



## **BUSINESS ASSISTANCE PROGRAM (BAP)**

### **STANDARD OPERATING PROCEDURES**

Eligibility Citation-24 CFR Part 570.203 (b)

#### **A. Purpose of the Program:**

The City of Fayetteville established the Business Assistance Program (BAP) to:

- Stimulate small business investments within the municipal boundaries of the City of Fayetteville.
- Create new services and retail businesses in the low-income areas, including the City's redevelopment study areas, within the City limits of Fayetteville.
- Create and retain jobs for low to moderate-income people living in the City of Fayetteville.

#### **B. Eligibility Requirements:**

- Business, office and industrial zoned properties must be located within the municipal boundaries of the City of Fayetteville. Home-based businesses are not eligible.
- Start up and expanding for profits in retail, services or manufacturing needing additional equity to qualify for primary financing from a Bank and who meet all of the City's program guidelines.
- Certain small business types, to include, but not limited to, adult entertainment, bars, night clubs, private clubs, vape shops, hemp shops, body piercing, alcohol sales/distribution and gambling businesses are excluded from this program.
- Businesses owning the project real estate must occupy a minimum of 51% of the facility.
- Businesses requiring ABC permits are subject to additional restrictions.

#### **C. Program Description and Requirements:**

For qualifying purposes under this program, a small business is defined as a firm that is organized for profit, has a place of business in the United States, is not dominant in its field, and meets size standards and other criteria set by the Small Business Administration (SBA). Size standards vary from industry to industry.

The City's loan works in conjunction with a primary loan from a Bank or approved participating Lender. The applicant would apply first through the participating Lender and once passing their underwriting criteria, the participating lender or applicant would request funds through an additional loan application from the City outlining analysis of business, project and loan structure. The Lender will refer the applicant to the City to discuss the City's job retention/creation requirement. If this

requirement cannot be met by the business, then the business is not eligible to apply for City funds.

The Lender's loan must be a minimum of 60% of the total loan funds involved in the project. Applicants apply for a business loan directly to a Bank or other approved Lender of their choice. The City will provide a subordinated loan up to 25% or a maximum of \$125,000 of the total loan funds. An exception to this percentage or approval amount can be made at the loan committee's discretion based on the project or client's needs. The Borrower is required to commit at least 5% of total project cost as equity. The Lender's request for City loan funds is based on the additional equity required by the lender to approve its loan and make it more affordable for the applicant.

**Example:**

Company ABC applies at a Bank of Fayetteville for a \$500,000 loan. Bank will loan 75% of property value subject to appraisal in the amount of \$375,000. Applicant qualifies, but does not have \$125,000 for down payment. City could lend 95% of the needed equity funds as a subordinated loan with the applicant making the 5% difference in cash down payment. The City could also lend the full gap of \$125,000 if client can verify an equity investment has or will be made by the client of at least 5% of the total project cost.

Bank loan (75% of the loan funds):	\$375,000
City loan (20% of the loan funds):	\$100,000
Applicant (5% cash down)	<u>\$ 25,000</u>
<b>Total:</b>	<b>\$500,000</b>

If an applicant receives a SBA 504 Loan, the loan structure will differ. A private lender, usually a bank, provides interim financing for up to 90% of the total project costs, and a permanent mortgage for 50% of total project costs. A Certified Development Corporation, such as our local CDC Self Help Credit Union, provides up to 40% of permanent financing for project costs. The business applicant is expected to provide as little as a 10% equity injection (usually cash or land). Start-ups or special use buildings require at least 15%. Start-ups and special use buildings require at least 20%.

The interest rate on approved City loans will be 5% fixed for the term of the loan. As an incentive to encourage business activity in the City's redevelopment plan areas and low income census tracts, the City will offer a 3% fixed interest rate on those loans throughout the term of the loan. Loan repayment term can be based on the recommendation of the Lender with a maximum of 20 years. The City loan will take a second lien position behind the primary Lender. A third lien position will be considered on a case-by-case basis such as when participating with a SBA 504 Loan. In either case, there must be sufficient collateral to secure the City loan. An exception may be granted on smaller loans at the committee's discretion.

