommendation. This may also be the case of an existing business.
- (f) All projections must include the assumptions made. Purchase orders, or letters from potential customers will buttress assumptions.
- (g) While not required, those achieving a 1.2 coverage will receive preference. All projections must show how 1.2 coverage will be achieved in a reasonable period.

2. Credit

- (a) Credit reports are required for each borrower.
- (b) Credit reports that reveal open bankruptcies, a large number of past dues, and large numbers of derogatory reporting shall be rejected.
- (c) The amount of debt and the amount of bad debt will have to be considered. Borrowers will be given the opportunity to explain extenuating circumstances and to reach agreements with creditors. However, these shall be evaluated on a case-by-case basis by the Loan Officer and reviewed by the LRC.
- (d) Each borrower shall be required to submit SBA Form 413.
- (e) In many instances of poor credit or inferior collateral, the provision of a guarantor of sound financial means can increase the likelihood of the approval of a loan.

3. Collateral

- (a) All loans shall be collateralized by liens against the fixed assets and liens on the receivables and inventory of the business.
- (b) The Lender may require the pledge of certain personal assets such as personal vehicles, stocks and bonds, and outside real estate.

- (c) Personal Guarantees shall be required of all owners of a business, no matter their percentage of ownership in the business.

4. Character:

- (a) Each borrower shall be required to submit SBA Form 912.
- (b) Each borrower shall provide a statement, which can be punishable by fine or imprisonment, regarding any open lawsuits and past lawsuits, regarding personal or business matters.
- (c) A list of personal and business references shall be submitted with each loan request.
- (d) Resumes on all owners in the business shall be required.
- (e) A history of the business shall be required.

5. Least Amount Necessary:

- (a) Applicant must provide verifiable evidence that business was adversely affected by Covid-19.
- (b) The Loan Officer shall consider personal resources such as cash that can be contributed into the project.

6. Financial Ratios

Loan to Value Ratio (considering all loans for the project):

Land and building: 80%
Used machinery and equipment: 80%
New machinery and equipment: 80%
Receivables: 70%
Inventory: 50%

Debt service coverage ratio: 1.20:1.00

7. Credit History

- Independent credit investigations are conducted on the applicant and the principals. This includes real estate searches, Uniform Commercial Code (UCC) searches with the Secretary of State and personal credit reports on the principals. This credit investigation is used, in part, to verify the accuracy of the information provided by the applicant and the principals and to find out if there are any undisclosed judgments, liens, etc.
- The credit investigation will be run by the primary lender when participating in the project and by EDD when the AEIBL is the only source of funding.

H) Collateral Evaluation

Collateral Type	Advance Rates	Value Determined By
Real Estate		
1. Commercial Owner Occupied	Up to 80%	Appraisal
2. Income Producing Non-Owner Occupied	Up to 80%	Appraisal
3. Raw Land	Up to 80%	Appraisal
Collateral Type	Advance Rates	Value Determined By
Equipment (includes vehicles)	Up to 80% of Liquidation Appraisal on used and up to 80% of invoice on new equipment. If liquidation appraisal is not available, use 80% of book value.	Appraiser, Balance Sheet, Machinery/Equipment quotes
Stock Securities		
1. Highly Marketable	Up to 100% of good grade listed in the NYSE, American or NASDAQ Exchanges.	NY Times or Wall Street Journal
2. Less Marketable	Up to 50% of thinly traded under \$10.00 value listed on an exchange.	NY Times or Wall Street Journal
U. S. Government or Municipal Securities	Up to 100% of listed and traded bonds.	NY Times or Wall Street Journal
Accounts Receivable	Up to 80% of eligible accounts receivable. Advance rates on accounts are a function of dilution rate, turnover, quality of customer sold, industry characteristics, warranty liabilities, and any unusual contractual obligations.	Accounting methods

I) Fees and Costs

1. Processing fee

A non-refundable application fee of in the amount of \$300 is payable at the time an application is submitted. Waiver or reduction of processing fee at discretion of EDD director.

