

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

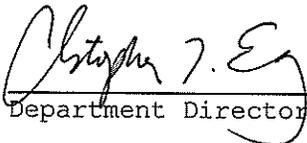
12-0501R

RESOLUTION ADOPTING GUIDELINES FOR ADMINISTERING  
BUSINESS RECOVERY FUNDS AWARDED THROUGH THE MINNESOTA  
INVESTMENT FUND

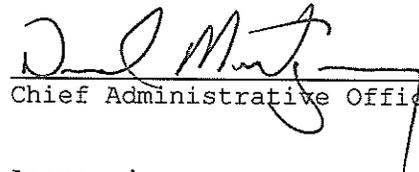
CITY PROPOSAL:

RESOLVED, that the City of Duluth hereby adopts the guidelines for  
administering business recovery funds awarded through the Minnesota Investment  
Fund ("MIF") in the form of those on file in the office of the City Clerk as  
Public Document No. \_\_\_\_\_.

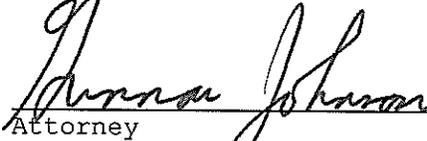
Approved:

  
Department Director

Approved for presentation to council:

  
Chief Administrative Officer

Approved as to form:

  
Attorney

Approved:

  
Auditor

BD/ATTY CE/JC:bel 09/27/2012

STATEMENT OF PURPOSE: This is a companion resolution to Resolution No. 12-0494R which authorizes an application to the Minnesota Department of Employment and Economic Development ("DEED") for a MIF Disaster Recovery Grant. As part of the application process, the City is required to adopt guidelines for administering business recovery funds. The attached guidelines are based sample guidelines provided by DEED. All business loan agreements will be presented for council consideration as applications are approved according to the program guidelines.

# **Guidelines for Administering Business Recovery Funds Awarded through the Minnesota Investment Fund (MIF)**

**I. Purpose of Guidelines.** The purpose of these guidelines is to establish policies and procedures to regulate, coordinate and facilitate the process for underwriting new financing requests, servicing recovery loans, and ensuring borrower compliance with loan terms and conditions. These guidelines must be used for the administration of the MIF funds, however, under extraordinary circumstances exceptions may be made with permission from the Minnesota Department of Employment and Economic Development.

**II. Authorization and Funding Sources.** Minnesota Statute 12A.07 and Chapters 1 and 2, 2012 1<sup>st</sup> Special Session authorize the distribution of financial assistance to local units of government in the area designated under Presidential Declaration of Major Disaster, DR-4069. Counties and tribal lands included in the declaration are: Aitkin, Carlton, Cass, Cook, Crow Wing, Dakota, Goodhue, Itasca, Kandiyohi, Lake, Meeker, Pine, Rice, Sibley, St. Louis, and the Fond du Lac Band of Lake Superior Chippewa, Grand Portage Band of Lake Superior Chippewa, and the Mille Lacs Band of Ojibwe.

The City of Duluth has requested funds to administer a local loan program to assist a business, cooperative, utility, commercial, retail and/or nonprofit organization that was directly and adversely affected by the June 2012 flood. The City of Duluth will contract with the Northspan Group who will administer the program. The Business Recovery Loan Fund was capitalized by an appropriation of the Legislature of the State of Minnesota through the Minnesota Department of Employment and Economic Development.

**III. Equal Opportunity and Affirmative Action.** No one shall be denied assistance based upon race, color, creed, religion, national origin, sex, marital status, age, familial status, or disability. All loan recipients, developers, contractors and subcontractors must agree not to discriminate in any manner against an employee or applicants because of race, color, creed, religion, sex, marital status, age, familial status, or disability.

**IV. Conflict of Interest.** All officials and employees shall comply with the applicable conflict of interest regulations set forth in Minnesota Statutes Section 471.87 and 471.88.

