

# 17  
R. 31299

RESOLUTION 31299

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A RESOLUTION relating to economic and community development, authorizing an application to the United States Department of Housing and Urban Development (HUD) for a "Section 108" loan guarantee to support eligible activities.

WHEREAS, the City's 2009-2012 Consolidated Plan for Housing and Community Development provides a number of strategies to support economic and community development, and the City has stated that it will assist the development of catalytic economic development projects with Section 108 loan financing, providing opportunities for business growth and new jobs; and

WHEREAS, under Section 108 of the Housing and Community Development Act of 1974, as amended, federal guarantees are available for loans obtained to finance eligible economic and community development activities; and

WHEREAS, the City's Director of the Office of Economic Development has recommended that the City apply for a Section 108 loan guarantee to fund eligible activities, including those involving the acquisition and development of properties within the City; and

WHEREAS, State law, RCW 35.21.735, authorizes the City to issue federally guaranteed notes, without pledging the City's credit, to finance loans to private parties for activities authorized under the Section 108 program; and

WHEREAS, a Section 108 loan guarantee will make the acquisition and development of catalytic economic development projects economically feasible; and

WHEREAS, a Section 108 loan guarantee will benefit low- and moderate-income individuals, including through the creation or retention of jobs and the preservation or development of affordable housing, and may also address slums or blight on a spot basis; and

WHEREAS, subject to final approval by ordinances, proceeds of Section 108 guaranteed loans are intended to be applied to multiple projects; and

WHEREAS, the Office of Economic Development has made public a proposed application for a Section 108 loan guarantee, and the City Council has held a public hearing on the proposed application to obtain citizens' views on community development needs, as required by federal regulations; NOW, THEREFORE,

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SEATTLE, THE  
MAYOR CONCURRING, THAT:**



1           Section 1.     That the Mayor, or his designee, is authorized, for and on behalf of The  
2 City of Seattle, to submit to the United States Department of Housing and Urban Development  
3 (“HUD”) an application for a Section 108 loan guarantee in the amount of up to TEN  
4 MILLION AND NO/100 DOLLARS (\$10,000,000) for the purposes of financing loans to be  
5 made for eligible activities. The final application shall be based upon the proposed application  
6 attached to this Resolution as Exhibit A, with all understandings and assurances contained  
7 therein, and with such additions, modifications and amendments as HUD may require or the  
8 Mayor or Director of the Office of Economic Development may deem necessary or advisable  
9 in order to carry out the intent of this Resolution and obtain the necessary approval from HUD.  
10 The Director of the Office of Economic Development is designated as the official  
11 representative of the City to act in connection with the application and is authorized to provide  
12 such additional information as may be required.

13  
14           Section 2.     Upon acceptance of the application by HUD, the Mayor, or his designee,  
15 may submit to the City Council one or more proposed ordinances authorizing the necessary  
16 agreements with HUD and other parties to implement the Section 108 loan guarantee.



1           Adopted by the City Council the \_\_\_\_ day of \_\_\_\_\_, 2011, and  
2 signed by me in open session in authentication of its adoption this \_\_\_\_\_ day  
3 of \_\_\_\_\_, 2011.

4 \_\_\_\_\_  
5 President \_\_\_\_\_ of the City Council

6  
7 THE MAYOR CONCURRING:

8  
9 \_\_\_\_\_  
10 Michael McGinn, Mayor

11  
12 Filed by me this \_\_\_\_ day of \_\_\_\_\_, 2011.

13  
14 \_\_\_\_\_  
15 City Clerk

16  
17 (Seal)

18  
19 Exhibit A: City of Seattle Application for Loan Guarantee from U.S. Department of Housing  
20 and Urban Development for an Economic and Community Development Loan Fund in the  
21 amount of \$10,000,000.



ECONOMIC AND COMMUNITY DEVELOPMENT LOAN FUND  
SEATTLE, WASHINGTON

**CITY OF SEATTLE**

**APPLICATION FOR LOAN GUARANTEE**

**FROM**

**U.S. DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT**

**FOR AN**

**ECONOMIC AND COMMUNITY DEVELOPMENT LOAN FUND**

**IN THE AMOUNT OF \$10,000,000**

**JUNE 14, 2011**



ECONOMIC AND COMMUNITY DEVELOPMENT LOAN FUND  
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**A. Introduction**

The purpose of this Section 108 application is to assist with economic and community development activities in the City of Seattle. The guaranteed loan funds will be used to create a loan pool targeted to projects that will have positive economic and community development benefits.

