

# Façade Deferred Loan for Commercial Only

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City of Lewiston Façade Deferred Loan for Commercial Only Program  
Guidelines

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# City of Lewiston Façade Deferred Loan for Commercial Only Program Guidelines

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## Part 1: Introduction

### **I. Program Overview**

The City of Lewiston’s Economic and Community Development Department (ECDD) offers five commercial programs that are made available to residents who are interested in developing mixed-use spaces in collaboration with residential programs, attracting commercial uses to increase the tax base, and increasing vibrancy in the downtown area.

The five (5) programs are described below. There are two (2) Economic Development Business Assistance Programs: Microenterprise Loan and Economic Development Loan. Three (3) rehabilitation programs are available: Façade Deferred Loan for Commercial Only; Façade Deferred Loan for Historic Preservation; and Residential Loan in Mixed-Use Properties.

*These guidelines are only related to Façade Deferred Loan for Commercial Only Program*

### **II. Funding Authorization**

The City of Lewiston (City) is an entitlement grantee that receives an annual allocation of Community Development Block Grant (CDBG) funding through the U.S. Department of Housing and Urban Development (HUD). This funding is administered by the City’s Economic and Community Development Department. The funding the City utilizes for its Economic Development programs is from the federal government and has programmatic requirements that must be satisfied in order to be funded by the City. Those requirements are addressed in a later section.

The City completed a HUD approved consolidated planning process and established funding priorities for economic development in its 2015-2019 Consolidated Plan. Each year the City, utilizing its Citizen Participation Process, determines its funding priorities in its Annual Action Plan. All loan programs are funded by the Revolving Loan Fund (RLF) and CDBG entitlement funding.

### **III. Program Goals**

The goals of the Economic Development Commercial programs are:

- to leverage private investment
- increase vibrancy in the downtown
- increase functionality of mixed-use spaces

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- attract commercial uses to the City
- create jobs for low and moderate income people,
- Expand access to retail and services that benefit low and moderate income people

## **IV. Target Geography**

Funding will be concentrated in the following areas:

- 75% of funding will be invested in the Neighborhood Revitalization Strategy Area (NRSA) which is comprised of Census Tracts 201,203 and 204 and is the Choice Neighborhood.
- 20% of funds will be invested in Census Tract 202.
- 5% of funding will be invested citywide in areas outside these Census Tracts

## Part 2: Program Summary

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#### National Objectives:

570.208(a)(1)(i) Low-Moderate Income Area Benefit

570.208(a)(2)(iii) Low-Moderate Income Limited Clientele

570.208(a)(4) Low-Moderate Income Job Creation

570.208(b)(2) Slum and Blight Spot

**Purpose:** To enhance the appearance of the commercial area, encourage private investment in storefronts, and assist business owners with rehabilitating storefronts.

Both building owners and commercial tenants may be eligible for façade funding. Commercial tenants must have written permission from the building owner.

#### Eligible Activities for Building Owners:

Exterior improvements including entryway	Exterior Lighting	Signage
Windows to improve energy efficiency	Masonry	Awnings
Landscaping in areas visible to public	Painting	Repainting

#### Eligible Activities for Commercial Tenants:

Signage

Lighting

#### Ineligible Activities:

Costs associated with security, solar, or satellite      Decorative Fencing

Sidewalks on private property      New Construction      Interior Renovations

Any work commenced prior to receipt of a signed funding agreement from the City, including purchasing materials and design work.

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## **Property Eligibility:**

Applicant must own property to be rehabilitated, or have written permission from the owner

City façade funding is limited to floors of the building with commercial development. Floors with residential development are not eligible for funding. If a floor is mixed use, commercial development must be 50% or more of the floor and will be provided on a pro rata basis.

Façade must be structurally sound upon completion.

## **Applicant Eligibility:**

Applicant, or tenant business improvements are made for must either create jobs for LMI individuals or provide 51% of services to LMI individuals or improve a blighted commercial storefront.

Must demonstrate a gap in funding.

## **Bid Requirements:**

All rehabilitation, including signage, requires 2 bids for each component of work utilizing Davis Bacon wage rates. Rehabilitation projects that include \$2,000 or more in labor must be bid to pay Davis Bacon Wage Rates.

**Matching Funds:** 1:1; for every \$1 paid by City, applicant pays \$1.

**Maximum Loan:** \$35,000 for building owner; under \$2,000 for commercial tenant

**Financing Terms:** 100% deferred loan, payable when property changes ownership for building owner. 100% deferred loan, forgiven if business remains in the funded space for five years.

**Funding Source:** CDBG based on funding availability.

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## Part 3: Definitions

**Blight:** Exhibits objectively determinable signs of deterioration sufficient to constitute a threat to human health, safety, and public welfare

**Business Plan:** a document setting out a business's future objectives and strategies for achieving them. It should include funding sources, projected profits, where the business will be located, how the business will be structured, and a detailed description of business activities.

**City Assessments:** Applicants may not be delinquent on property taxes, personal property taxes, trash, water or sewer bills, or have any outstanding or delinquent accounts on any property of which they are a principal owner within the City of Lewiston. The City may accept a written payment plan made with the department on which there is a delinquent account.