2. AEIBL Loan Fee

The applicant will pay 2%-5% of the total AEIBL loan amount due at the time of closing. Waiver or reduction of processing fee at discretion of EDD director.

3. Other Fees

The applicant will be responsible for all other fees, including bank, SBA, and institutional lender fees, appraisal and environmental fees, legal fees from outside firms, and any other fees. Applicants will receive a Good Faith Estimate of the projected City of Austin fees, which may or may not be adjusted at closing.

J) Environmental Assessment

As the program is listed as categorically excluded, pursuant to 24 CFR 52.35(b)(2) and (4) and 24 CFR 58.34(a), only a short form Environmental Assessment, as provided by HUD, is required.

K) Procurement

In accordance with HUD regulations, Section 108 financed projects for private, for-profit businesses and private non- profits are exempt from HUD procurement policies.

L) Other Program Information

All Section 108 funded projects are required to comply with federal, state and local statutes, regulations and requirements, including but not limited to the Davis-Bacon Act, Workers Compensation, Section 3 of the Housing and Community Development Act, and insurance requirements.

M) Relocation

Section 108 funded activities that result in the displacement of persons or businesses will trigger the Uniform Relocation Act compliance requirements.

IV. PROGRAM ADMINISTRATION

A) Choosing a Project

Preliminary Review of Information

EDD staff and the City's outside Program Consultant, if applicable, will perform a preliminary analysis of the interim financial statements, tax reports, payroll information, debt schedule, business plan, copies of agreements, and any other required documentation. This preliminary review will reveal if (a) the project meets the HUD and SBA guidelines and at least one of the national objectives, (b) the applicant has the capacity to pay debt service on the AEIBL until SBA payoff occurs, and (c) the applicant has the capacity of fulfilling all of the requirements of the AEIBL and has completed an application with the SBA Economic Injury Disaster Loan Program. If the preliminary review is acceptable to EDD, the applicant may submit a Loan Application Form.

B) Obtaining Loan Review Committee Approval

After determining that the project and the applicant qualify for the AEIBL and have filed an SBA Economic Injury Loan application to the satisfaction of staff EDD (which may include assistance from the City's outside Program Consultant) will prepare a AEIBL Package for the LRC with all of the supportive documentation. The LRC shall either approve or disapprove the loan application. If approved and, when applicable, following City Council approval, the loan package shall be filed for HUD review.

C) Obtaining Final Loan Approval

After the LRC approves a loan application, final loan underwriting and HUD eligibility approval requires the following actions:

- When the project requires expenditure of Section 108 loan match exceeding the City Manager's administrative contracting authority as set out per City Charter, EDD will require the approval of the City Council.
- Unless waived by HUD, the City Manager or the City Manager's designee will submit a loan eligibility request to HUD for approval of HUD eligibility requirements. City will request formal approval from HUD for a waiver to expedite loan processing.

D) Loan Acceptance

- Upon receipt of HUD eligibility approval, EDD will submit the City of Austin's Loan Commitment Letter to the applicant.

E) Closing

The City's Law Department (or outside counsel as approved by the Law Department) shall close all loans in coordination with HUD's Counsel and the Borrower's Counsel if they choose to be represented. EDD and the City's Law Department will be responsible for supervising compliance with the loan closing documents.

F) Servicing

EDD will carry out loan servicing regarding payments and submission of reports and financial statements.

G) Supervision and Reporting

EDD shall review on a yearly basis all financial statements of the borrower, and compliance reports for compliance with Davis Bacon, Section 3, and the National Objectives of the program. EDD will make a field visit to the borrower's location at least once a year.

Borrowers in default or who cannot be brought into compliance shall be referred to the City's Law Department for corrective action, including foreclosure, if necessary.

H) Loan Administration

The Austin Economic Injury Bridge Loan program shall be administered in accordance with Section IV. The Loan Review Committee described in Section II (C) shall serve as the Loan Committee for the Micro-Loan Program.

CONTACT INFORMATION

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