

ORDINANCE # 285

AN ORDINANCE IMPLEMENTING THE PROGRAM INCOME DISTRIBUTION REQUIREMENTS OF THE STATE OF FLORIDA, SMALL CITIES COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM AND U.S. DEPARTMENT OF COMMERCE, ECONOMIC DEVELOPMENT ADMINISTRATION IN COMPLIANCE WITH SECTION 104 (j) OF TITLE 1 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; ECONOMIC DEVELOPMENT ADMINISTRATION TITLE IX REVOLVING LOAN FUND GUIDELINES; ECONOMIC DEVELOPMENT ADMINISTRATION DIRECTIVE SYSTEMS 17.07 DATED JULY 10, 1989 AND SUPPLEMENTS; BACKGROUND; PROGRAM OVERVIEW; GOALS AND OBJECTIVES; ELIGIBILITY REQUIREMENTS; SPECULATION ACTIVITIES; LOAN ADMINISTRATION BOARD; LOAN SELECTION, APPROVAL, AND SERVICING PROCESS; AND ASSURANCES.

WHEREAS, the City of Bonifay, Florida, hereinafter referred to as the "City, has been awarded funds through the State of Florida Department of Community Affairs Small Cities community Development Block Grant (CDBG) Program and has been awarded funds through the United States Department of Commerce, Economic Development Administration (EDA); and

WHEREAS, a portion of the CDBG funds will be utilized for loans and assistance to for-profit businesses as specified in the CDBG Award Agreement; and

WHEREAS, a portion of the EDA funds will be utilized to provide infrastructure to property owned by for-profit businesses as specified in the EDA Award Agreement; and

WHEREAS, the City Council, hereinafter referred to as the "Council", is desirous of implementing guidelines for the reissuance of said funds upon repayment where applicable;

NOW THEREFORE BE IT ORDAINED by the commission, that:

SECTION 1. PURPOSE

This plan provides policy and program guidance for the implementation of the City Revolving Loan Fund Program, hereinafter referred to as the "RLF".

SECTION 2. BACKGROUND

A. The Florida Department of Community Affairs, hereinafter referred to as "DCA", in furtherance of its duties under Public Law 93-383, as amended, certified that the City qualified for a grant or grants under the CDBG program.

B. These CDBG funds were utilized for a loan or loans as specified in the CDBG Award Agreement, and proper loan documents were prepared and executed. As the business repay the loans to the RLF, these repaid funds will be used to provide loans to other businesses within the City.

C. The United States Department of Commerce, Economic Development Administration, hereinafter referred to as "EDA", in furtherance of its duties certified that the City qualified for a grant or grants under the EDA Program.

D. These EDA grant funds were utilized for infrastructure as specified in the EDA Award Agreement, and proper documents were prepared and executed. If the business must repay the EDA funds to the City for any reason, the City will use these repaid funds to provide loans through the RLF to other businesses within the City.

E. These repaid 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, hereinafter referred to as the "Act"; OMB Circular A-102; 24 C.F.R. Part 570; HUD Policy Index Memorandum 3-15, 3-18, 3-31, and 3-33; HUD CPD Notice 89-42; and EDA Directive Systems 17.07 dated July 10, 1989 and supplements. Furthermore, that program income which 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 or any other CDBG grant which may be in effect at the time of administrative closeout of the grant generating the program income.

SECTION 3. Program Overview

A. The RLF is a pool of money to be used by the City to achieve economic benefits. The money that is repaid to the RLF is to be used for the sole purpose of making other economic

development loans. In that manner, the RLF becomes an on-going "revolving" financial tool for economic development.

B. The RLF is not a substitute for conventional lending sources. Given the small size of the RLF, this program is only available to fill gaps in existing local financing markets and to provide and attract additional capital which otherwise would not be available for local economic development.

C. As part of the RLF program, the City requires that RLF dollars be allocated in accordance with this RLF Plan. The RLF Plan defines specific objectives and operating procedures, including standards and selection criteria.