**Deferred Loan:** A loan which will require no payments unless borrower defaults on other requirements, including the Façade Maintenance Agreement. The loan will be repaid by the building owner when property sells or ownership is transferred.

**Façade:** the exterior of a building that is visible from a primary street or public way

**Federal, State and Local Requirements:** The funding available to the City for grants and loans comes from federal or state sources, which means there are some restrictions or requirements that must be met. Additionally local ordinances may apply. Restrictions governing these funds are described in a later section of these guidelines.

**Funding Agreement:** A Notice of Loan Approval is provided to borrowers when the City's Loan Qualification Committee (LQC) has approved City funding. Any project expenditures made prior to the LQC approval and execution of a funding agreement will not be funded nor will they be counted toward the match requirement. The following documents become part of the Funding Agreement between the City and the Owner: "*City Economic Development Program Guidelines*"; "*Notice of Loan Approval*"; "*Truth and Lending Statement*"; "*Rehabilitation Loan Agreement*"; "*Security Agreement*" or "*Mortgage*"; "*Promissory Note*"; "*Personal Guaranty*" (Any person holding an ownership interest of 20% or more); "*Corporate Guaranty*"; "*Escrow Agreement*"; "*Assignment of Leases and Rents*"; "*Consent for Insurance*"; "*Terms and Conditions*", "*Façade Improvement Program Maintenance Agreement*"; and any other agreements to satisfy the conditions of the LQC.



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**Funding Gap:** To qualify for funds, applicant must demonstrate a gap between the sources and uses of the project and must demonstrate that but for CDBG funds, the project would be unable to proceed. Applicant may show a bank denial, or documentation of existing debt exceeding 80% Loan to Value as evidence of a funding gap

**Household Income:** Income of all members of the household is considered for computing total household income. This may include wages, salaries, overtime, bonuses, fees, tips, commissions, interest and dividend income, net rental income, child support, alimony, Social Security benefits, SSI retirement, pension, or annuity, TANF, unemployment benefits, worker's compensation, and disability or benefits from any source.

For the purpose of computing income, a household shall be defined as all persons who occupy a housing unit. The occupants may be a single family, one person living alone, two or more families living together or any other group of related or unrelated persons who share living arrangements.

Exception to Household Income Requirement -- An exception to calculating household income will be for boarders of the applicant. A boarder is an adult who pays the market rate to rent a room and shares kitchen facilities with the applicant. The applicant must produce verification of rental income such as canceled checks and rental income on a federal income tax form. The gross income of the boarder will not be included in calculating the applicant's household income. Instead, the HUD Fair Market Rent for a 0 bedroom unit shall be added to household income, or the actual rent paid, whichever is higher. The boarder will not be counted as a household member when calculating family size.

**Investor:** A property owner that does not occupy a unit at the property and who may receive rehabilitation assistance in order to improve housing conditions for low/moderate income tenants.

**Job Creation:** To be considered creation, a new job must be made available to LMI individuals. To be considered available a job created may not require special skills that can only be acquired with substantial training or work experience or education beyond high school. Alternatively, a business may hire unqualified persons and provide training; and the recipient shall take measures to ensure LMI individuals receive first consideration for jobs.

**Job Retention:** To be considered retained, it must be documented that a job would be lost but for CDBG assistance. The job must either: be currently held by LMI individual or be reasonably expected to turn over to an LMI individual within two years.

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## **Loan Types**

- i. **Fee-Based Loan:** a loan which requires a fixed monthly fee for service.
- ii. **Interest-Based Loan:** a loan which requires a percentage of the loan amount to be repaid each month

**Low-Mod Income:** A household whose income is at or below 80% of Median Family Income (MFI) for the Lewiston-Auburn Metropolitan Statistical Area (LAMSA) and published annually by HUD and are listed in a table on the City's web site.

**Match:** Funding that is secured by the borrower sufficient to meet the requirements of the specific program being applied for. Match funding may be cash, equity or be acquired through a private lending institution or insurance settlement. At the time of closing, the borrower will deposit the requisite amount into the City's escrow account.

**Maximum Funding Available per Project:** Three tiers of funding may be available based upon funding available to the City: Minor, Moderate, or Substantial Rehabilitation. We anticipate that most of the funding for Economic Development Rehabilitation will be in the Moderate or Substantial Rehabilitation category.

1) **Minor Rehabilitation:** Loans of up to \$7,500/unit for Minor rehab refers to repairs (activities short of replacements that maintain the home) and improvements (activities that enhance the residential structure) of a minor nature; work in support of weatherization such as lead hazard control; health and safety issues as they relate to smoke detectors, CO monitors, etc.

2.) **Moderate Rehabilitation:** Loans of up to \$10,000/unit for Moderate rehab involve more extensive improvements such as new wiring and heating and cooling systems as well as new cabinets, fixtures, and finishes, in addition to health and safety issues etc.

3.) **Substantial Rehabilitation:** Loans can be up to \$25,000/unit of heated habitable space. Substantial rehab entails removal of all interior walls and mechanical equipment and installation of a new space plan.

