

TOWN OF HAVANA

ORDINANCE NO. 262

AN ORDINANCE IMPLEMENTING THE DEPARTMENT OF COMMUNITY AFFAIRS, COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM INCOME DISPOSITION REQUIREMENTS IN COMPLIANCE WITH SECTION 104(j) OF TITLE I OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974; 24 C.F.R. PART 570.504; 9B-43, FLORIDA ADMINISTRATIVE CODE, HUD POLICY INDEX MEMORANDUMS 3-15, 3-18, AND 3-33; HUD CPD NOTICE 89-43 DATED AUGUST 11, 1989; AND OMB CIRCULAR A-102, ATTACHMENT E DETAILING THE PROGRAM INCOME PURPOSE; BACKGROUND; PROGRAM OVERVIEW; GOALS AND OBJECTIVES; ELIGIBILITY REQUIREMENTS; SPECULATION ACTIVITIES; GRANT/LOAN ADMINISTRATION BOARD; GRANT/LOAN SELECTION, APPROVAL, AND SERVICING PROCESS; ASSURANCES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Havana, Florida hereinafter referred to as the "Jurisdiction", has been awarded funds through the Florida Department of Community Affairs Small Cities Community Development Block Grant (CDBG) Program; and

WHEREAS, a portion of the funds were used as a loan as specified in the CDBG Award Agreement; and

WHEREAS, the Town Council is desirous of implementing guidelines for the reissuance of said funds upon repayment;

NOW THEREFORE BE IT ORDAINED by the Town Council that:

Section 1. Purpose

This plan provides policy and program guidance for the implementation of the jurisdiction's Program Income Disposition Program, hereinafter referred to as the "Program".

Section 2. Background

A. The Florida Department of Community Affairs, in furtherance of its duties under Public Law 93-383, as amended and s. 290.0401-290.049, Florida Statutes, certified that the jurisdiction competitively qualified for a grant under the CDBG Program.

B. These funds were utilized for a loan as specified in the Award Agreement, and proper loan documents were prepared and executed. As the funds are repaid, the Council will use these funds to accomplish other eligible, Title I projects within the jurisdiction.

C. The funds referred to as program income, including interest earned, are subject to the requirements of the Housing and

Community Development Act of 1974 as amended (the Act); OMB Circular A-102; 24 C.F.R. Part 570; Florida Administrative Code, Chapter 9B-43; HUD Policy Index Memorandums 3-15, 3-18, 3-31, and 3-33; and HUD CPD Notice 89-42. Furthermore, the program income that is received after the grant generating the program income has been administratively closed out is not subject to the Act, notwithstanding any subsequent participation in any other CDBG grant which may be in effect at the time of the administrative closeout of the grant generating the program income.

### Section 3. Program Overview

A. The program will generate a pool of money to be used by the Council to achieve economic and/or community benefits in the jurisdiction. The monies can be used for loans to private, for-profit organizations or non-profit organizations for public purposes which would benefit at least 51 percent low or moderate income persons.

B. Interest and principal that is repaid to the pool will be used to make other loans. This program is not a substitute for conventional lending sources, but merely a means of filling gaps in the financing market.

C. As part of the program, the Council requires that all dollars be allocated in accordance with the specific objectives, operating procedures, standards, and selection criteria as defined herein.

### Section 4. Goals and Objectives

A. The primary program objectives are capital formation and private-sector job creation for members of low and moderate income families. The second objective is the accomplishment of community development projects with a public purpose which fulfill a local need other than economic development. Projects are expected to support specific activities in specified locations in the jurisdiction. These may include but are not limited to the following types of projects:

- (1). Small business development, including start-up or expansion of locally owned businesses;
- (2). Redevelopment of blighted or vacant facilities for productive use, if that redevelopment is necessary to immediately put the facilities to use for an eligible purpose.
- (3). Development of businesses owned and operated by minorities, women, and other economically disadvantaged groups.

