

RESOLUTION NO. 20200521-008

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

The *Austin Economic Injury Bridge Loan Program* guidelines and criteria are modified as set forth on Exhibit A to this resolution and are approved.

ADOPTED: May 21, 2020

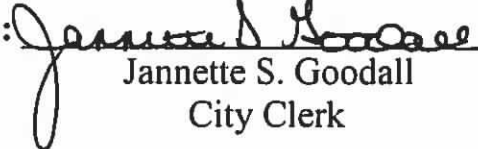
ATTEST: 
Jannette S. Goodall
City Clerk

EXHIBIT A

THE CITY OF AUSTIN SECTION 108 Austin Economic Injury Bridge Loan Program CRITERIA – REVISED April 23, 2020

**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 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 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 Federal disaster assistance proceeds.

II. PROGRAM REQUIREMENTS

A) Guidelines

The AEIBL will follow the HUD 108 guidelines and SBA Disaster Relief Loan Program guidelines for eligibility and underwriting criteria.

B) National Objectives

To benefit low- and moderate-income persons through job retention activities pursuant to 24 CFR 570.208(a)(4)(ii)

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.

2. Period of Eligibility:

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

3. Program Operating Period:

- Loan applications will be accepted up until May 8th 2020 unless an extension is approved by the Austin City Council or until all funding has been exhausted.

4. 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.
- A lien will be required on all assets of the business to secure the loan.
- No prepayment penalty.
- Approved applicants shall be required to submit proof that a completed application was submitted to, including but not limited to, SBA Economic Injury Disaster Loan Program, Paychecks Protection Program or any other future federal disaster assistance program made available by a U.S. federal agency and designed to provide assistance to businesses due to Covid-19 (**Federal Disaster Assistance Program**) prior to funding.
- Business must be able to show repayment ability based on last two years operating history.

5. Ineligible businesses include companies involved in:

- real estate investment
- multi-level marketing
- are engaged in illegal activities
- an agricultural enterprise
- derive revenue from sexual depictions or products
- derive more than a third of their annual revenue from gambling activities
- are in the business of lobbying
- are a government entity
- non-profits

- companies with past due tax liabilities or tax liens or currently in bankruptcy (Corporate or Personal)

6. Program Restrictions:

- Interest rate and terms. 12 month term at a rate of 3.75%, or up to 60 month maximum for applicants that can evidence a decline for federal assistance.
- 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.

7. Eligible Applicants

- Private, for-profit businesses that have been engaged in commercial and multi-family real estate, medical, 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 less than 500 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.

C) 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.
- Failure to secure Federal Disaster Assistance Program assistance – Should an applicant complete an application and make a good faith effort to secure federal disaster assistance, but fail to secure funding the following terms shall be applied:
 - A) Working Capital – for a maximum of a 5-year term from the original closing date. i.e. loan closed April 1st 2020 and decline for federal disaster assistance received July 1st 2020 the remaining term is 57 months to maturity.

D) Eligible Uses

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

E) Job Preservation

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

F) Underwriting

In considering an application for an 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 company interim financial statements, 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) A 1.2 cash flow coverage shall be required.

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.
- (d) Collateral coverage of 1.2 shall be provided preference with an exception allowance of 1.0

4. Character:

- (a) 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.
- (b) A list of personal and business references shall be submitted with each loan request.
- (c) Resumes on all 20% or more ownership interests in the business shall be required.
- (d) 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%

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 or its designee when the AEIBL is the only source of funding.

G) 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

H) Fees and Costs

1. Processing fee

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

I) 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.

J) Procurement

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

K) 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.

L) 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 a Federal Disaster Assistance Program payoff occurs, and (c) the applicant has the capacity to fulfill all of the requirements of the AEIBL and has completed an application with all applicable Federal Disaster Assistance Programs. 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 a Federal Disaster Assistance Program 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, loans shall be documented and reported to the HUD San Antonio field office in accordance with field office requirements.

C) Obtaining Final Loan Approval

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

- 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.
- Borrower shall agree as a condition of loan acceptance to apply proceeds from a Federal Disaster Assistance Program to repay any and all outstanding AEIBL balance in full immediately upon receipt of such funding.

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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