**Mixed-Use Property:** A property that is used in some part for residential purposes and in some part for non-residential purposes. City funds under this program may not be used in the non-residential area, except as specifically noted under the program eligible uses.

**National Objective:** Each funded activity must meet one of the three HUD national objectives: 1) low-moderate income benefit; 2) elimination of slum and blight; or 3) urgent need. In aggregate, at least 70% of all CDBG Funds invested by the City must assist low and moderate income persons

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over a 1-3 year period. CD staff will document the file the extent to which the project meets these National Objectives. The availability of funds for projects that do not benefit low/moderate income households may be impacted by where the City stands on this metric at the time of loan review and approval.

**Neighborhood Revitalization Strategy Area (NRSA):** a Community Development Block Grant (CDBG) grantee-designated area targeted for revitalization. An NRSA is different from other local targeted areas in that the designation is reviewed and approved by HUD. In return for the designation, grantees are afforded enhanced flexibility in undertaking economic development, housing and public service activities with their CDBG funds.

**Owner occupied:** A person who holds the entire ownership interest of the property and lives in one unit of the property as his primary residence.

**Qualified Contractor:** Is able to satisfactorily demonstrate that he/she and his/her subcontractors has the necessary skills, abilities and equipment to perform the scope of work in an expedient and efficient manner; is licensed as required by the City of Lewiston and the State of Maine; carries the appropriate amount of insurance. Contractor Standards are further described in Part 4 Section III.

**Reasonable Cost Estimate:** An estimate of the costs of the project

**Rehabilitation Costs:** The total of contractor estimates from qualified contractors for the scope of the work.

**Residential Structure:** A building used entirely for residential purposes. Rental buildings under common ownership and management that are located on the same or contiguous properties may be considered as a single structure.

**Working Capital:** Funding for day-to-day business operations; cannot be used to pay debt.

## Part 4: Façade and Residential Rehabilitation Requirements

### **I. Property Inspections**

Property inspections are conducted at initial application; during construction; and a final inspection before the final invoice is paid.

#### a. Initial Inspection:

- At the time of application, the Community Development Coordinator (CD) will set a time for an initial inspection with the Owner, Rehabilitation Coordinator (RC) Code Enforcement Officer (CEO), Fire, and Building Inspector (BI).
- Owner will notify all residents and provide access to all areas of the building
- During the initial inspection the owner, CEO, Fire, and BI will agree on the work that will be included in the rehabilitation scope of work;
- CEO will generate an initial “Health and Safety Inspection” and will take “before” pictures

#### b. Progress Inspection:

- Check in with the contractor;
- Progress inspections during the rehabilitation by the RC, BI, CD or CEO;
- Contractor will notify owner and CD if during the course of the rehabilitation a problem arises.

#### c. Final Inspection: RC that the work is complete;

- RC or the CEO will meet with the contractor or Owner/Agent present
- Work completed satisfactorily, the CEO will sign off, certify project completion and take pictures;
- For work not completed to Code or not completed as agreed, RC, CEO, BI, and/or Fire will issue a punch list;
- Contractor will notify RC when completed; RC will schedule CEO, complete the inspection, CEO will certify completion and take pictures.

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## **II. Bid Process**

The owner/applicant must include any items identified by CEO in the scope of work or complete the issues that do not meet code prior to the rehabilitation. The CEO must sign off on the work once completed if not included in the rehabilitation work.

The owner/applicant may choose to become the “general contractor” for the scope of work. At least two (2) bids for each specific rehabilitation task. Bids may be obtained from a general contractor, covering all rehabilitation tasks or from separate contractors for each specific rehabilitation task. The owner is solely responsible to invite and accept or reject any bid proposal.

### **Labor Standards (Davis-Bacon)** (24 CFR 570.603)

Rehabilitation funded by CDBG that have nine (9) units or more residential units, or commercial projects with \$2,000 or more in labor costs must comply with section 110(a) of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq. aka **Davis Bacon Wage Rates**, and as provided under the CDBG regulations in 24 CFR 570.603 . This applies to non-volunteer labor financed in whole or part using federal funding covered by the Act.

### **Employment and Contracting Opportunities (Section 3)** (24 CFR 570.607)

Section 3 workers are defined as “a person whose pre-employment income is below the HUD published income limits based on eligibility for assisted housing, a person who resides in the Lewiston-Auburn Metropolitan Statistic Area, a worker employed by a Section 3 business, a worker who is qualified for the job.” This opportunity is covered under Section 3 of the HUD Act of 1968.

**Shortage of contractors:** Over the past three years there has been a shortage of contractors in Lewiston to perform work on residential properties. It is important to competitively bid the work and obtain at least two bids; however, it may not be practicable. In these cases the owner/applicant may document the number of attempts made to secure two bids and why it was not possible to secure them. A note to the file on the attempt and that the bid submitted has been reviewed and is considered reasonable. If it is “not reasonable” the scope will need to be modified and bid again.