**V. Staff responsibility.** The City of Duluth staff or its agent shall have the general responsibility for coordinating the application process, reviewing loan applications, preparing applications and summaries for review by the Review Committee, and coordinating the loan approval and servicing process.

## **VI. Eligibility**

### **A. Eligible applicants.**

1. Applicants may be any business, cooperative, utility, industrial, commercial, retail and or non-profit organization including those nonprofits that provide residential, health care, child care, social, or other services on behalf of the Department of Human Services to residents included in the disaster area.
2. Business applicants must be organized as a proprietorship, partnership, LLC, or a corporation.
3. Applicants must have been in operation before June 14, 2012

B. Eligible activities. Loan funds may be used to assist businesses only in their recovery efforts but are not available to provide relief from economic losses.

C. Eligible costs. Eligible costs may include the following: repair of buildings, leasehold improvements, fixtures and/or equipment, loss of inventory, and cleanup costs.

## **VII. Ineligible Activities**

A. Ineligible applicants. Any applicants not meeting the eligibility requirements are not ineligible to receive recovery loan funds.

B. Ineligible activities. Funds may not be used for lending or investment organizations, land speculation, or any deemed illegal by federal, state, or local law or ordinance.

C. Ineligible costs. Ineligible costs include but are not limited to: economic injury losses, relocation, management fees, financing costs, franchise fees, debt consolidation, moving costs, refinancing debt existing prior to the date of the disaster, June 14, 2012 and operating costs.

## **VIII. Loan Application**

A. Application process. All parties seeking recovery loan funds must file an application with the City of Duluth. Applicants are encouraged to use DEED's Business Recovery Application, however, SBA application forms may be substituted, as long as the additional information as detailed in the DEED application is submitted.

B. Application information. Only completed applications will be reviewed for consideration. Submittal of the following information constitutes a complete application:

1. MIF Recovery Loan Fund Application;
2. SBA Business Disaster Application, if applicable;
3. Regional development organization or responsible local government application, if applicable;
4. Administrative contact;
5. Documentation through financial and tax records that the business was a viable operating entity at the time of the disaster;
6. Amount of loan request;
7. Business release for local government to review SBA damage assessment/loss verification, if applicable;
8. Proof of loss statement from insurer; if not available, a letter from the insurance company stating insurance coverage;
9. Documentation of damages incurred; this could include third party loss verification as provided by the SBA, insurance Proof of Loss statement, photographs, etc.;
10. Construction cost estimates;

11. Invoices for work completed;
12. Quotes for Equipment;
13. Proposed security;
14. Company historical financial statements for the 24 months immediately prior to the application date;
15. Credit check release;
16. Ownership or lease agreements of the subject property;
17. Number of jobs to be retained and wages paid for those jobs;
18. Property taxes paid and current;
19. Judgments, tax and other liens, agreements, consent decrees, stipulations for settlements, or other such actions which would prevent the applicant from participating in any program administered by the responsible local, state, or regional government;
20. Compliance with all applicable local ordinances and plans;
21. Business Tax Identification Number;
22. Owner's Encumbrance Report from the County Recorder's Office; and,
23. Other documentation as requested.

C. Incomplete applications. The City of Duluth staff or its agent, at their sole discretion, will determine if the application is complete and actionable. Incomplete applications will be assigned pending status and the applicant will be informed in writing of the missing documentation.

D. Determination of eligibility. Applicant eligibility will be determined by staff using criteria enumerated in subsection VI. A. A credit check for the company and each of its principal owners may be conducted.

**IX. Loan Review Process.** The City of Duluth staff or agent will prepare loan applications and summary information.

A. Loan Review Committee. The City of Duluth staff will serve as the loan review committee. Anyone employed by the administering entity (consultant) cannot be a member of the Review Committee. The final determination on all recovery loan applications rests with the Review Committee.

B. Determination of eligibility will be based on the completed loan application and review for soundness of plan including the ability to repay.