SECTION 4. Goals and Objectives

A. One of the major problems of the City regarding economic development, and a significant contribution factor to local economic distress, is the problem of credit availability. Even when available, the cost and terms of the credit may hinder start-up businesses or prevent existing businesses from expanding. In addition, a program aimed at broadening the economic base and one that encourages local entrepreneurs is needed. The establishment of the RLF is an effort to address the above mentioned problems, as well as to attract additional capital to the community which otherwise would not be available for local economic development.

B. The primary program objectives are private-sector full-time job creation for members of low and moderate income families. Projects are required to create new full-time, non-seasonal jobs and to support specific economical development activities planned in the City. These may include but are not limited to the following types of projects:

1. Small business development, including the start up or expansion of locally owned businesses where new jobs will be created;

2. Redevelopment of blighted and vacant facilities for productive use and new job creation (eligible only if the redevelopment of the vacant facilities is completed as part of an eligible activity, i.e., demolishing structures and clearing land is eligible only as part of an activity to immediately put the land to use for an eligible purpose); and

3. Development of businesses owned and operated by minorities, women and other economically disadvantaged groups for the purpose of new job creation.

C. The effectiveness of the RLF as development tool will depend on its lending policies and financing techniques. These include but are not limited to:

1. Innovative repayment terms, such as short-term deferral of initial principal and/or interest payments to enhance initial cash flow for the business;

2. Taking greater risks than banks are prepared to take, but only when substantial economic development benefits will result if the loan applicant succeeds;

3. Providing below market interest rates if it can be documented that a lower interest rate is required to make a project financially viable.

4. Utilizing and leveraging other state and federal programs in conjunction with the RLF to maintain maximum dollars within the RLF pool;

5. Requiring a minimum ratio of one to one leverage of private investment to borrowed RLF funds with a minimum of 5% in cash equity;

6. A maximum loan amount of \$12,000.00 per new full-time job being created; and

D. All program income that results from payment of interest should be utilized to provide funds for additional economic development loans.

E. Each loan applicant must demonstrate job creation capabilities and agree that fifty-one-percent (51%) of all jobs created will be made available to members of low and moderate income families. The loan applicant must agree to document the 51% LMI Benefit through use of the most recent CDBG Household Income Survey Form used by the Florida Small Cities CDBG program, Economical Development category.

F. Administration cost for the RLF will be paid by the City and not charged or allocated to the RLF.

SECTION 5. Loan Administration Board

The Council will establish a RLF Loan Administrative Board, hereinafter referred to as the "Board". The Board will consist of seven (7) members. These seven members shall be the Community Development Director and six (6) other City residents representing a cross section of business leaders, minorities, and the banking community. This Board will perform a financial analysis on all loan applications, approve or reject loan applications, and make recommendations on RLF management and financial policies and procedures to the commission. The duties of the Board will be as follows:

A. Review all loan applications submitted for funding, establishing that each loan applicant has sufficient collateral, leverage, equity, cost per job, financial feasibility, and adequate business management experience to meet the requirements of the RLF program;

B. Approve or reject loan applications. (All loans receiving approval must be compliance with the goals, policies, and procedures as set forth in this RLF Plan); and

C. Establish, with the consent of the commission, such rules, procedures, policies, goals, and forms as may be required to further the purpose of this ordinance.

SECTION 6. Eligibility Requirement

A. Eligible loan applicants for RLF assistance include:\

1. Any legal corporate entity, partnership, individual, or private organization engaged or desiring to be engaged in a for-profit business which resides or desires to locate within the geographic boundaries of the City;

2. Loan applicant will be considered without regard to race, color, religion, sex, national origin, age, handicap condition, familial status, or marital status;

3. Loan applicants must demonstrate that the project to be partially financed by the RLF will result in new, private sector, full-time job creation or retention, and

contributes to the overall economic development efforts of the City. When applicants use job retention to document LMI benefit, job loss must be documented through correspondence from a third party governmental agency which has issued an order to the loan applicant to initiate some change that is beyond the capacity of the loan applicant to accomplish, that can be remedied through the use of RLF funds, and that will result in loss of permanent jobs if the ordered change is not accomplished:

4. Loan applicants must demonstrate that the request is "Necessary or Appropriate" as defined in 24 C.F.R. Part 570. Further, the information that is required of participating parties for loans in the State Small Cities CDBG program must be completed and submitted with all the applications (See EXHIBIT 1-A). Prior to the approval of the loan, local staff should communicate with DCA staff responsible for the CDBG Economic Development program to ascertain that sufficient documentation of the "necessary or appropriate" determination has been obtained, and the City has documented its determination adequately. In questionable cases, on-site technical assistance should be formally requested from DCA. RLF assistance must not be substituted for readily available private equity or private sector financing; and

5. Loan applicants must demonstrate that requirements relating to meeting a "National Objective" as defined in 24 C.F.R. Part 570 will be met (Exhibit 1-B must be completed and submitted with all applications).

B. Eligible activities for RLF assistance must be within the City and may include loans for:

1. Acquisition, or construction of commercial and industrial buildings and structures;
2. Purchase of capitalized machinery and equipment with a useful life of at least 5 years;
3. Acquisition of real property;
4. Removal of Architectural Barriers which restrict the mobility of elderly or handicapped persons in commercial buildings; and
5. Rehabilitation of deteriorated retail and commercial buildings in the downtown area.

C. Ineligible activities for RLF assistance include:

1. Loans for speculation activities such as land banking and the construction for 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 high interest instruments;
4. Loans which would create a potential conflict - of-interest, real or apparent, for any officer or employee of the City, or any current or former member of the Board or staff who reviews, approves, or otherwise participates in decisions on RLF loans;
5. Loans to any applicant who was an original recipient of a CDBG loan from the City and whose repayment is to be a capitalization source of the RLF;
6. Loans for the purchase or construction of any building the purpose for which will be the general conduct of government or whose occupant any time within five years of the expenditure of the program income is or becomes any governmental unit, agency, instrumentality, or subdivision;
7. Loans for working capital, inventory, or supplies, or any activity that is maintenance in nature;
8. Loans for the purpose of re-financing previously incurred debt;
9. Any activity not designed to generate repayment with interest;
10. Any activity which would negatively amortize.

D. The RLF program may only be used for debt financing through direct loans to for-profit businesses. RLF capital cannot be used to:

1. Purchase, finance, or "cash out" existing equity in private businesses;
2. Subsidize interest payments on existing loans;
3. Refinance loans or any portion thereof made by other lenders;

4. Finance working capital, inventory, maintenance or supplies;

5. Purchase of an asset owned by the loan applicant or a principal of the loan applicant; and

6. Finance construction of infrastructure for any loan applicant through any mechanism other than a loan.

E. The RLF program is available to make loans to eligible borrowers at interest rates and under conditions determined by the Board to be most appropriate in achieving the goals of the RLF.

1. The interest rate may be from 3 to 5 percent below the prime interest rate on the date of loan application, but in no case may the interest rate be less than 5 percent;

2. Where necessary, RLF financing may be designated to assist loan applicants with special credit problems, and therefore may involve greater risks and more lenient terms rather than conventional financing. Nothing in this section should be interpreted to encourage or advocate loans to individuals or firms with adverse credit history, who are insolvent, where the probability of repayment is not satisfactory, or where financial analysis reflects little likelihood of success of the business over the long term; and

3. The RLF income will not be co-mingled with other City funds or with program income from other CDBG or EDA non-economic development activities. Separate interest-bearing checking accounts will be established for this purpose.