Because this application is for a loan fund, Section 108 loans will qualify under one or more of several eligible activities, including 24 CFR 570.703(a), (e), (f), (h), (i), and (l). Similarly, Section 108 loans will qualify under one or more of several criteria for compliance with national objectives, including 24 CFR 570.208(a)(1) - (4) and 24 CFR 570.208(b)(1) - (3). Projects funded under 24 CFR 570.703(i) will meet the public benefit test pursuant to 24 CFR 570.209(b), where applicable.

As each project becomes ready for commitment, the City will submit a loan proposal to HUD with a full description of the project, an explanation of the eligible activity and national objective to be achieved, and analysis of the project's compliance with the City's underwriting guidelines (as described in greater detail below). The City understands that such information will be required prior to release of funds to the City or its custodian for an individual project.

**B. Section 108 Submission Requirements**

**1. Community Development Objectives**

The Section 108 loan fund will result in lending for economic and community development in the City of Seattle. In doing so the loan fund will further the City of Seattle's Economic Development Goals as listed in the City's 2009-2012 Consolidated Plan.

Within the 2009-2012 Consolidated Plan, Goal 3: Expand Economic Development Opportunities of the Strategic Plan Priorities Matrix, the City has stated that it will "[a]ssist the development of catalytic mixed-use projects with Section 108 and Float loan financing, providing opportunities for business growth and new jobs."

**2. Compliance with 24 CFR 570.208 - National Objectives.**

Section 570.200(a)(2) requires that all CDBG activities meet one of three National Objectives. Section 570.208 defines the three national objectives as: 1) benefit to low and moderate income families; 2) aid in the prevention or elimination of slums or blight; and 3) meeting other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available.

Projects assisted with the Section 108 loan fund will benefit low and moderate income individuals and families by creating and retaining jobs, providing area benefit, providing affordable housing or serving limited clientele. The loan fund may also help eliminate conditions of blight.



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If a project creates or retains jobs to satisfy the National Objective, the City will enter into a jobs agreement with the Obligor and/or other appropriate parties ensuring the incorporation of job requirements and reporting in tenant lease agreements.

**3. Compliance with 24 CFR 570.703 – Eligible Activities**

Each of the projects to be assisted with the Section 108 loan fund will be eligible under 24 CFR 570.703. Because this application is for a loan fund, Section 108 loans will qualify under one or more of several eligible activities: 703(a)(acquisition); 703(e)(clearance, demolition, removal); 703(f)(site preparation); 703(h)(housing rehabilitation); 703(i)(economic development activities) or 703(l)(public facilities).

None of the projects assisted with the Section 108 loan fund will be used for the ineligible activities provided in Section 570.207(a): buildings used for the general conduct of government, general governmental expenses, or for political activity.

**4. Section 570.209 Guidelines and Objectives for Evaluating Project Costs and Financial Requirements.**

All activities eligible under Section 570.203 and some eligible under 570.204 must meet the requirements of Section 570.209. This section outlines underwriting guidelines for ensuring that a proposed project carries out an economic development objective in an appropriate manner. These guidelines under 570.209(a) are not mandatory but serve as a framework for financially underwriting economic development projects. The City has developed underwriting guidelines consistent with 570.209 and described in greater detail in Section C below. Each project assisted with the Section 108 loan fund to which Section 570.209 is applicable will comply with the City's underwriting guidelines.

All projects assisted with the Section 108 loan fund to which Section 570.209 applies will comply with the standards of subsections 570.209(b)(1), (2) & (3). Section 570.209(b)(1) establishes the standards for evaluating public benefit in the aggregate, Section 570.209(b)(2) applies those standards and 570.209(b)(3) establishes the standards for individual activities.

**C. City's Underwriting Guidelines**

In evaluating proposed projects the City of Seattle intends to use the following criteria:

**1. Project Management**

The City of Seattle - Office of Economic Development (OED) will manage the fund. OED will underwrite all loans with assistance provided by its consultant National Development Council (NDC) to advise on project feasibility. NDC has a more than 35-year track record of assisting local governments in structuring and implementing economic development and housing projects.

Prior to submitting legislation for a Section 108 loan to City Council, OED shall convene a meeting of its City Loan Committee to consider the loan proposal. Committee members shall have a minimum of two weeks to review the loan proposal prior to the



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meeting. At the conclusion of the meeting, the Committee members shall advise whether to recommend approval of the loan proposal. OED shall prepare and distribute meeting minutes to Committee members. Following Committee approval, the Committee shall be consulted with respect to any material changes to the project financial structure, public benefits, or CDBG compliance.