B. Lending policies and financing techniques of the Program will include but are not limited to the following:

- (1) Innovative repayment terms, such as short-term deferral of

- initial principal and/or interest payments;
- (2) Providing below market interest rates;
- (3) Utilizing other state and federal programs in conjunction with the Program to maintain maximum dollars within the pool;
- (4) Requiring a minimum 1:1 leverage of equity investment to borrowed Program funds;
- (5) Not lending for the purpose of providing working capital, inventory, or supplies;
- (6) No Program funds shall be utilized for purposes other than those stated herein;

C. All proceeds from principal and interest payments will be utilized in the following manner:

- (1) To cover reasonable administrative costs related to the Program;
- (2) To provide funds for additional grants/ loans.

D. Each applicant must demonstrate job creation capabilities and agree that fifty-one (51) percent of all jobs created will be made available to members of low and moderate income families.

#### Section 5. Eligibility Requirements

A. Eligible applicants for Program assistance include:

- (1) Any legal entity, individual, public and private organization and federally recognized Indian Tribal groups which resides or desires to locate within the jurisdiction;
- (2) Applicants will be considered without regard to race, color, religion, sex, national origin, age, handicap, familial status, or marital status;
- (3) Applicants for economic development projects must demonstrate that the request is "necessary and appropriate" as defined in 24 C.F.R. Part 570. Exhibit A "Participating Party Information" must be completed by all applicants.
- (4) Applicants must demonstrate that requirements relating to meeting a "National Objective: as defined in 24 C.F.R. Part 570 will be met. Exhibit B " Achievement of a National Objective" must be completed by all applicants.

B. Eligible activities include:

- (1) Acquisition or construction of commercial or industrial buildings and structures;
- (2) Purchase of capitalized machinery and equipment with a useful life of at least five (5) years;
- (3) Acquisition of real property;
- (4) Construction of a business incubator to provide inexpensive space and assistance to new firms to help them become viable businesses;
- (5) Removal of architectural barriers which restrict the

- mobility of elderly or handicapped persons;
- (6) Rehabilitation of deteriorated commercial and industrial buildings;

C. Ineligible activities include:

- (1) Speculation activities such as land banking and the construction of speculative or unleased buildings;
- (2) Loans which assist the relocation of jobs from another labor area in the State of Florida;
- (3) Loans for the purpose of investing in high interest accounts, certificates of deposit, or other investments not directly related to job creation;
- (4) Loans which would create a potential conflict of interest for any officer or employee of the jurisdiction or any current or former member of the Grant/Loan Administration Board, or staff who reviews, approves, or otherwise participates in decisions on the grant/loans.
- (5) Loans to any applicant who was an original recipient of a CDBG loan from the jurisdiction;
- (6) Purchase or construction of any building the purpose of which will be the general conduct of government or whose initial occupant is any governmental unit, agency, instrumentality, or subdivision.

D. Program capital cannot be used to:

- (1) Subsidize interest payments on existing loans;
- (2) Refinance loans made by other lenders;
- (3) Finance working capital, inventory, or supplies;
- (4) Purchase an asset owned by the applicant or a principal of the applicant.

E. The Program is available to make loans to eligible borrowers at interest rates and conditions determined by the Town Council to be most appropriate in achieving the goals of the Program. The interest rate may be from 3 to 5.5 percent below the prime interest rate on the date of the loan application, but in no case may the interest rate be less than 3 percent.

F. In determination of the collateral requirements, the Grant/Loan Administration Board shall consider the merits and potential economic benefits of each request. Program financing shall be secured by liens, mortgages, or assignments of rights in assets of assisted firms as follows:

- (1) The lien position of the Program Loan may be subordinate and made inferior to liens securing other loans made in connection with the project prior to or concurrent with the Program Loan;
- (2) The Program Loan shall be backed by collateral such as liens on land, buildings, equipment, inventory, receivables, or other available assets of the firm.
- (3) In addition, the Program Loan may also be secured by assignment of patents and licenses, the acquisition of

hazard and other forms of insurance, and other security the Board should deem necessary to protect the interests of the jurisdiction;

- (4) Personal guarantees will also be required from principal owners.