1. Criteria. The Review Committee will base their decision on the economic benefit to the City of Duluth, the collateral offered to secure the loan, the number of jobs to be retained, wage rates of jobs retained and the borrower's ability to repay the loan.

2. Review committee action. The Review Committee shall approve, deny, or table for consideration at a future meeting the loan application request.

3. Notification of Review Committee action. The applicant shall be notified in writing within fourteen (14) days of the Review Committee's decision.

C. Approval. If approved, the applicant will be sent a written commitment letter that will outline the terms and conditions of the loan approval. The City of Duluth staff will prepare documentation and coordinate the loan closing with the Borrower or the Borrower's counsel. Any commitment made to an applicant by the Review Committee is subject to the approval by the Duluth City Council of the business recovery loan.

D. Loan denial. The City of Duluth will not make a loan if the company cannot provide: 1) firm project costs; 2) documentation of loss; 3) job retention; 4) ability to repay the loan. The Committee will consider Conditions 1, 2, and 3 as priority in reviewing the loan.

E. Appeal. There will be a complaint and appeal procedure for aggrieved applicants:

1. Written notice. Applicants will receive written notice of the denial of the loan and the reason(s) for the determination within fourteen (14) days of the determination.

2. Petition. The aggrieved applicant may petition the Review Committee in writing for reconsideration within fourteen (14) days from the date of the written notice of denial. Any request to appear before the Committee must be in writing and must be submitted at least seven (7) days prior to the Committee's scheduled meeting. Upon receipt of the written petition for reconsideration, the Review Committee shall consider the petition at its next scheduled meeting and advise the petitioner in writing of its decision within fourteen (14) days of that meeting. The Committee's decision will be final.

3. Re-application. Applicants aggrieved by the Committee's final decision may re-apply for recovery loan funds after ninety (90) days if the concerns in the preceding application are adequately and appropriately addressed.

4. Notice of award or denial. Applicants will be notified in writing not more than fourteen (14) days after final action has been taken on their recovery loan fund application by the Review Committee.

F. Upon approval by the Review Committee, the recovery loan application and the Review Committee's recommendation will be sent to DEED for final approval.

G. All business recovery loans require the approval of the Duluth City Council.

**X. Loan Terms and Conditions.** The City of Duluth shall make available to eligible applicants an interest free loan of which fifty percent (50%) will be forgiven if the business remains in the community for ten years.

A. Loan Terms.

1. Loan amount. The loan amount available is based on a documented need for the financing, less insurance proceeds. The minimum loan amount available for businesses located in counties served by the Northland Foundation is \$5,000 (or higher if grant award is higher). The minimum may increase (i.e.,

lower MIF loan) if equivalent assistance is available from other sources or other funding is available through other programs funding through Chapters 1 and 2, 2012 1<sup>st</sup> Special Session.

2. Installment loan. Fifty percent (50%) of each loan will be an installment loan amortized over nine (9) years which will be repaid to the City of Duluth and remitted to DEED on an annual basis

3. Deferred payments. Payments will be deferred for the first year from the date of the loan.

4. Forgiveness. Fifty percent (50%) of each loan may be forgiven if the business remains in operation for ten (10) years from the date of the loan. If the business closes or moves during the 10-year period, the remaining outstanding balance of the loan will be due and payable.

B. Balance due. All balances will be due and payable if and when the loan recipient sells or otherwise transfers any or part or his/her interest in the property or fails to meet any of the guidelines established within this document or moves out of the community during the 10 year period.

C. Collateral requirements. All loans will be collateralized to the extent possible. The recovery fund may take a subordinate position to the primary lender on the assets financed. Mortgages and security agreements will be required on all loans.

D. Personal guaranty. Personal guarantees of persons with ownership interest of 20% or greater may be required.

E. Loan repayments. Repayment of the loan must begin no later than one year following loan closing.

F. Loan prepayment. Prepayments are permitted where the Borrower makes the City of Duluth whole for any losses or costs associated with the prepayment.