The City Loan Committee shall comprise five members: the department heads of the City's Budget Office, Human Services Department, and Office of Housing; and two members from private lending institutions selected by the OED Director. The OED Director may attend Committee meetings but will not be an official Committee member. At least one representative from a private lending institution shall participate in any Committee meeting. If the private lending institution has a financial interest in the proposed project, such institution shall abstain from participating in the Committee meeting.

**2. Public Benefits**

The proposal for each project will clearly identify the public benefit(s) including CDBG National Objective to be achieved. Moreover, the City will give priority to projects creating one or more of the following economic benefits:

- Create or retain permanent jobs;
- Increase the availability of goods and services needed by nearby residents;
- Serve as an anchor for future economic development;
- Enhance the local tax base through increased sales and/or property taxes from the project's operations;
- Include energy efficient building or process improvements; and/or
- Increase the amount of affordable housing (i.e. housing serving households at 50% - 80% of median income) available for nearby residents

**3. Loan Term** (as permitted under federal regulations)

Section 108 loans shall not exceed a loan term of 20 years, with no loan to exceed the overall 20 year term of this loan fund and in no event to exceed the useful life of the asset being financed.

**4. Interest Rate**

City notes guaranteed under Section 108 will initially bear a floating rate based on a formula that is presently the 90 day LIBOR (London Interbank Offered Rate), as adjusted monthly, plus 20 basis points, and after inclusion in a public offering arranged by HUD, will carry a fixed rate for each maturity of principal pursuant to the public offering. The City may charge the borrower an interest rate that is higher or lower than the rate on the City's note. Any difference in the interest rate will be discussed in the underwriting analysis.

**5. Origination Fee to City**

The City may assess a fee of up to 2% of principal amount.



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**6. Evidence of Site Control**

Applicants for loans must demonstrate evidence of ownership or site control, such as an executed option or purchase and sale agreement.

**7. Payments/Amortization**

Section 108 loans may be amortized over the full term of the loan (e.g., 20 year amortization for a 20 year loan); amortization greater than the term of the loan may be considered (e.g., 30 year amortization for a 20 year loan), if the anticipated financial condition of the project is sufficient to sustain a balloon payment at the end of the term.

**8. Ability to Repay**

The analysis will identify the primary, secondary and, where considered necessary, tertiary sources of repayment for the loan. Projects will have at least a 1.2-projected debt coverage ratio, except that a lower debt coverage ratio, not less than 1.1, may be considered if the project's financial condition supports such a lower ratio (e.g., project has commitment of financially strong tenant(s) under long term lease).

Key repayment risks will be analyzed in detail, including an analysis of project financial assumptions compared to actual market conditions. The analysis will compare anticipated lease rate to similar properties, where applicable. Also, the analysis will compare anticipated vacancy rates to similar properties, where applicable. The analysis will also describe the projected leasing time frame to achieve project stabilization and whether reserves exist to guard against delay. If there is a balloon payment at the end of the loan term, the analysis will describe the projected financial condition of the property on the maturity date, the project's ability to make the final payment and efforts to mitigate risk (e.g., replacement reserves to maintain the physical condition of the property). Debt service reserves may also be required.

In addition, OED will reference appropriate supporting documentation, such as a recent appraisal and 15 year operating pro forma to support our analysis.

**9. Collateral**

Property financed with Section 108 loans should have a loan to value ratio not to exceed 80 percent at project stabilization. This value must be supported by an appraisal prior to funding. The City's security interest will typically be in the form of a deed of trust; however, in transactions involving New Markets Tax Credits, security will typically consist of assignments of the interests of the borrower entity in its investee, which in turn may hold interests in the entity funding the project owner. For real estate security, the analysis will first determine whether the loan to value ratio exceeds 80 percent, using the property being financed as the sole source of value. If such calculation exceeds 80 percent, the analysis will then determine whether there is sufficient outside collateral to add as value, in order to meet the loan to value requirement. In certain cases, HUD permits guarantees to suffice in lieu of additional collateral, depending on the resources and financials of the individuals or entities providing such guarantees. The Loan Committee will decide whether to accept outside collateral and/or guarantees to meet the loan to value requirement. Consistent with customary underwriting practice, loan to



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value coverage will be determined based on expected value as of project stabilization (i.e., the point in time when the project has obtained the targeted debt coverage ratio). In addition to 80 percent loan to value, Section 108 loans should have a minimum collateral coverage of 100 percent of the loan amount. The collateral coverage analysis will use an advance rate/discount value of 80 percent of appraised value for property (determined at project stabilization). The analysis will describe how, prior to stabilization, construction risk and lease-up risk (as applicable) will be mitigated. The analysis will also identify key mitigation issues such as construction contingencies, reserves, guaranteed maximum price contract, and experience of the development team.