**Family/relatives performing work:** Bid proposals may be secured from and awarded to a member of the applicant's family (i.e. relative) if the bidder:

- is a bona fide and skilled tradesman;

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- is not living in the same household as the borrower;
- has no financial interest in the property to be rehabilitated; and
- the relationship is disclosed in writing by the Borrower at the time of bid proposal.

**Low bid:** Regardless of the method of bidding/project management, it is expected that the lowest qualified bid will be accepted. If however, the low bid is not accepted and the rehabilitation activity is awarded to a higher bidder; the owner/applicant must submit to CD:

- a written statement explaining the reason for accepting the higher, if compelling, the work may be awarded to the higher bidder; and/or
- if not compelling, must fund the difference out of pocket but may be rolled into the loan if there is a loan to fund the rehabilitation work.

Any contractor chosen must prove his ability to provide all necessary insurances, expertise, equipment, and materials to satisfactorily complete the respective task.

### **III. Contractor Eligibility**

To be considered an eligible contractor the following standards apply:

**Insurance:** The contractor and subcontractors shall carry Worker's Compensation Insurance for all their employees in accordance with the Worker's Compensation laws of the State of Maine. The contractor and subcontractors shall carry Manufacturer's and Contractor's Public Liability Insurance with a limit of \$300,000 for personal injury or death and \$100,000 for property damage. The ECDD may require bonding for contracts in excess of \$100,000.

**License and Qualifications:** The contractor shall have in effect a license if required by the City of Lewiston, or State of Maine. The contractor must have completed a Department of Environmental Protection approved lead-smart renovator's course, if pertinent to the work being performed, and become certified.

**Credit:** The City may require a list of credit references, names of suppliers, name of bank where contractor does business, and names and addresses of recent home improvement customers.

**Skill and Equipment:** No approval of a contract shall be given unless the construction contractor can satisfactorily demonstrate that he/she and/or their subcontractor(s) have the necessary skills and equipment to perform the work in an efficient and expedient manner.

**Debarment:** Not on Federal list of debarred contractors

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## **IV. Labor Performed by the Owner/Applicant**

Bid proposals may be secured from and awarded to the owner/applicant (i.e. owner may serve as general contractor and/or do work on his/her own property), if the owner/applicant meets the following requirements:

1. Is a contractor or tradesman who has an ownership interest in a contracting or trades business that has been in existence for at least six (6) months prior to loan application or, as a property owner, has employed, for at least six (6) months prior to loan application, a full-time maintenance crew with the expertise and equipment to satisfactorily complete the respective tasks which the owner proposed to perform.
2. The Borrower must have completed a Department of Environmental Protection approved lead-smart renovator's course, if pertinent to the work being performed.
3. For those tasks to be performed by the Owner and/or the Owner's employees:
  - a. Bid proposals shall be for materials and employee labor only, with no profit, overhead or payment to the Owner for his/her personal expertise and/or labor allowed;
  - b. A maximum of **\$5,000** per unit will be allowed for materials purchased;
  - c. Invoices for materials shall be for costs only, including any discounts, with no mark-ups allowed;
  - d. Invoices for labor shall be accompanied by payrolls which include hours and work performed by each employee;
4. For those tasks to be performed by a sub-contractor (e.g. plumbing, electrical, etc.), at least two (2) separate bids shall be secured for each specific rehabilitation task.
5. The relationship is disclosed by the owner/applicant at the time of bid proposal.

## **V. General Terms and Conditions for Rehabilitation**

1. Approved rehabilitation activities must be completed in accordance with applicable federal/state or local codes:
  - a. Owner/applicant agrees to correct any and all code violations in the property
  - b. Owner/applicant agrees to permit inspection by CD, RC, or Code Enforcement of the property, rehabilitation work, including all contract agreements, materials, equipment, payrolls, and conditions of employment pertaining to the rehabilitation project.

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- c. Owner/applicant agrees to follow the procedures and conditions of all established and applicable municipal ordinances in the physical rehabilitation and maintenance of improved property.
  - d. Work not meeting minimum standards and procedures established by code is unacceptable for disbursement of any loan funds.
  - e. No monies will be disbursed for improvements made prior to funding approval, or for improvements not originally included in the scope of work, made that was not approved by CD or included
2. NO work, regardless of the funding source, may commence on the property until the environmental review is complete and the Funding Agreement is signed;
  3. No monies will be disbursed for improvements made that were not in the original scope of work to reimburse the borrower for improvements made to the property that were not approved by CD.
  4. Agree to have the property inspected by a licensed Lead Risk Assessor, if the scope of the rehabilitation disturbs lead and is built prior to 1978; and
  5. Obtain a permit and submit plans (i.e. floor, electrical, plumbing plans) as requested by CD/Code enforcement as may be required for a building permit.



## Part 5: Application Process

City Assistance in projects is generally in the form of a loan and is designed to provide construction and/or permanent financing in conjunction with other Federal, State and/or City Programs or other lending institutions. Some programs require a match from the applicant/borrower. Specific terms and conditions are listed with each program.

