

City of Eastvale
Business Incentive Loan Policy

SECTION 1: INTRODUCTION

This written policy is intended as a guide in making credit decisions regarding applications for the Business Incentive Loan Program for the City of Eastvale (City). This policy is written to allow flexibility as credit needs change. It should be used as a tool to provide consistency for project selection. Projects will be considered for funding on a case-by-case basis, until available funding is exhausted. Only those projects falling within the scope of the guidelines will be considered for funding. Depending on the funding amount, successful applicants will be determined by the City Manager or City Council.

SECTION 2: PURPOSE

This policy provides financial assistance to support economic development and business retention and expansion goals. The goals are structured to promote Eastvale as a positive place for quality businesses, promote business expansion and attraction to enhance local economic growth, and ensure that government regulations promote a favorable business climate.

This loan program is not to be equated with a loan program available through banking or financial institutions. As a public lender, the source of funds is interested as much in the social benefits as return on investment, and preservation of capital. The return to Eastvale is multiple: increased investment in the business community, job creation, and enhanced business activity, and increased tax revenues and quality of life for our residents.

The purpose of the economic development assistance is to:

1. Reduce Eastvale's sales tax leakage.
2. Create jobs within the community.
3. Create opportunities for business expansion for existing Eastvale businesses.
4. Create opportunities for recruiting new businesses.
5. Encourage additional foot traffic and social activity within a business location.
6. Diversify the City's sales tax base.

**SECTION 3: PROHIBITION AGAINST CHANGE IN OWNERSHIP, MANAGEMENT
AND CONTROL OF PARTICIPANT**

The qualifications and identity of Participant in this program are of particular concern to City. It is because of those qualifications and identity that City will enter into an Agreement with Participant. No voluntary or involuntary successor in interest of Participant shall acquire any rights or powers under this program except as expressly set forth within executed documents under this program. A change in ownership, management, and control shall be subject to the approval of City, but such approval shall not be unreasonably withheld.

Participant shall not assign all or any part of any Agreements or Notes under this program without the prior written approval of City, which approval shall not be unreasonably withheld.

SECTION 4: LOAN FORGIVENESS

Participants in this program will be required to remain in operation for a specified amount of time, as outlined in Section V below. In meeting this requirement and compliance with the program, funds loaned will be forgiven at the end of that period.

SECTION 5: PARTICIPATION PERIOD REQUIRED

The required period of time for program compliance and fund forgiveness/repayment is contingent upon the amount loaned. The following schedule applies:

<u>Amount of Loan</u>	<u>Forgiveness/Operating Period</u>
Up to \$100,000	7 years

SECTION 6: ELIGIBLE BUSINESSES

Given limited funding availability and strong community desire for more variety of options for dine-in restaurants in the City, at this point in time only restaurants are eligible for a loan through the program.

Eligibility Criteria:

1) The restaurant must be a high-end / upscale restaurant or premium casual restaurant providing high-quality food. Examples include, but are not limited to, Fleming's Prime Steakhouse, McCormick and Schmick's, The Water Grill, Jinya Ramen Bar, Georgia's Restaurant, and Bushfire Kitchen. These businesses must include sit-down services and serve customers with cloth napkins and metal utensils. City shall determine, in its sole

discretion, whether a business qualifies as a high-end / upscale restaurant or premium casual restaurant.

2a) The restaurant is new to the City; OR

2b) The restaurant is an existing restaurant in the City and is expanding its square footage by 50% or more, at least half of the expansion area is “front of house” to increase the capacity for dine-in customers, and the restaurant will be adding **one** or more of the following to its offerings:

- Adding a full service bar or a specialty cocktail program;
- Adding a patio or outdoor covered seating area for the exclusive use of the restaurant’s patrons (communal outdoor spaces are ineligible);
- Adding a space for the performance of live music (not a DJ);
- Upgrading from counter service (ordering food at counter, food delivered to table or picked up at counter) to full sit-down service (tableside ordering and delivery of food through waitstaff).

