



**CITY OF FOUNTAIN VALLEY
COMMERCIAL PROPERTY
AND
BUSINESS IMPROVEMENT
LOAN PROGRAM**

INTRODUCTION

Due to the dissolution of all California redevelopment agencies as of February 1, 2012, the California Legislature recognized that local governments, especially cities and counties, needed new economic development tools. A series of new laws became effective on January 1, 2014 to “promote economic development on a local level so that communities can enact local strategies to increase jobs, create economic opportunity, and generate tax revenue for all levels of government” with the city (or county, as applicable) using local revenues to provide an economic subsidy subject to legal requirements. See: Government Code Section 52200, *et seq.* From these new laws, the City of Fountain Valley, as a general law city, is now clearly and expressly authorized to “establish a program under which it loans funds to owners or tenants for the purpose of rehabilitating commercial buildings or structures.” Section 52202. To promote economic development of commercial properties and businesses in the City of Fountain Valley (“City”), the City Council adopted a new program called the *Commercial Property and Business Improvement Loan Program* (“Program”), which will allow the City to provide low interest rate loans to the fee owners of commercial property (ies) to stimulate the local business environment and also enhance the overall appearance of the City. Commercial Improvement Loans (each a “Loan”) will be available to qualified, eligible commercial property owners to update and improve existing commercial properties in the Fountain Valley community.

The Policies and Procedures for the Program are set forth in this manual, which was adopted by the City Council of the City of Fountain Valley on _____, 2017 (“Program Policies”).

The City has created this Program to incentivize local commercial property owners to improve their property (ies), which thereby enhances the community and creates a more vibrant business environment.

The Program is expressly subject to funding availability and appropriation by the Fountain Valley City Council on a periodic basis as determined by the City Council in their sole discretion. Commercial properties (structures and appurtenant improvements) with evident deterioration due to age, obsolescence, or municipal and other uniform code violations will have priority, based on funding availability, but any commercial property owner may make application to the City, subject to the Program requirements, available local funds, and approval (or disapproval) by the City Manager, or as he may elect to present to the City Council for consideration and approval (or disapproval) in his or their sole, reasonable discretion.

The Program will utilize a cost-sharing approach requiring, if a City Loan is approved, that the commercial property owner (“Owner”) to provide not less than 50% of the funds

and the City will provide a matching City Loan that will not exceed 50% of the cost of the rehabilitation improvements, but in no event will a City Program loan exceed \$500,000. In all events, the disbursement of the proceeds of an approved City Loan will only occur only after the Owner has incurred and expended all of its funds committed to the Rehabilitation and Scope of Work and based on the Disbursement Procedures, as the terms are more fully described herein.

The City and the Owner will develop a scope of work and rehabilitation plan agreeable to all parties to achieve the mutually desired result of correction of code violations, improvements and upgrades (together, the "Rehabilitation") that will enhance the subject property and business operations thereon ("Commercial Property") both physically and aesthetically.

I. PROGRAM GOALS

A. The primary goals of the Commercial Property and Business Improvement Loan Program are to:

1. Stimulate economic development by providing incentives to increase business investment, improve business sustainability and create visually pleasing areas that will attract new businesses and consumers;

2. Increase local employment;

B. Complement other revitalization efforts in the City; and

1. Support local business in order to further the economic health of the City.

II. PROGRAM REQUIREMENTS

A. Commercial Property Eligibility Requirements

1. Location and Type of Property. An eligible Commercial Property must include existing commercial buildings/structures and uses, such as retail, restaurant, offices, retail center and commercial service properties. All existing uses must be compliant with the Fountain Valley Municipal Code ("FVMC"). Schools and educational facilities, both private and public, are not eligible. Faith-based facilities are not eligible. Non-commercial structures and uses are not eligible.

a. The focus of this Program is designed to renovate and rehabilitate existing structures and appurtenant improvements, in particular the exterior facades, parking areas, landscaping, and interior work and improvements shall relate only to correction of uniform code violations. Therefore, new additional construction, expansion of the existing structure(s) are not eligible. The Commercial Property must be located within the Fountain Valley city limits.

2. Condition of Property. In order to be eligible and for the Owner to make application to the City, the subject Commercial Property must be in need of repairs to (i) correct existing nonconforming development standards, (ii) correct existing nonconforming local and/or state code requirements, (iii) correct existing local and/or state code violations, including the Uniform codes and the FVMC, (iv) protect the

structural integrity of the Commercial Property, (v) promote neighborhood safety, (vi) improve commercial viability, (vii) improve exteriors, or (viii) aid the mobility of the physically disabled and/or elderly.