#### Section 6. Grant/Loan Administration Board

The Town Council may act as the Grant/ Loan Administration Board or appoint a Grant/Loan Administration Board. If appointed, the Board shall consist of five (5) members representing, to the greatest extent possible, a cross section of business leaders, minorities, and the banking community. This Board will make recommendations on approval or rejection of applicants to the Town Council. The duties of the Board will be as follows:

- (1) Review all grant and loan applications submitted for funding;
- (2) Recommend approval or rejection of the applicants to the Town Council;
- (3) Establish, with the consent of the Town Council, rules, procedures, policies, and forms to further the purpose of this ordinance.

#### Section 7. Loan Selection, Approval and Servicing Process

A. Applicants for Program assistance are to furnish financial statements and other information necessary to document the application.

B. Completed application forms shall be submitted to the Board. All applications, with comments from the Board, shall be submitted to the Town Council with funding recommendations.

C. Funding cycles and application submission dates will be publicized by the Town Council. No applicant may request a level of funding that exceeds the funds available on the date of the application.

#### Section 8. Reporting Requirements

A. If the jurisdiction has an open CDBG, the Town Council shall report to the Department of Community Affairs on a quarterly basis using the most current Quarterly Status Report Forms provided by the Department. This report shall contain any and all data on program income required by the Department, but at a minimum shall contain:

- (1) Activities producing program income;
- (2) The schedule of payments, the estimated total of payments, and whether the payments are occurring on schedule;
- (3) Amount of program income collected from the activity to date and during the reporting period;

(4) Proposed and actual uses of the program income.

B. The Town Council shall prepare a semi-annual report effective January 1 and July 1 of each year. The report shall detail the loans made during the previous six-month period, the status of all open loans, interest income from deposits, loan repayments received, and the current available balance in the Program fund.

#### Section 9. Other Requirements

A. CIVIL RIGHTS The assurance of equal opportunity in lending will be empowered by the following means:

- (1) The Town Council will insure that borrowers do not discriminate against employees or applicants for employment by including in each application for funding a statement requiring compliance with all applicable state and federal laws and regulations. The Town Council will monitor the employment practices of approved borrowers annually.
- (2) No applicant will be denied a loan on the basis of race, color, national origin, religion, age, handicap, familial status, marital status, or sex.

B. ENVIRONMENTAL CONSIDERATIONS All potential projects will undertake an environmental assessment pursuant to 24 C.F.R. Part 58 and will obtain a formal release of funds from the Department of Community Affairs.

C. FLOOD HAZARD INSURANCE Prior to approval of any project in a flood hazard area, the proposed applicant will be required to obtain flood hazard insurance.

D. ACCESS FOR THE HANDICAPPED If the proposed project is a construction project, all plans for construction must include accessibility for the handicapped.

E. LABOR STANDARDS PROVISIONS If the proposed project request funding for any activity that triggers compliance with the Davis-Bacon Act or other CDBG labor standards provisions, the applicant will agree to comply with those provisions.

Section 10. Effective Date

This ordinance shall take effect upon its passage and approval as provided by law.

INTRODUCED in open session of the Town Council of the Town of Havana, Florida, on this 19th day of July, A.D. 1993.

ADOPTED AND PASSED in open session of the Town Council of the Town of Havana, Florida, on this 27th day of July, A.D. 1993.

