



Department of Planning & Community & Economic Development
Economic Development Division

Website: www.cityofmadison.com

- Office of Business Resources
- Office of Economic Revitalization
- Office of Real Estate Services

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TO: Economic Development Committee (EDC)

FROM: Matthew B. Mikolajewski, Office of Business Resources Manager *MMB*

SUBJECT: Edits to "BREWD Guidelines – 2009 Revision" dated October 2, 2009

DATE: February 3, 2010

The EDC is scheduled to discuss and act on "BREWD Guidelines – 2009 Revision" (dated October 2, 2009) at its February 3, 2010 meeting. Additional information about this revision can be found in Legistar File # 16767. The following memo summarizes additional potential modifications to the "BREWD Guidelines – 2009 Revision" document ("Revised Guidelines"). **Staff recommends that the EDC include, or not include, these changes within any motion to approve the "Revised Guidelines."**

1. Word Processing Error

The fifth paragraph on Page 1 currently reads "unless an overriding employment benefit exists or the project will remediate/redevelop a site owned by the City of Madison or the City of Madison Community Development Authority (CDA), properties owned by the City or CDA will not be eligible to receive funding."

This sentence should read: "unless an overriding employment benefit exists or the project will remediate/redevelop a site owned by the City of Madison or the City of Madison Community Development Authority (CDA), tax-exempt properties will not be eligible to receive funding. **Staff recommends including this change within the Revised Guidelines.**

2. Property Mortgage

At the January 6, 2010 EDC meeting, several questions were raised about the City requiring a mortgage on the property in the amount of grant funds. Please refer to the attached January 22, 2010 Memorandum by Assistant City Attorney Anne Zellhoefer for additional guidance regarding the appropriateness of such a mortgage.

Per this memo, staff recommends maintaining the mortgage language within the Revised Guidelines.

3. Common Wealth Development Inc. Recommendations

Common Wealth Development Inc. provided the attached letter, dated January 26, 2010, outlining four recommendations for the Revised Guidelines.

First, Common Wealth recommends adding language to the guideline's mortgage requirement that would insure that the City takes a subordinate position. Following consultation with Assistant City Attorney Anne Zellhoefer, the City would prefer the flexibility to negotiate the type of mortgage, and subordination, on a project-by-project basis. **As such, staff recommends not including language regarding subordination within the Revised Guidelines.**

Second, Common Wealth has suggested that the Certificate of Occupancy requirement be extended from two-years to five-years from the issuance of the grant. As noted in Common Wealth's letter, the project that is being contemplated is the remediation/redevelopment of the Garver Feed Mill. This is a complex and unique project. Although a five year timeframe may be appropriate for this project, it is likely unreasonably long for other proposals.

The City has the ability to negotiate the implementation timeline for all BREWD grants with Applicants through the preparation of each grant agreement. Staff believes the guidelines could remain silent on implementation timeline, recognizing that a project-specific deadline will be included within each grant agreement. **Staff recommends removing the phrase "by 2 years from the issuance of the grant" from the two locations where the phrase appears within the Revised Guidelines.**

Finally, Common Wealth provided a couple of recommendations regarding the application checklist presented on page 17. **Staff agrees with these suggestions, and recommends that they be included within the Revised Guidelines.**

4. Employment Requirement

The current version of the Revised Guidelines does not require a specific employment guarantee. Rather, the Revised Guidelines provide an employment recommendation, and require City staff to make a determination if an Applicant can reasonably expect to meet this recommendation at the time of application. Through its mortgage requirement, the current version of the Revised Guidelines also provides assurance that funds will be used for the purpose that they are awarded. **Staff therefore recommends that the Employment Requirement section of the Revised Guidelines remain as currently drafted.**

If the EDC desires to include an employment guarantee within the Revised Guidelines, City staff recommends replacing the existing Employment Requirement section with the following language:

It is the City's desire to invest BREWD funds in projects that create space for employment opportunities. At the time of application, all Applicants will be required to submit a projection of employment positions anticipated to be located on the property within four (4) years of Certificate of Occupancy. The projection will be required to include an estimate of the number of these positions that will and will not conform to the City of Madison Living Wage Ordinance (Section 4.20, MGO).

The City will require within four (4) years of Certificate of Occupancy, no less than one (1) permanent fulltime-equivalent (40 hours per week) Position that conforms to the City of Madison Living Wage Ordinance (Section 4.20, MGO) employed on the Property for every \$35,000 of BREWD funds granted. For example, a \$50,000 grant would require two (2) Positions, a \$100,000 grant would require three (3) Positions, and a \$350,000 grant would require ten (10) Positions. Should the Applicant fail to demonstrate the agreed upon employment requirement within four (4) years of Certificate of Occupancy, the Applicant will be required to repay the amount

granted that corresponds to the number of Positions not present on the Property. For example, using the ratio above, if eight (8) positions are required and only six (6) have been identified on the Property, the Applicant would be required to repay \$70,000 (\$35,000 per position times two (2) positions).