3. Ownership of the Property. The Owner, as “Applicant” and at all times while the City Loan is outstanding shall be and remain the fee owner of the Commercial Property. Each Commercial Owner of the subject Commercial Property must hold fee simple title. If the subject property is held in more than one name, such as joint tenants, percentages of ownership, corporate entity, then each and all persons, trustees of a family trust, or entities holding the whole or any part of the fee interests in the Commercial Property must be duly authorized to sign, and must sign, both the Program Application and, if approved, also sign the loan documents and other implementing instruments (i.e., duly authorized officer(s), director(s), partner(s), or member(s), as applicable, in the case of corporate entity Applicant).

4. Equity. At the time the Applicant files a Program Application, the total indebtedness of all liens and encumbrances of record against the Commercial Property, including the requested City Loan, if approved, under the Program, shall not exceed eighty-five percent (85%) of the fair market value of the improved real property after Rehabilitation. For the purposes of this calculation, encumbrances must include the proposed principal amount of the City Loan under the Program as requested by the Applicant. The equity calculation will be made by comparing the sales prices of comparable commercial properties sold in the immediate vicinity of the subject property within a six-month period prior to the filing of the Program Application by the Applicant. If the Applicant disagrees with the fair market valuation and thereby the equity calculation, the Applicant may at their own expense obtain an independent appraisal from an experienced, licensed appraiser (and provide to City a legible, true, complete copy of the appraisal). The City reserves all rights to have the appraisal reviewed by one or more independent licensed appraiser(s).

5. Hazard Insurance. The Owner shall pay for and maintain for the Commercial Property at all times insurance coverage that includes an all-risk property insurance policy in an amount equal to the full replacement value of all structures and improvements on the subject property. Furthermore, an Applicant with Commercial Property located within a FEMA-designated 100-year floodplain that may receive assistance under the Program must evidence Owner maintains flood insurance in the amount of the improvements for the term of the City Loan. The insurance policy or policies shall name the City of Fountain Valley as an additionally insured/loss payee.

6. Property/Income Tax Delinquency or Liens. All property taxes, income taxes and assessments must be current, and the Commercial Property must not have any recorded property tax liens, income tax liens, outstanding judgment liens or outstanding mechanics liens, other than the purchase money or permanent loans that meet the loan-to-value requirements of the Program.

7. Outstanding Judgments, Obligations or Forbearances. All outstanding mortgages/permanent loans recorded against the Commercial Property must be current, and shall meet the loan-to-value requirements of the Program. Furthermore, as of the date of the Application there shall be no outstanding judgments, no new liens or

judgments that may be recorded thereafter and no forbearances are allowed against the subject property.

8. Entry by the City. Owner shall permit the City, through its officers, employees and agents, at all reasonable times to enter onto the Commercial Property during construction and completion of the Rehabilitation in order to inspect work and to evaluate whether the work conforms to the approved Scope of Work and Rehabilitation Plans for the Rehabilitation and all the requirements of the Program. Owner acknowledges that the City is under no obligation to supervise, inspect, or inform Owner of the progress of construction, and Owner shall not rely upon the City therefor. Any inspection by the City is entirely for its purposes in determining whether Owner is in default under the Program and is not for the purpose of determining or informing Owner of the quality or suitability of construction. Owner shall rely entirely upon its own supervision and inspection in determining the quality and suitability of the materials and work, and the performance of architects, subcontractors, and material suppliers to undertake and complete the Rehabilitation.

9. Indemnity. Owner shall, at its expense, defend, indemnify, and hold harmless the City of Fountain Valley and its elected and appointed officials, officers, employees, agents and representatives (together, "Indemnitees") from any and all losses, liabilities, claims, lawsuits, causes of action, judgments, settlements, court costs, attorneys' fees, and other legal expenses, costs of evidence of title, costs of evidence of value, and other damages of whatsoever nature arising out of or in connection with, or relating in any manner to any act or omission of Owner or its agents, employees, contractors and subcontractors of any tier and employees thereof (together, "Owner's Agents") in connection with or arising from Applicant's or Owner's Agents' performance or nonperformance of any obligation under the Program or the contracts and instruments implementing the Program and providing Owner a City Loan, Owner's ownership or operation of the Commercial Property, except that arising from the sole, gross negligence or intentional misconduct of an Indemnitee.

10. Duty to Prevent Hazardous Material Contamination. During the construction of the Rehabilitation, Owner shall take all necessary precautions to prevent the release of any Hazardous Materials into the environment on or under the site of the facade improvement. Such precautions shall include compliance with all Governmental Requirements with respect to Hazardous Materials. Owner shall notify the City, and provide to the City a copy or copies, of any notices of violation, notices to comply, citations, inquiries clean-up or abatement orders, cease and desist orders, reports filed pursuant to self-reporting requirements and reports filed or applications made pursuant to any Governmental Requirement relating to Hazardous Materials and underground tanks, and the Owner shall report to the City, as soon as possible after each incident, any unusual, potentially important incidents in the event of a release of any Hazardous Materials into the environment.