The City may consider deferring its loan payment or allow the payment of interest-only for a specified period of time based on the recommendation of the Lender regarding the applicant's financial strength.

Loan applicants will undergo a credit check and meet standard underwriting criteria. All personal and business federal, state and local taxes must be paid current. Additional program requirements and/or restrictions may apply. The Lender makes the determination of whether the borrower needs additional equity funds from the City.

*Fayetteville Renaissance Plan Downtown Historic District*

Due to the increased cost of revitalizing in the downtown historic district and as a recruitment incentive, businesses renovating commercial properties in the downtown historic district will not only be offered a 3% fixed interest rate, but loan funds will be made available up to \$200,000 or 25% of the total loan funds needed for historic properties. All other properties within this plan area will be considered for a maximum \$125,000 loan.

#### **D. Underwriting and Application Processing Requirements**

A Lender shall refer an applicant to the City prior to processing a loan request or subsequently if the credit analysis determines the need for the City's loan assistance. The City shall screen potential applicants for the program in order to explain its program requirements specifically related to job creation/retention.

Participating Lenders will use standard underwriting criteria when reviewing a loan request. A Lender's decision to provide loan funds is made at the sole discretion of the Lender. If the applicant meets the Lender's underwriting criteria except for the required equity, the Lender or applicant requests the equity funds from the City in the form of a City Business Equity Loan. A Lender's request for City participation in the project is made in the form of a loan commitment letter from the Lender, to the Applicant, including a contingency clause stating that "the Lender's loan is contingent upon the City providing the requested funds in the form of a loan consistent with the City's program guidelines." The Lender provides the City with a copy of their commitment letter to the Applicant.

The City verifies the applicant's eligibility for the program and requires that the applicant complete a City's loan application and attach all necessary documents as indicated on the application checklist. The City may request additional information from the Lender and Applicant in order to make a loan decision. The City will charge a \$50 nonrefundable application fee. The applicant is also responsible for paying the recording fee to file a deed of trust if the loan is approved and secured by real estate.

#### **Business Assistance Loan Submission Requirements (see attached checklist for all needed documents)**

The following items must be submitted by the Lender and Loan Applicant to the City of Fayetteville for consideration for participation in the City's Business Assistance Program:

**Lender:**

1. *Commitment Letter from a Lender* specifying a commitment to make a loan to the Borrower “contingent upon the City approving a Business Assistance loan consistent with the City’s program guidelines.” The letter will outline the primary loan and City’s loan structure.
2. *Recommendation Letter* for the City to consider/approve the loan
3. *Copies* of tax returns, financial statements, credit report(s), debt analysis, appraisal(s), collateral information, and any other documentation used to render a loan decision.
4. *Additional Items* may be requested by the City from the Applicant(s) and/or Lender.

The City’s loan closing will take place prior to the primary loan closing in order to provide the down payment proceeds payable to the Lender and Applicant. The City will record its deed of trust after the primary lender has recorded its deed of trust. The borrower is responsible for paying the recording fee and must submit the fee prior at the loan closing. The borrower will make loan payments directly to the City of Fayetteville.

**Loan Applicant Submission Requirements:**

1. A *City Loan Application* from each member of the small business concern requesting assistance, including guarantors. An application must be completed by:
  - a. If a sole proprietorship by the proprietor
  - b. If a partnership by each partner
  - c. If a corporation, by each officer, director, and additionally by each holder of 20% or more of the voting stock
  - d. If a limited liability entity by each member and/or manager
  - e. All Guarantors
2. *Job Creation/Retention Summary Form* must be completed and provided to the City by the Applicant. For jobs retained a *job verification form* must also be completed on each employee.
3. Contractor/Subcontractor *Certification* form(s), if applicable
4. Copy of sales contract and/or Construction estimate
5. Verification a *DUNS#* has been requested if the applicant does not already have one
6. *Additional items* may be requested by the City from the Applicant(s) and/or Lender.
7. *\$50 Nonrefundable application fee* from the Applicant

**Job Creation/Retention and Monitoring Requirements**

Business must retain or create at least one full time equivalent job for each \$50,000 loaned by the City program. The borrower agrees to make the job(s) available to a low to moderate-income person. Annual job reviews, which may include on-site monitoring visits, will be conducted by the City to verify compliance with this requirement and will be conducted for at least a five-year consecutive period.