TOWN OF HAVANA, FLORIDA

BY:

T. J. Davis  
T. J. Davis, Mayor and Presiding  
Officer of the Town Council of  
the Town of Havana, Florida

ATTEST:

Anne T. Bert  
Anne T. Bert, Clerk of the Town of  
Havana and Clerk of the Town Council  
thereof

## EXHIBIT A

### PARTICIPATING PARTY INFORMATION

1. Five (5) year projected financial statements
  - a. Assuming 100 percent private financing and equity mix, provide project financial statements (balance sheets, profit and loss statements, and cash flow projections) with assumptions on a month by month basis for the first year and quarterly for all other years, based on generally accepted accounting principles. Profit and loss statements must show all debt service and projections both before and after taxes and include assumptions for sales projections.
  - b. Assuming a reduced rate Program Loan in addition to private financing and equity mix provide the same financial statements as described in section 1(a).
2. A statement that for the last two years:
  - a. The Existing business (if applicable) has not declared bankruptcy;
  - b. Each principal has not declared bankruptcy;
  - c. No principal has been a principal in any other business that has declared bankruptcy.
3. A copy of the consumer credit report on each principal
4. If the applicant is an existing business, or will be a spin-off or subsidiary of an existing business, provide financial statements (balance sheet, profit and loss statements, and cash flow statements) and tax returns for the previous three (3) years.
5. If real property is being acquired, include copies of property tax statements, an appraisal from a certified appraiser that documents the proposed purchase price as the fair market value of the property.
6. If building construction or rehabilitation is proposed, include cost estimates from a certified general contractor or architect.
7. If acquisition of new machinery or equipment is proposed, include a cost estimate from a potential vendor.
8. If infrastructure is proposed, include certified cost estimates from an engineer or copies of previous from contractors.
9. Specify the borrower, amount of loan, interest rate, first payment date, frequency of payment, value of collateral, and lien position of the Program Loan.
10. All commitments must be binding, but may be contingent upon the receipt of Program Funds, and include an expiration date, if any. Commitments shall include:



- a. A clear statement of the concept, scope, and cost of project;
  - b. The nature of the commitment, including the total number of jobs to be created/retained, number of jobs to be created/retained for low and moderate income persons; the amount and terms of the private financial commitment to the project; and, if a corporation, a corporate resolution specifying who may act for and bind the corporation to the terms of the Program;
  - c. Identify the collateral or other requirements to be provided by the participating party;
  - d. Documentation of the existence and availability of the cash investment being pledged to the project;
  - e. A statement from each principal that he/she will personally guarantee the loan;
11. A statement from each lender, vendor, consortium, or private individual who will be a provider of funds or credit that is claimed as leverage or is required for the successful completion of the project. This statement shall provide:
- a. The nature of the financial commitment, including the amount, terms, expiration, and special conditions;
  - b. Any collateral or other requirements to be provided by the participating party;
  - c. Name of a loan officer or contact person.
12. A business Plan to include:
- a. Type of firm (new, existing, subsidiary, etc.)
  - b. Organization of the business entity and identity of all principals;
  - c. Description of the company, its history, its organization, its operation, its product line including Standard Industrial Code (SIC), its market and competition, and its sales history.
  - d. Describe the relationship of the subsidiary or parent company, and attach the most recent financial statement for the affiliated organization, if applicable;
  - e. Current ownership of the project site and if applicable, the status of acquisition;
  - f. Identification of all required permits, licenses, approvals, franchises, or other non-financial requirements

which are applicable to this project.

13. Narrative description of the project and the level of assistance requested as it relates to "necessary and appropriate". Specific reference should be made to the level, reason for, and terms of the assistance.

## EXHIBIT B

### ACHIEVEMENT OF A NATIONAL OBJECTIVE

The applicant shall demonstrate that the proposed project meets at least one of the following three National Objectives. Describe how the project, if funded, will achieve one of the National Objectives. Provide affirmative written statements that assure compliance with one of the National Objectives listed below:

1. Benefit to low and moderate income persons, when at least 51 percent of those who benefit from any activity are low and moderate income persons as determined by the most current income limits at the time of the loan application.
2. Aid in the prevention or elimination of slums or blight.
3. Meet urgent community development needs where there is a serious and immediate threat to the health and welfare of the community, which are of recent origin or recently became urgent, and where other financial resources are not available.