### **I. To Apply for a City Loan or Grant:**

Anyone interested in participating in the City's Loan Programs must submit a completed, **Pre-Application** to the Economic and Community Development Department (ECDD), City of Lewiston, 27 Pine Street, Lewiston, ME 04240 which can be found on [lewistonmaine.gov](http://lewistonmaine.gov) under "City Loan and Grant". ECDD staff will review the pre-application to identify programs for which applicant may be eligible. If you have questions specific to the program, you can contact Kon Maiwan, Economic Development Specialist, at 207-513-3126 x 3276 or [kmaiwan@lewistonmaine.gov](mailto:kmaiwan@lewistonmaine.gov). Personal appointments may be made upon request. There is an open application period as long as funding is available. Economic Development loans are processed on a first come, first serve basis. Applicant will receive a letter stating whether the process may move to the next step. **This does not indicate approval of a loan, but that the applicant MAY be eligible.**

**Application Submission:** The following items may be required submissions as part of the application package:

- a) An application that is complete and signed by owners with an interest of 20% or more in the property;
- b) Signed permission to check credit of each individual owner with an interest of 20% or more in the property;
- c) Financial information from all owners with a 20% interest or more, including: income from all sources (employment income must include 2 months of pay stubs or payroll record); two years of personal and corporate income taxes; two months of personal and corporate bank statements; personal financial statement.
- d) Copy of the current Hazard Insurance on the property;
- e) Other information as requested to make a determination of credit worthiness for a loan;
- f) Addresses of all properties in the City of Lewiston owned wholly or in part by the applicant;

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- g) Written description of the project improvements; and
- h) Two written bids/estimates for each component of the proposed scope of work needed to complete the project. If you are a single family homeowner you have the option to utilize the services of the City's Rehabilitation Coordinator to assist you in obtaining the bids.

**Application Processing and Review:** Each application will be dated upon receipt in the Economic and Community Development Department offices on the Third Floor at City Hall. Only one original application is needed; however, applicants should retain a copy of the completed application. Each program description outlines the type of funding available as well as the maximum funding limit. You may request up to that limit; however, if the ask is not supported by the need, the City may fund at a lower amount. You must meet the individual program and the financial guidelines for each type of program applied for. If there is a match requirement, owner's capacity to finance and complete the scope of the approved project on a timely basis is evaluated as part of the approval process.

**Verification of Information:** Once the application is submitted, ED staff will verify all sources of income, assets, and matching sources. Third party written verifications may be needed. Credit reports are obtained to determine credit worthiness of the applicant(s). The City is a credit reporting agency. Owners with 20% ownership or more will be required to sign a Personal Guaranty in addition to a Corporate Guaranty.

**Property Record Search:** ED staff will conduct a title search on the property to make sure that the title is clear from liens other than from lending institutions, and will complete property verifications with City Departments (Assessing, Finance, Water and Sewer, Treasurers, Code Enforcement and Planning) on the property in the City of Lewiston to ensure that there are no outstanding assessments or complaints against the properties.

**Outstanding City Assessments or Complaints:** If there are outstanding assessments or complaints, the applicant will not be eligible for funding until the assessments are paid in full and the complaints cooperatively dealt with. If the property owner is in a payment plan with the Treasurer's Office and is current and demonstrates a good paying record, a loan may be considered on this property.

**Environmental Review:** ED staff will check the Federal, State, and local databases to determine whether or not the building is historic and, if so, the type of review needed. If federal guidelines

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require project review by the Maine Historic Preservation Commission, the approval process may take as long as 60 days. City staff will also check the FEMA Flood Database and the Wetlands Mapper to determine if there are any restrictions and requirements related to these issues on the property, and a GIS map of the property location will be printed and maintained in the application file.

**Initial Inspection:** ED staff will review the project and the bids with Code Enforcement and set an appointment to conduct an initial inspection of the property to ensure that the proposed improvements will add value and that the building can support the proposed improvements. Code Enforcement will make recommendations as needed, including items that do not meet code and need to be repaired as part of the project.

**Debarred or Suspended Contractors:** ED staff will check the contractors that have provided proposals against the Debarred Contractor listing at <http://www.sam.gov> to determine if the contractor has been debarred, suspended, is proposed for debarment, excluded, or otherwise disqualified from work that is federally funded. Staff will document the file.

## **II. Risk Analysis and Underwriting Criteria**

All loans will be underwritten by staff or contractors of the Economic and Community Development Department.

**Underwriting Criteria:** The following underwriting criteria will be used to evaluate the financial strength of the borrower and the anticipated success of the project:

- a. Debt Coverage Ratio (DCR) defined as the monthly debt compared to the monthly net income. The City will expect a DCR of at least 1.15;
- b. Funding Gap Analysis to determine the amount of financial assistance, if any, needed through CDBG.
- c. Loan to Value Ratio (LTV) defined as the Total Loan Balances of the mortgages divided by the Fair Market Value of the Property. Appraisals may be required on an “as improved” basis.
- d. Commitment of other lenders/Terms of the Commitment/Subordination;
- e. Collateral coverage;

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- f. Matching source from an institutional lender, owner financing, insurance company, and/or any other source acceptable to the lender, if required by the program;
- g. Track record of cooperation with Code Enforcement and other City departments; and
- h. Verification that all City Department assessments (taxes, City utilities, etc) have been paid.
- i. Rent Justification Statement (if applicable)

The file will be documented with this information and reviewed by staff to determine whether or not the project is financially feasible and ready to move to the Loan Qualification Committee for approval.