11. Eligible and Ineligible Expenses.

a. Eligible Expenses:

(i) Exterior Building Improvements:

- (1) Paint
 - (2) Architectural Elements
 - (3) Siding (stucco, composite, wood)
 - (4) Soffit and Fascia
 - (5) Gutters and Drainage
 - (6) Lighting attached to Building
 - (7) Windows and Doors
 - (8) Awnings
 - (9) Signage
 - (10) ADA Accessibility
 - (11) Other work approved by City Manager or his authorized designee.
- (ii) Exterior Site Improvements:
- (1) Freestanding lighting
 - (2) Monument signs
 - (3) Parking lot improvements
 - (4) Fencing
 - (5) Landscaping
 - (6) Sidewalks
 - (7) Other work approved by City Manager or his authorized designee.
- (iii) Other Eligible Expenses
- (1) Permit Fees
 - (2) Architectural and Design fees not to exceed \$5,000 of the City's loan commitment.
 - (3) Demolition not to exceed 20% of project cost
- b. Ineligible expenses:
- (i) Interior Improvements
 - (ii) Any improvements made prior to loan approval
 - (iii) Any improvement not allowed per City codes such as neon lighting
 - (iv) Any improvement not approved by the City Manager or his authorized designee
 - (v) New construction of additional square footage
 - (vi) Routine Maintenance
 - (vii) Operating Costs

III. PROJECT EVALUATION CRITERIA

- A.** Applications will be evaluated on the following criteria:
1. Eligibility of the Applicant
 2. Eligibility of the proposed Scope of Work for the Rehabilitation
 3. The extent to which Owner's private funds are to be leveraged
 4. The extent to which jobs are to be created
 - a. Type of jobs and wages
 5. The extent to which sales taxes are to be created
 6. The extent to which property taxes are to be created
 7. Evidence of ability to repay the City loan
 8. Size of City Loan requested
 9. Schedule of the Rehabilitation
 10. Completeness of Owner's application
 11. The level of deterioration, code violations, and overall condition of the Commercial Property
 12. Impact of the proposed Rehabilitation and the resulting economic enhancement of the area
 13. Whether the Rehabilitation will aesthetically transform the Commercial Property
 14. The long term sustainability and durability of the Rehabilitation improvements
 15. Other factors as deemed appropriate by the City Manager and his authorized designee(s).
16. Availability of appropriated amounts by the City for program (that year).

IV. TERMS AND CONDITIONS OF PROGRAM ASSISTANCE

A. *Building Permits.* For all proposed work for the Rehabilitation requiring building, electrical, plumbing or mechanical permits, the Owner shall have caused to be prepared proper plans and submitted such plans ("Rehabilitation Plans") to the City Building Department for review and issuance of the permits.

B. *Maintenance/Occupancy Requirements.* Each Commercial Property shall be maintained in compliance with the FVMC and all other local, state and federal laws and regulations. From the date of Application and for the entire term the City Loan remains outstanding, the Owner shall not allow, and shall take appropriate remedies to stop, any criminal activities at the subject Commercial Property, nor shall an Owner allow, and shall take steps to stop, the Commercial Property to suffer deterioration or decline, or maintain, or cause to be maintained, or allow to be maintained any public or private nuisance on or about the Commercial Property.

C. Nondiscrimination. There shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, marital status, national origin, or ancestry, in the selection of contractors or subcontractors to complete the Rehabilitation work financed with the City Loan, or in the sale, leasing, transferring, use, occupancy, tenure, or enjoyment of the assisted properties.

D. Compliance with Program Policies and Procedures. For the entire term the City Loan is outstanding, Owner shall comply with all Program requirements and procedures as set forth in these Policies and Procedures, and as required and as set forth in City Loan agreement and all implementing documents and instruments.

E. Prevailing Wages. Applicant shall acknowledge and as Owner agrees Owner is required to cause all of its contractors and their subcontractors to pay prevailing wages in compliance with California Labor Code Section 1720, *et. seq.* Owner shall be responsible to obtain from its general contractor and all subcontractor(s) certified payroll records demonstrating that the proper prevailing wages have been accounted for and paid to all workers in compliance with the California Labor Code. Owner shall ensure payroll records are filed electronically. Contractors and subcontractors shall be registered with the DIR.

V. LOAN TERMS AND CONDITIONS

A. City Evaluation and Underwriting. The Owner's application will be evaluated by the City Manager (and his authorized designee(s)) for completeness and whether the Owner meets the underwriting criteria, evidences the Owner's current financial condition, credit history, and financial need and demonstrates a feasible and reasonable ability to repay the City Loan.