**10. Development Team Capacity and Experience**

Projects to be funded should have a development team that has both the capacity and demonstrated experience to complete the project as evidenced by past projects of similar size and scope, as well as financial strength. The analysis will include (i) resumes of development team members and (ii) a list of prior comparable projects completed by development team members with a description of project size and cost, and whether such projects were completed on time and on budget. Also, the analysis will describe development team members' experience with public funding sources and accompanying regulations as applicable (e.g., housing tax credits, Davis-Bacon).

**11. Developer / Owner Commitment**

Developer / owner commitment can take many forms. These commitments can include: developer / owner equity, guarantees of completion, guarantees to fund shortfalls or guarantees of minimum cash flow. The developer's financials will also be examined and analyzed.

**12. Character**

Projects to be funded should have developers with good credit histories, demonstrated integrity, and quality references.

**13. Proposed Costs**

The analysis will compare estimated development costs to costs of similar properties. Also, the analysis will determine whether estimated development costs have been prepared by a credible third party such as a contractor or other cost estimator. Finally, the City's loan commitments for financing construction or rehabilitation will be conditioned on a final guaranteed maximum price contract for development within the proposed budget.

**14. Commitment of Funds**

Projects seeking Section 108 loans should have commitments of construction and permanent financing. If private financing includes a right to adjust the interest rate after a certain point in time, the analysis will describe the effect of such a change on the Section 108 loan. Loan documents should contain adequate lender protections (e.g., default and cure privileges) for the City, subject to reasonable conditions of other lenders having priority over the Section 108 loan.



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**15. Need for Public Assistance**

The analysis will determine whether the project can be developed feasibly with private financing alone or, in fact, requires public financial assistance to make the development feasible. OED will examine the reasonableness of a for-profit developer's fee compared to market rates. If the for-profit developer has an ownership stake in the project, OED will also examine the reasonableness of the developer's return under cash on cash return and internal rate of return ("IRR"). Cash on cash return measures the developer's cash return on a cash investment [i.e., cash flow ÷ equity]. IRR measures the rate at which the developer's investment grows over a long term period, taking into account periodic cash flows and property appreciation. As part of such analysis, an excessive developer fee/return will be reduced and put back into the project in the form of additional equity and/or additional reserves.

**D. Pledge of CDBG Guarantee**

The City of Seattle understands that if the borrowers from this Section 108 loan fund fail to make timely payments and the City of Seattle therefore fails to make a required payment on its note, HUD will deduct that payment from the City of Seattle's CDBG Line of Credit and in accepting this loan guarantee, the City of Seattle will pledge all grants made to the City or for which the City may become eligible under 24 CFR Part 570, as security for the guarantee.

**E. Schedule for City's Repayment of Loan**

In requesting approval of this loan guarantee the City of Seattle is requesting a commitment for a 20-year term. The City will act as the borrower and issue the guaranteed debt obligations, consistent with RCW 35.21.735. We estimate that the multiple projects in the loan fund will have a combined principal repayment schedule as described below. However, the City intends to issue separate HUD-guaranteed promissory notes with an individual principal repayment schedule for each project funded. The following principal repayment schedule assumes that some or all projects funded will qualify for a schedule with a balloon payment, as described in Section 7 above. The first loan is anticipated to close by August of 2011. Therefore the repayment period should run from 2012 through 2031.

Year	Principal Repayment
August 1, 2012	82,000
August 1, 2013	85,000
August 1, 2014	100,000
August 1, 2015	175,000
August 1, 2016	250,000
August 1, 2017	330,000
August 1, 2018	350,000
August 1, 2019	375,000
August 1, 2020	400,000
August 1, 2021	430,000



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August 1, 2022	460,000
August 1, 2023	490,000
August 1, 2024	530,000
August 1, 2025	570,000
August 1, 2026	610,000
August 1, 2027	650,000
August 1, 2028	690,000
August 1, 2029	740,000
August 1, 2030	790,000
August 1, 2031	<u>1,893,000</u>
Total:	\$10,000,000



**FISCAL NOTE FOR NON-CAPITAL PROJECTS**

<b>Department:</b>	<b>Contact Person/Phone:</b>	<b>CBO Analyst/Phone:</b>
Office of Economic Development	Ken Takahashi/684-8378	Gregory Shiring/386-4085

**Legislation Title:**

A RESOLUTION relating to economic and community development, authorizing an application to the United States Department of Housing and Urban Development (HUD) for a "Section 108" loan guarantee to support eligible activities.