**Other Considerations:** The City may accept or reject any application for funding. It utilizes its Revolving Loan Fund (RLF) to fund City loans and has an “open window” to accept applications for rehabilitation projects throughout the year. Sometimes a property/owner meets the underwriting criteria but may not be funded by the City.

The following reasons may cause the City to reject an application for funding:

- 1) There is no more funding available through City sources;
- 2) The funding priority may have changed; or
- 3) There are environmental review concerns such as but not limited to the property being in a 100 year flood plain; it’s historic and the cost to rehabilitate the building is no longer cost reasonable for the limited funding the City has available; severe or toxic contamination, etc.
- 4) There was a material change in either the property condition or the owner’s financial condition. If this situation occurs after the loan has been approved but before the closing, City staff may choose to not close the project; if this occurs after loan approval and closing, the City may choose to follow the default remedies under the loan.
- 5) Would put the City at risk of not meeting the HUD required 70% low/moderate income benefit ratio.

### **III. City Approval/Disapproval**

All loans that meet program and financing guidelines are presented for review and approval to the Loan Qualification Committee (LQC), consisting of the following members: Lewiston City Administrator, Economic & Community Development Director, Director of Finance, one member of the City Council, and one citizen representative preferably with lending experience.

The actions of the Committee shall be governed by the following rules:

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- a. A majority of the Committee's members must be present to constitute a quorum. At least three (3) votes on the prevailing side are required to constitute a valid vote on any funding application.
- b. Committee approval of loans will be contingent upon the applicant meeting the ongoing requirements of the program.
- c. The Committee has the authority to adjust terms, rates, the match requirement and underwriting ratios on a case-by-case basis.

Once the LQC makes a recommendation, the applicant will be notified via telephone or email by a representative of the Economic and Community Development Staff to be followed by a Loan Approval Letter that outlines the details of the loan approval and requirements which is to be executed by the City and Applicant. If the terms have been modified, the borrower will be given an opportunity to accept the new terms and conditions or request an appeal.

## **IV. Appeal Process**

The applicant may appeal the decision of the Loan Qualification Committee (LQC) under the following circumstances:

- a. Must be in writing with an explanation regarding why the applicant should be granted an appeal
- b. No new information may be presented by the applicant, only clarification of information that was originally provided but, in the applicant's point of view, may not have presented their complete financial condition.
- c. Request for an appeal must be made in writing to the LQC, Chairperson within 30 days of the date of the decision to deny or modify the terms of participation.
- d. The applicant may provide written information or may request to be present at the appeal and present information directly to the Committee.
- e. The Chairperson will conduct the hearing for the appeal process.
- f. The LQC will deliberate the request and make its decision after the hearing.
- g. The LQC decision is final and the applicant will be notified by an ECDD staff person.

## **V. General Terms and Conditions for Participation in the City Programs**

This section sets forth the general terms and conditions to which an applicant must agree in order to receive a loan through the City.

Once the proposed work is approved for funding and a Notice of Loan Approval is issued, CD staff will contact the owner to schedule an appointment for a loan closing. The following documents become part of the Funding Agreement between the City and the Owner: "City

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*Economic Development Program Guidelines”; “Notice of Loan Approval”; “Truth and Lending Statement”; “Rehabilitation Loan Agreement”; “Security Agreement” or “Mortgage”; “Promissory Note”; “Personal Guaranty” (Any person holding an ownership interest of 20% or more); “Corporate Guaranty”; “Escrow Agreement”; “Assignment of Leases and Rents”; “Consent for Insurance”; “Terms and Conditions”, “Façade Improvement Program Maintenance Agreement”; and any other agreements to satisfy the conditions of the LQC.*

The City of Lewiston views the documents executed at the loan closing as a contractual agreement between the Borrower and the City. To fulfill this agreement, the Borrower must:

1. Supply a “Schedule of Work”. Complete all rehabilitation work as described in the loan application submitted by the applicant and approved by the Loan Qualification Committee. For exterior work, scheduled allowances may be made for weather if needed.
2. Repay in full and in the manner prescribed all loan money disbursed to the Borrower by the City of Lewiston through its programs.
3. The Borrower accepts ultimate responsibility for fulfilling this agreement and further agrees that:
  - a. Other verbal agreements or written contracts entered into for the completion of any rehabilitation activity are made solely between borrower and the respective contractor and/or supplier;
  - b. Borrower will indemnify and hold harmless the City of Lewiston and its agents from any and all disputes or claims of any nature for damages which may arise from the performance of any rehabilitation activity.
4. The Borrower's failure to make any monthly payment in full within thirty (30) days of the date when due, or the Borrower's failure to make full payment of any late charge or interest penalty within thirty (30) days of the date assessed, shall constitute a default.
5. The entire principal balance and all accrued interest shall become immediately due and payable without notice or demand upon the following events:
  - a. The Borrower's failure to make any monthly payment in full within 30 days of the date when due or the Borrower's failure to make full payment of any late charge or interest penalty within 30 days of the date assessed;
  - b. The commencement of any proceedings by or against the Borrower under any bankruptcy or insolvency laws:

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- c. The dissolution of, insolvency of, appointment of a receiver for, or assignment for the benefit of creditors of any property of the developer;
  - d. Loss of, substantial damage to, destruction of, sale of encumbrance upon (whether first or second position to this note and the mortgage securing this note), seizure of, levy against, attachment of, failure to pay any property taxes or other city utilities upon or insurance premiums on the project property
6. Rehabilitation Loans will require a security instrument which is acceptable to the City. The cost of preparation and registration of the security document will be the Borrower's responsibility to bear and will be payable to the City at the time of the loan closing.
7. A Borrower agrees to permit inspection by the City's ECDD and/or Code Enforcement personnel of the property, rehabilitation work, and all contract agreements, materials, equipment, payrolls, and conditions of employment pertaining to the rehabilitation project.
8. The Borrower agrees to follow the procedures and conditions of all established and applicable municipal ordinances in the physical rehabilitation and maintenance of improved property. Work not meeting minimum standards and procedures established by code will not be eligible for disbursement from City loan programs.
9. Disbursement of Program funds:
  - Disbursement of all Rehabilitation Loan funds is made through the City after the work has been approved for funding and the Contractor has submitted a Contractor Payment Request Form approved by the owner and a Certificate and Release of Liens signed by the contractor.
  - Any rehabilitation work that requires a match must be placed in a construction escrow account as directed by the City.
  - Repayment of the loan will begin upon completion of the construction phase or six (6) months after the closing date, whichever occurs first.
  - The above is contingent upon approved activities being completed in compliance with applicable municipal codes.
  - No money will be disbursed to reimburse the Borrower for improvements made to the property prior to loan approval.

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10. The Borrower is required to maintain hazard insurance on the improved property for the full term of the note and in a minimum amount equal to the total value of all mortgages held on the property. Prior to disbursement of program funds, the City shall be listed as a loss payee on the policy for the property.

11. The Borrower agrees to keep such records as may be required by the City of Lewiston with respect to the rehabilitation activities.

12. The Borrower further agrees to abide by all terms and conditions of Federal Regulations which are described in the next Section.

13. If job creation or retention is a requirement of the loan approval the Borrower will provide required paperwork in a timely manner.



## Part 6: Federal/State/Local Requirements

### **I. National Objectives (24 CFR 570.200; 570.208; and 570.506)**

This section summarizes the National Objectives of the CDBG Program contained in the Code of Federal Regulations, Title 24, Part 570, Sections 570.200 (a)(2) and (3), 570.208(a)-(d).

Each Activity must meet one of the CDBG program's three broad National Objectives:

- a. Benefit low-moderate-income persons;
- b. Aid in the prevention or elimination of slums or blight; or
- c. Meet urgent needs (relating to natural disasters)

**Housing Activities:** Are activities that are undertaken for the purpose of providing or improving permanent residential structures which, upon completion, will be occupied by LMI households.

In order to meet the housing LMI national objective, the following standards apply:

- a. Structures with one unit must be occupied by a LMI household;
- b. If the structure contains two units, at least one unit must be LMI occupied.
- c. Residential structures with three or more units must have at least 51% occupied by LMI households.

### **Multi-family Rental Properties:**

- a. Rental buildings under common ownership and management that are located on the same or contiguous properties may be considered as a single structure.
- b. For rental housing, occupancy by LMI households must be at affordable rents, consistent with the following standards:

Applicants must rent to low-moderate income residents for a period of one year. The rents are considered affordable when they are at or below the HUD established Fair Market Rents as adjusted by a utility allowance for tenant paid utilities. The FMR is published annually for the Lewiston-Auburn MSA as published by HUD; The utility allowance established by the Lewiston Housing Authority. If the tenant is receiving assistance under the Section 8 Housing Choice Voucher Program, the unit automatically qualifies as affordable under these guidelines.

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**Record Keeping Requirements:** Title 24, Part 570.506(4)(iii) requires that for each activity carried out for the purpose of providing or improving housing which is determined to benefit low and moderate income person, the City keep documentation for each unit occupied by a low and moderate income household including the size and income of the household. Records must be kept by both City and recipient of funds for at least (7) seven years.

For rental housing only:

- a. The rent charged (or to be charged) after assistance for each dwelling unit in each structure assisted; and
- b. Such information as necessary to show the affordability of units occupied (or to be occupied) by low and moderate income households pursuant to the affordability standards listed above.

## **II. Furthering Fair Housing (24 CFR 570.601)**

The Borrower must not discriminate upon the basis of race, color, creed, or national origin in the sale, lease, rental or occupancy of an improved property and will comply with the Fair Housing Act of 1968 as amended.

## **III. Anti-Discrimination (24 CFR 570.602)**

Section 109 of the Act requires that no person in the United States shall on the grounds of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance made available pursuant to the Act. Section 109 also directs that the prohibitions against discrimination on the basis of age under the Age Discrimination Act and the prohibitions against discrimination on the basis of disability under Section 504 shall apply to programs or activities receiving Federal financial assistance under Title I programs. The policies and procedures necessary to ensure enforcement of section 109 are codified in 24 CFR part 6.