F. In the determination of collateral requirements, the Board shall consider the merits and potential economic benefits of each request. When appropriate and practical, RLF financing shall be secured by liens, mortgages, or assignments of rights in assets of assisted firms as follows:

1. The lien position of the RLF may be subordinate and made inferior to liens securing other loans made in connection with the project prior to or concurrent with the RLF loan;

2. The RLF shall obtain collateral such as liens on land, buildings, equipment, inventories, receivables, or other available assets of applicants. Such liens may be subordinate only to existing liens of record and other loans involved in the project in accordance with the terms of the RLF contract and loan documents between the loan applicant and the City;

3. In addition to the above type of security, the RLF may also require security in the form of assignment of patents and licenses, the acquisition of hazard and other forms of insurance, and such other additional security as the Board determines is necessary to protect the RLF's interest;

4. RLF loan requests submitted by closely held corporations, partnerships or proprietorships dependent for their continuing success on certain individuals will ordinarily be expected to provide and assign life insurance on these key persons to the City;

5. Personal guarantees will also be required from principal owners where such principal is an owner of twenty percent (20%) or more of a corporation. The board may also require other personal guarantees at its option where appropriate; and

6. If the loan request entails construction, the loan applicant shall obtain construction financing from other sources, and the RLF assistance shall take the form of "permanent" financing upon completion of construction and issuance by the City of a Certificate of Occupancy.

SECTION 7. Loan Selection, Approval and Servicing Process

A. Over the longer term, the effective management of the RLF capital will be important to the achievement of the overall goals of this RLF Plan. The commission will be responsible for publicizing the availability of the RLF Program. The Board will be responsible for reviewing and approving loans. The Board will also be responsible for facilitating the loan packaging process which will include development procedures for:

1. Meeting and interviewing the loan applicant to gain an understanding of the project, its parameters, the principals, and the potential structure of the loan. The goals of this initial interview are to gain an understanding of the purpose of the loan request, to give the loan applicant specific information about the RLF Program, to determine whether the proposed projects meets goals of the RLF Program. It is anticipated that this first meeting will be between the applicant and the Community Development Director, but may include others in addition to the Community Development Director;

2. Obtaining technical and compliance assistance when needed from various federal, state and local government agencies, university centers, and other groups composed of persons familiar with the effective administration of the funding process.

These agencies can provide additional sources of funding, development of market feasibility studies, conduct labor and resource surveys, and assist in the preparation of environmental assessments; and

3. Refer loan applicants to qualified advisors (Bankers, advisors, accountants, etc.) where appropriate.

B. Loan applicants for RLF assistance are to furnish financial statements and other information necessary to document the RLF application (See EXHIBIT 1-A). The loan application documentation allows the Board to determine the viability and feasibility of the project and to examine cost reasonableness.

C. Only completed RLF application packages will be submitted by the Community Development Director to the Board for review and approval or rejection. All loan approvals will be communicated to the commission at the first meeting following the Board approval of the loan. The loan approval shall be deemed effective after the first commission meeting following Board approval unless the loan approval is overruled by the commission at said commission meeting.

D. Loan applications will be accepted by the Community Development Director at any time. The board shall meet at their leisure within the first two weeks of each quarter if there are loan applications for their review.

E. The Board may not agree to obligate RLF funds that have not been received on the date of a Board meeting. No loan applicant may request a level of funding that exceeds the funds available on the date of the application.

F. The loan applicant shall be required to enter into a Participating Party Agreement that is similar in nature and terms to those required by DCA of applicants for CDBG assistance at the time of the application for the loan. Technical assistance can be obtained from DCA on the process of crafting the Participating Party Agreement.

G. After evaluating a loan application, the Board may offer a reduced loan amount to the applicant if the Board determines that it is in the best interest of the RLF, or that a "necessary and appropriate" determination requires a lesser loan amount

SECTION 8. REPORTING REQUIREMENTS

A. The Community Development Director shall report to the Commission on a quarterly basis or at the request of the commission. This report shall contain:

- 1) The current unobligated balance in the RLF;
- 2) The current outstanding balance by loan on all loans made by the RLF to date; and
- 3) The delinquency status of all contractually past due loans by borrower, amount past due, number of payments past due, and actions taken in attempting to bring the loan current.