1. Loan Amount. The City Loan amount is subject to the availability and appropriation of Program funds by the City Council. The City Loan amount shall not exceed 50% of the total Rehabilitation costs in an amount not to exceed \$500,000.

2. Interest Rate. The interest rate on the City Loan shall be three percent (3%) simple interest per annum.

3. Term of City Loan. The City Loan term shall be determined by the original principal amount of the loan. The loan term shall range from 5 years to 10 years.

4. Private Funds Leveraged. The Owner shall leverage a minimum of one dollar (\$1.00) of private funds for every one dollar (\$1.00) of the City Loan amount requested.

5. Amortization Schedule; Period of Payment. The City will establish an amortization schedule for each City Loan, which shall include level, monthly amortized payments over the term of the City Loan; provided however, the City will defer payments until the first anniversary of the City Loan.

6. Repayment. Interest shall commence to accrue at issuance of the City Loan and shall be added to the principal and balance and shall be amortized over the term of the loan.

a. Prepayment: There shall be no prepayment penalties.

b. Late fees: A 5% late fee will be assessed to each payment over five (5) days late.

c. Collateral: Loans are to be secured by a Deed of Trust, recorded as a senior lien against the Owner's Commercial Property, but in no event shall the deed of trust be recorded in less than second lien priority, subordinate only to an existing first lien securing Owner's permanent loan. And, the loan-to-value ratio of all encumbrances, including the City Loan, shall not exceed eighty five percent (85%).

d. Job Creation: In connection with and as a part of the Owner's application, as Applicant, Owner must submit supporting documentation that within two (2) years of completion of the Rehabilitation, the Owner shall have caused creation of at least one (1) full-time permanent position or full-time equivalent position of employment at the Commercial Property for every \$35,000 of Program funds provided through the City Loan.

e. Due on sale or transfer: The City Loan, all funds due of the remaining balance of principal and interest, shall be immediately due and payable upon (i) sale or transfer of all or any part of the Commercial Property to a third party, (ii) an unpermitted refinancing of the first lien, (iii) default or failure to meet the required terms set forth in the City Loan documents under this Program.

(i) If a corporation holds title the loan is due and payable if a majority of the officers are replaced or the majority of the stock within the corporation is transferred.

f. Subordination: The Program loan will only be subordinated to a rate and term refinancing that does not decrease City's original equity position. Further, subordination and affirmation or a new subordination upon a permitted refinancing shall meet the refinancing criteria of the Program.

B. Minimum Requirements. To be considered for funding, the Applicant must meet all of the following minimum requirements:

1. The Applicant must have owned the subject property for a minimum of five (5) years.

2. Documents. Applicant must submit the following documents in connection with their application for a City Loan:

a. A detailed plan of the Scope of Work for the Rehabilitation, including exterior improvements and a plan for correction of code violations both interior and exterior to the Commercial Property.

b. A developed marketing plan and business plan.

c. Three years of financial history including tax returns, balance sheets, profit/loss statements, cash flow statements and accountant notes.

d. Information regarding successful credit history.

e. Proof of verification for the minimum of one dollar (\$1.00) of private funds for every one dollar (\$1.00) of loan requested.

3. Loan Proceeds Distribution. All loan proceeds will be maintained in an escrow account. Owner's funds shall be expended prior to the proceeds of the City Loan. Draws from the account will be made at predetermined milestones of the construction. Approval of the draws will be authorized by the City Manager or his authorized designee. Owner's general contractor must provide conditional waiver and lien releases upon partial payments as draws are received and an unconditional waiver and lien release upon final payment.

C. Contractor Requirements

1. All of Owner's contractors and subcontractors are required to possess a valid California Contractors license for their trade specialty or a general contractor's license.

2. All of Owner's contractors and subcontractors are required to have valid liability Insurance in the amount of \$1million.

3. All of Owner's contractors and subcontractors are required to have valid workers compensation insurance for all workers on the job.

4. All of Owner's contractors and subcontractors may not be on any government debarment list.

5. All of Owner's contractors and subcontractors are required to have a valid City of Fountain Valley business license.

6. The Owner's contractor(s) must be familiar with state prevailing wage requirements.

VI. APPROVAL OF PROGRAM LEGAL DOCUMENTS

A. City's Legal Counsel. All Program legal documents shall be approved as to form by the City's legal counsel or special counsel prior to their use.

VII. AUTHORITY TO ADMINISTER

A. City Manager as Program Administrator. The preparation and use of all required Program procedures manuals, forms, documents and agreements shall be administered by the City Manager or his authorized designees in accordance with these Program policies and procedures.