The Maine Human Rights Act prohibits discrimination in employment, housing, public accommodation and credit based on race, color, sex, physical or mental disability, religion, ancestry, or national origin.

Section 109 of the Housing and Community Development Act of 1974, and in accordance therewith, no person in the United States shall, on the ground of race, color, national origin, religion, age, or sex, be excluded from participation in, be denied the benefits, or be subjected to discrimination under, any program or activity funded in whole or in part with the Community

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Development funds or any other federal financial assistance. The operating agency will immediately take any measures necessary to effectuate this agreement.

## **IV. Labor Standards (24 CFR 570.603)**

Rehabilitation funded by CDBG that have nine (9) units or more residential units must comply with section 110(a) of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq. aka **Davis Bacon Wage Rates**, and as provided under the CDBG regulations in 24 CFR 570.603 . This applies to non- volunteer labor financed in whole or part using federal funding covered by the Act.

## **V. Environmental Review (24 CFR 570.604; 570.605)**

The City will conduct an environmental review on every property that receives City assistance in accordance with 24 CFR Part 58 and Part 50 and as further described in CDBG regulations 24 CFR 570.604. The level of review is determined by the type of rehabilitation activity that is undertaken. NO work may commence on the property until the review is complete and the Funding Agreement is signed.

Areas of particular concern that may cause delay in approval of the project include:

- a. Historic properties;
- b. Properties located in a Special Flood Hazard Area (SFHA) flood zone; and
- c. Contaminated sites requiring special cleanup provisions

These include special requirements and will be staff reviewed to determine whether or not the City is willing to invest in these properties.

**Flood Hazard Insurance:** For properties approved for funding that are located in a designated flood hazard area, the applicant will be required to carry flood insurance in accordance with the National Insurance Act of 1968 (as amended) and abide by the regulations of the Flood Disaster Protection Act of 1973 as contained in CDBG regulations 24 CFR 570.605.

## **VI. Relocation (24 CFR 570.606)**

Families may be required to be temporarily relocated because of the nature and extent of the rehabilitation. The City makes every attempt possible to minimize the disruption of families and individuals; however, in certain circumstances, if funding is approved by the City, and the occupants are displaced, the City will follow the requirements of 49 CFR Part 24, as provided under the CDBG regulations 24 CFR 570.606. For rehabilitations related to the LALP, relocation

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is a component of the lead program and will be funded through that program. All other relocations are the responsibility of the entity receiving funds.

## **VII Employment and Contracting Opportunities. (24 CFR 570.607)**

Under the current CDBG housing programs, Section 3 requirements do not apply to the rehabilitation work which includes demolition and lead based paint abatement, because the dollar threshold will not exceed \$100,000 for an individual contractor. On LALP funded projects, contractors may be subject to Section 3 and will follow the process established by the LALP.

## **VIII. Lead Based Paint (24 CFR 570.608)**

Any rehabilitation funded by CDBG shall be subject to the current federal regulations contained in entitlement grant regulations 24 CFR Part 35 provisions providing for the elimination of lead-based paint hazards. The City contracts with Clarity Property Services, LLC that has licensed Lead Inspectors and Risk Assessors that design the lead hazard control work tasks to be compliant with HUD and Maine DEP regulations. All contractors must be certified under the RRP rule and licensed under Maine Department of environmental Protection (MEDEP) Chapter 424 Regulations (10-03-2016).

## **IX. Debarred, Suspended or Ineligible Contractors (24 CFR 570.609)**

No awards will be made to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, “Debarment and Suspension” (24 CFR 85.35)

At the time a contract is bid, the CD will check all contractors and subcontractors at SAM.gov to ensure that they are not listed on the ineligible parties list. A printout of “no record” will be placed on file.

## **X. Conflict of Interest (24 CFR 570.611)**

**Interest of Certain Federal Officials:** No member of or Delegate to the Congress of the United States and no Federal Housing Commissioner shall be admitted to share any part of this Program or any benefit to arise from the same.

**Interest of Members, Officers, or Employees of Operating Agency, Members of Local Governing Body, or Other Public Officials:** No member, officer, or employee of the Department of Development (Planning, Community Development or Code Enforcement) or its agents or assignees, no municipal officers of the City, and no other member of any board or commission,

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elected or appointed official of Lewiston, or employee of the City of Lewiston who exercises any decision-making functions or responsibilities regarding the Community Development Program shall have any direct or indirect pecuniary interest, as that term is defined by 30 MRSA, Section 2250, et seq., in any contract, subcontract, or the proceeds thereof for work to be performed in connection with the program assisted under this agreement.

**Bonus, Commission or Fee:** The Borrower cannot pay any bonus, commission, or fee for the purpose of obtaining the City of Lewiston's approval of the loan application or any other approval or concurrence required by the City of Lewiston or its designee to complete the rehabilitation work financed in whole or in part with the rehabilitation loan.