**Summary of the Legislation:**

This legislation authorizes OED to submit an application to the United States Department of Housing and Urban Development (HUD) for a "Section 108" loan guarantee. The proposed \$10 million Section 108 loan pool is for the acquisition and development of certain properties in the City of Seattle.

**Background:** (Include a brief description of the purpose and context of legislation and include record of previous legislation and funding history, if applicable.)

The City's 2009-2012 Consolidated Plan for Housing and Community Development provides a number of strategies to support economic and community development, and the City has stated that it will assist the development of catalytic economic development projects with Section 108 loan financing, providing opportunities for business growth and new jobs. A Section 108 loan guarantee in the amount of \$10 million will enable the City to make multiple loans and help make the acquisition and development of economic development projects economically feasible.

Please check one of the following:

**This legislation does not have any financial implications.**  
(Stop here and delete the remainder of this document prior to saving and printing.)

**This legislation has financial implications.** (Please complete all relevant sections that follow.)

Note: While there are no direct financial implications to this legislation, through this legislation, OED seeks authority to apply to HUD for \$10 million in Section 108 funding. Following HUD's approval of the \$10 million Section 108 loan application, a follow-up ordinance will be provided to Council to authorize OED to enter into agreements with HUD regarding the \$10 million Section 108 loan guaranty. OED will include a description of the financial implications in the forthcoming legislation. The financial implications to be described in the forthcoming legislation include the following:



- Following project approval by HUD and City Council, proceeds from the \$10 million Section 108 loan fund will be deposited directly by HUD to the City's trustee/custodian known as JPMorgan Chase ("Custodian"). According to an agreement with the Custodian, the City will direct the Custodian to disburse Section 108 funds to multiple projects.
- The City will collect a fee representing up to two percent (2%) of the total Section 108 loan funds disbursed for multiple projects. Should the \$10 million application be approved by HUD, the cumulative fee amount to be received by the City as revenues will be \$200,000. The fee will be paid directly by the 108 borrower rather than from 108 loan funds. Pursuant to Council adopted 108 loan policies, fee revenue will be used to cover costs of the Section 108 loan program.

**What is the financial cost of not implementing the legislation?**

(Estimate the costs to the City of not implementing the legislation, including estimated costs to maintain or expand an existing facility or the cost avoidance due to replacement of an existing facility, potential conflicts with regulatory requirements, or other potential costs.)

There is no financial cost for not implementing the legislation. The cost would be measured in terms of unachieved public benefits.

**Does this legislation affect any departments besides the originating department?**

(If so, please list the affected department(s), the nature of the impact (financial, operational, etc), and indicate which staff members in the other department(s) are aware of the proposed legislation.)

No.

**What are the possible alternatives to the legislation that could achieve the same or similar objectives?**

(Include any potential alternatives to the proposed legislation, such as reducing fee-supported activities, identifying outside funding sources for fee-supported activities, etc.)

None.

**Is the legislation subject to public hearing requirements?**

(If yes, what public hearings have been held to date, and/or what plans are in place to hold a public hearing(s) in the future?)

Yes, a public hearing will be held before Council committee consideration of this Resolution

**Other Issues:** (Include long-term implications of the legislation.)

None

**List attachments to the fiscal note below:**

None





City of Seattle  
Office of the Mayor

May 17, 2011

Honorable Richard Conlin  
President  
Seattle City Council  
City Hall, 2<sup>nd</sup> Floor

Dear Council President Conlin:

I am pleased to transmit the attached proposed Council Resolution that authorizes the application of a \$10 million federal Section 108 loan fund. Section 108 funds will be used to create a loan pool targeted to commercial and mixed-use projects that will have positive economic and community development benefits.

Upon HUD's approval of the \$10 million Section 108 loan fund, a subsequent ordinance will be forthcoming to authorize the City's Office of Economic Development to enter into agreements with the U.S. Department of Housing and Urban Development ("HUD") to establish the loan fund. HUD and the City Council will approve each project financed by the Section 108 loan fund.

The Section 108 loan is one of the few financing tools available to the City in assisting economic development projects. The City has a strong track record in making effective use of the program, most recently financing the relocation of motion picture film laboratory Alpha Cine to Southeast Seattle and the rehabilitation of the Bush Hotel in the Chinatown International District.

Approval of this legislation will result in significant public benefits in low-income neighborhoods. Should you have any questions, please contact Ken Takahashi of the Office of Economic Development at 684-8378.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael McGinn".

Michael McGinn  
Mayor of Seattle

cc: Honorable Members of the Seattle City Council