Once, at any time after Certificate of Occupancy, the Applicant has met the employment requirement, he or she may submit evidence of meeting this requirement to the City of Madison. Pending City approval of said evidence, he or she will be released of his/her employment obligation.

It is important to note that the Applicant may not always be the entity directly providing jobs on the property. For example, a developer may apply for BREWD funds to remediate a site that is redeveloped into a multi-tenant space. It is the tenants located within the facility, and not the Applicant, that will provide jobs on the property.

CITY OF MADISON
OFFICE OF THE CITY ATTORNEY
Room 401, CCB
266-4511

Date: January 22, 2010

MEMORANDUM

TO: Economic Development Committee


FROM: Anne P. Zellhoefer, Assistant City Attorney

RE: **Proposed Amendments to BREWD Guidelines**

The proposed amendments to the BREWD Program Guidelines provide that the borrower of BREWD funds shall provide a mortgage to the City in the amount of the grant funds, and that the mortgage shall not be released until either a certificate of occupancy is issued for the building or the loan is repaid. I understand the Committee questioned whether it is customary for the City, as part of its loan and grant programs, to require a mortgage as a condition of funding. It is.

Many City of Madison loan and grant programs require a mortgage as a condition of funding. City grant and loan programs that require a mortgage are: the HOME Program; the American Dream Down Payment Assistance Program; Tax Incremental Financing; Madison Capital Revolving Fund Program; and many CDBG loans. Each loan or grant agreement provides terms under which the mortgage may be satisfied. Terms differ depending on the program and the risk to the City. The presence of a mortgage provides security for the City's loan and ensures that the City has a remedy if a loan is not repaid or a project is not completed as approved.

Please let me know if you have any questions.



Anne P. Zellhoefer, Assistant City Attorney

APZ:skm
cc: Matt Mikolajewski

**COMMON WEALTH
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January 27, 2010

Matt Mikolajewski
Manager of Office of Business Resources
City of Madison
215 Martin Luther King Jr. Blvd.
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Madison, WI 53701-2983

Re: Brownfields Remediation/Elimination and Workforce Development
("BREWD")

Dear Matt:

I write you on behalf of Common Wealth Development, Inc. in connection with the City's proposed modifications to the BREWD program. As you may know, our organization intends to apply for BREWD funds in connection with its clean-up and redevelopment of the Garver Feed Mill.

Common Wealth Development fully supports the City's efforts to convert the BREWD program from a loan format into a grant to encourage the use of these funds. In addition, please note the following comments to the program's guidelines:

1) On page 2, the BREWD grant requirements include the following language: "The City will require a mortgage on the property in the amount of the grant funds. Such mortgage shall not be released until a certificate of occupancy is issued for the building by two years from the issuance of the grant or until the grant amount is repaid." As to the mortgage requirement, this seems somewhat inconsistent with the grant language. However, we understand the City's desire to have some sort of security interest in the property to assure that the grant funds are used for their stated purpose. While we would recommend that the requirement for a mortgage be removed, if it must remain in place, we urge language be added to the guidelines which indicates that the City will agree to subordinate its mortgage to any financing required for the project. Traditional lenders would have difficulty taking a second position behind the City. Even if lenders agreed to such a second mortgage, it would likely result in higher financing expenses.



Matt Mikolajewski

January 27, 2010

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2) As to the release date of the mortgage, the guidelines state, both on page 2 and on page 4, that the mortgage would not be released until a certificate of occupancy is issued two years from issuance of the grant. Common Wealth Development feels that more time should be granted for an applicant to obtain its certificate of occupancy. For instance, in the project contemplated by Common Wealth Development, while the environmental remediation will certainly be completed within two years of the grant, a final build-out and certificate of occupancy for the project may not be issued for anywhere from four to five years. Therefore, we request that the two-year period be extended to five.

3) The required information checklist on page 17 includes a bank commitment letter. We recommend that the language "if available" be added at the end of this requirement. In many instances, the financing commitments will not be available. Additionally, the City should consider adding language that "In lieu of a commitment for the development of the property, the applicant should submit evidence of sufficient funding to complete the remediation."

4) Finally, another required submittal on page 17 is an offer to purchase. Here we suggest that the application provide for "an offer to purchase or other evidence of site control." Many applicants may have site control, through options or otherwise, but not yet have signed binding purchase agreements.

Feel free to call should you have any questions regarding this matter.

Very truly yours,



Marianne Morton
Executive Director

City of
Madison



CITY OF MADISON
Community
Development Block
Grant Program



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