B. If the City has an open CDBG grant, the commission shall report to DCA on a quarterly basis using the most current Quarterly Status Report Form provided to the commission by DCA. Program income reporting may be halted at the time when all the program income on hand ceases to be regulated by CDBG requirements as defined in 24 C.F.R. Part 570. This report shall contain any and all data on program income that is required or required by DCA, but at a minimum shall contain:

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

C. The Commission shall prepare a semi-annual report effective January 1 and July 1 of each year detailing the loans made from the RLF during the previous six months or since the last report, the status of all open loans, interest income from depository accounts, loan repayments received, program income received from any other source, and the current available balance in the RLF. An original copy shall be forwarded to DCA.

SECTION 9. OTHER REQUIREMENTS

A. CIVIL RIGHTS That assurance of equal opportunity in lending will be empowered by the following means; loan opportunities will be advertised through an outreach program that

will include release of information through any special contracts made with existing minority businessmen in the area and dissemination of information through any local minority-oriented development groups. In addition, local banks will be informed about the availability of the RLF Program and its guidelines. The commission will insure that borrowers do not discriminate against employees or applicants for employment by including in each Participating Party Agreement a statement requiring compliance with all applicable state and federal laws and regulations. Periodic checks may be made to ensure that job opportunities are duly advertised and that an affirmative action plan is being followed. No job applicant to a business receiving a loan from the RLF will be denied employment on the basis of race, color, national origin, religion, age, handicap, familial status, marital status, or sex.

B. ENVIRONMENTAL CONSIDERATIONS. The Board will be appraised of state and federal statutes concerning environmental impact of the proposed projects. All projects funded in whole or in part with RLF funds will undertake an environmental assessment pursuant to 24 C.F. R. Part 58, and will obtain a formal approval for release of funds from the Department of Community Affairs after completion of the environmental assessment and applicable public notices and public hearings. All construction projects will require approval from the State Historic Preservation Office to assure that no historic properties or archaeological factors are affected. Projects which have potential liquid or harmful waste will be required to obtain a letter of approval from the Department of Natural Resources and the Department of Environmental Regulation. In addition, all construction project site =s will be reviewed to ascertain their location in relation to floodplains or wetlands. In such locations a letter of approval will be required from DCA. No project will be approved which produces an insurmountable, harmful alteration of the natural environment.

C. RELOCATION OF JOBS. No portion of the RLF funds shall be used in any manner to assist in a transfer of jobs relocating from one labor market area to another within the State of Florida.

D. FLOOD HAZARD INSURANCE. Prior to disbursement of RLF funds for a project in designated flood hazard area, the proposed loan applicant will be required to obtain Flood Hazard Insurance. Documentation that this insurance is in force must be provided prior to disbursement of funds.

E. ACCESS FOR THE HANDICAPPED. If the RLF loan applicant requests financing for a construction or renovation project, the plans submitted to the City Building Department by the loan applicant must provide for accessibility to the handicapped.

F. LABOR STANDARDS PROVISION. If the RLF loan applicant proposes any activity that triggers compliance with the Davis-Bacon Act or other CDBG labor standards provisions, the loan applicant will agree to comply with those provisions and to co-operate with the commission in its responsibility to monitor that compliance.

G. FINANCIAL MANAGEMENT. The accounting and financial filing systems for each loan shall mirror that of the most recently completed CDBG project.

H. DISPLACEMENT AND RELOCATION BENEFITS. If the expenditures of loan funds from the RLF causes displacement or relocation of any person as defined in the Uniform Act, such persons shall be provided full benefits pursuant to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, hereinafter referred to as the "Uniform Act", and 24 C.F.R. Part 570.

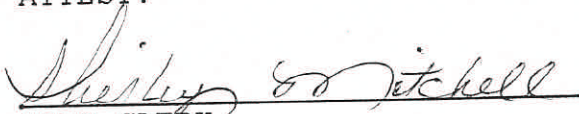
ADOPTED IN REGULAR SESSION on this 28 day of June

1993.

CITY OF BONIFAY
a Florida Municipal
Corporation

By: 

ATTEST:


CITY CLERK