G. Loan closing documents. The City of Duluth will close the loan within sixty (60) days of final Review Committee approval of the loan application and City Council approval of the business recovery loan. At that time, the City of Duluth will deliver to the Borrower all closing documents and a final debt service schedule. All loans must be closed no later than December 31, 2013.

H. Post-closing amendments and modifications. Requests for amendments and modifications following award, closing or disbursement of funds to the underwriting of the original request require Review Committee and City Council approval.

**XI. Delinquency.** There shall be a notification procedure for delinquent loans.

A. The finance officer is responsible for the timely posting and accounting of all loan repayments.

B. Thirty day notice. Upon thirty (30) days delinquency, the finance officer will notify the City's Director of Business and Economic Development (the "Director") the delinquency and the Director shall send the borrower a delinquency notice requesting payment within fifteen (15) days.

C. Forty-five day notice. If payment has not been received by the 45th day a second delinquency notice will be sent to the Borrower by the Director requesting payment within fifteen (15) days.

D. Sixty day notice. If payment has not been received by the 60th day, the Director will attempt to contact the Borrower by telephone to discuss the delinquency. The Director shall also send a notice of default to

the borrower via certified mail requesting immediate payment and advising the borrower the delinquency will be placed on the City Council agenda for discussion at the next scheduled meeting.

E. Ninety day notice. If no repayment plan is submitted by the Borrower, or if there is no attempt by the Borrower to negotiate the amount due, the Director will contact the City's Chief Administrative Officer and the City attorney to discuss sending a 90 day letter calling due the loan in full.

F. Negotiation. Throughout this process, every attempt will be made to preserve the company, the jobs and the loan funds.

**XII. Default.** If the City of Duluth determines a loan to be in default, it will pass a resolution declaring the entity in default and convey the matter to the City attorney for disposition.

**XIII. Loan Servicing.** City of Duluth staff will coordinate loan servicing activities.

A. Monitoring. City of Duluth staff will monitor loans for compliance with the accepted terms and conditions including job creation statistics and wage and benefit levels.

B. Reports. City of Duluth staff are responsible for ensuring that all required reports are filed in a timely manner.

C. Records. Computer files and conventional paper files will be maintained for the purpose of documenting, tracking, and monitoring program and project activities. Program and financial records will be maintained primarily by the City of Duluth. Where applicable, the following records will be maintained:

1. Program records. The following program information will be maintained in the program project file, including but not limited to:

- a. Eligibility determination records as set forth in Section VI, A, B and C;
- b. Review Committee Actions of Record;
- c. Correspondence;
- d. Loan documents and executed loan agreement.
- e. Business Loan Application as set forth in Section VIII.

2. Financial records. The following financial information will be maintained in the financial project file, including but not limited to:

- a. Copy of the executed loan agreement;
- b. Disbursement data;
- c. Progress reports;
- d. Repayment data; and
- e. Amortization tables.

D. Record retention. All program and financial records, supporting documents, statistical records, and other records pertinent to the recovery loan program shall be maintained for a period of at least seven (7) years from the date of the final loan payment.

#### **XIV. Regulations of Minnesota Investment Fund Flood Recovery Loan Funds**

A. Labor Requirements. Minnesota Statutes, Section 116J.871 (Payment of Prevailing Wages to Contractors) applies if a business receives \$500,000 or more in State funds.

B. Surety Deposits. Minnesota Statutes, Section 290.9705 (Surety Deposits Required for Construction Contracts) applies to this project.

C. Job Listing Agreements. A business or private enterprise receiving grants or loans in amounts over \$200,000 shall as part of the grant or loan agree to list any vacant or new positions with a state workforce center.

D. Job Retention and Wage Goals. Loan Agreements will establish goals for the number of jobs to be retained by each business and the wages for those jobs.

E. Annual Reports. Businesses will be required to report on employment and wages to the City of Duluth on an annual basis until the loan is paid in full.