For an activity that retains jobs, the project applicant must demonstrate that the job(s) would have been lost without the City's assistance with the loan. The job(s) retained must either be held by a low or moderate-income person or the job(s) can reasonably be expected to turn over within the following two years and that steps will be taken to ensure that it will be filled by, or made available to, a low or moderate-income person upon turnover.

### **Davis Bacon Labor Standards Requirement**

Projects funded in whole or in part with federal funds exceeding \$2,000 must comply with the Davis Bacon Act. The Davis Bacon Act mandates minimum hourly payment to all employees employed on the construction project. During the course of construction, weekly-certified payrolls are to be submitted to the Community Development Office. This office reviews the payrolls to insure compliance with the Davis Bacon wages. Wage interviews will also be conducted with employees chosen at random on the construction site bi-weekly by the department's Davis Bacon Coordinator. The contractor and any subcontractors must agree to comply and incorporate labor standards provisions (HUD form 4010) and the applicable wage decision into the construction contract with the loan client. A copy of the construction contract must be submitted to the City before construction can begin.

### **Section 3 Business Certification**

The City of Fayetteville has a commitment to implementing the requirements of Section 3 as outlined by HUD regulations. Section 3 is a provision of the Housing and Urban Development Act of 1968. The purpose of Section 3 is to ensure that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing federal, state, and local laws and regulations, be directed to low and very low income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low and very low income persons. A Section 3 business concern is a business that is 51% or more owned by Section 3 residents; or one that employs Section 3 residents for at least 30% of its full-time, permanent staff; or one that provides evidence of a commitment to subcontract to Section 3 business concerns, 25% or more of the dollar amount of the awarded contract. The Community Development Department will require that each contractor and/or subcontractor complete a Section 3 Business Certification Form.

### **Environmental Review Requirement**

Projects funded in whole or in part with federal funds are subject to an environmental review process to identify if the project will have a significant impact on the quality of the human environment. The loan documents for an approved loan cannot be executed until this process has been completed. Projects involving only the acquisition of a commercial property will require an internal review process. Projects involving rehabilitation or new construction to the project site may involve a more extensive review process.

If the project involves new construction an environmental assessment must be completed at the expense of the applicant and the hired firm must address the factors listed on the HUD environmental assessment statutory checklist. If a project involves the rehabilitation of a building, to include new signage, and is located in a historic district, listed in the National Register of Historic Places, or the building is fifty years or older, then the rehabilitation plans, along with a Certificate of Appropriateness (COA), if applicable, must be reviewed by the State Historic Preservation Office (SHPO) in Raleigh. This agency has 30 days to respond with a letter to whether or not the project will have an adverse effect. In a rare situation the review process may take longer than the normal process. Projects involving buildings less than 50 years old and not located in a historic district will only require an internal review process.

### **Definition of Income**

For the purpose of determining whether a person is defined as low to moderate income, the following definition has been selected for this program: 26 CFR § 1.61-2: Gross income as defined for purposes of reporting under Internal Revenue Service (IRS) Form 1040 for individual Federal annual income tax purposes.

### **Low and Moderate Income Guidelines**

Low and moderate income persons means a member of a family having an income equal to or less than the Section 8 low-income limit established by HUD. Currently the Section 8 low-income limit is capped not to exceed 80% of the median family income for the Fayetteville metropolitan statistical area, HUD issues new income limits on an annual basis.

\*\* To determine if a hire is low/mod, his/her current total household income prior to being hired, depending on the family size cannot go over the listed amount. If it does, that person is not considered low/mod.