3) The restaurant submits its application within 90 days of the date of opening / re-opening of the restaurant.

SECTION 7: ELIGIBLE ACTIVITIES

Within these categories funding can be used for the following types of activities:

- Purchase of business equipment, furniture, and fixtures
- Working capital

Interior and/or exterior leasehold improvements and construction/renovation activities are ineligible expenses. The applicant is responsible for determining whether their use of the loan funds requires the payment of prevailing wages. If prevailing wages must be paid, the applicant must fulfill all applicable prevailing wage requirements.

SECTION 8: APPLICATION REQUIRED DOCUMENTS AND RATING

Prior to applying, applicants are encouraged to contact the City’s Economic Development Manager at economicdevelopment@eastvaleca.gov to discuss interest in applying to the Loan Program. All 16 of the following documentation must be submitted electronically to economicdevelopment@eastvaleca.gov.

1. Application Cover Sheet

2. IRS Tax Return Verification Form (IRS Form 2)
3. Detailed proposal of use of requested funds
4. List of available collateral, including any to be purchased with loan proceeds
5. Month-to-month projections covering any interim period until year end plus one full fiscal year including the assumptions that the projects were based upon
6. Resume/CV for all business owners/managers
7. Current personal financial statement for each business owner
8. Business data and history
9. Complete Business Plan
10. Fictitious Name Statement (filing and proof of publication)
11. Articles of Incorporation OR Partnership Agreement, Limited Liability Company Article of Organization
12. Fiscal year end business financial statements for prior three years (if available)
13. Interim business financial statement within 60 days of application date
14. Business federal tax returns for the prior three years to include all supporting schedules and statements (if available)
15. Copy of current/proposed lease on business premises including accessor's parcel number
16. Personal federal tax returns for the prior three years to include all supporting schedules and statements, for each business owner

Given the limited amount of funding available annually, loan proposals submitted by applicants will be reviewed and graded. Eligible applicants' loan proposals will be evaluated using the following rating system:

1. Reduce sales leakage in Eastvale and generate increased sales tax for the City.
2. Encourage additional foot traffic and social activity within the proposed business location.
3. The risk determination analysis (see Section XIII).
4. Proposed use of the funds (responsible and appropriate)

Category	Points Available
Reducing sales tax leakage and generate increased sales tax for the City	25
Encourage additional foot traffic and social activity within the proposed business location	25
Risk determination analysis	25
Proposed use of funds	25
TOTAL	100

Funding decisions will be made based on the rating of the proposal and the availability of funding. The date of submission of a proposal as compared to other submissions is not a factor (e.g., funding is not “first-come, first-served”).

SECTION 9: ADMINISTRATION

Loan Committee

In order to ensure timely review of applications, a business incentive loan committee will be organized. The Committee will be comprised of the City Manager, Community Development Director, Economic Development Manager, and Finance Director (Program Administrator). The Committee will meet as needed to review the applications and recommend approval or denial based upon the rating system in section VIII of this policy. The Committee will also review and recommend approval or denial of requests from approved borrowers for payment deferrals, substitution or release of collateral, waiver or release of covenants, and amendments to loan documents.

Program Administrator

The Finance Director will serve as the Program Administrator. The Program Administrator will market, solicit, review, and process potential borrowers’ applications for credit. The Program Administrator will decline or refer out to some other agency any applicant who clearly does not qualify under eligibility standards as set forth by the policy. The Program Administrator will recommend new credit, payment deferrals, release or substitution of collateral, waivers/amendments to loan covenants and exceptions to loan policy to the Loan Committee.

SECTION 10: LOAN APPROVAL

Regardless of the amount of the loan, all loans must be approved by the City Council.

SECTION 11: FUNDING AVAILABILITY

The business incentive loan program is funded on a fiscal year basis. The City of Eastvale’s fiscal year begins on July 1st and ends on June 30th of the following calendar year. Limited funds are available in each fiscal year when the program is funded.

SECTION 12: APPLICATION PERIOD

Submittal

Applications will be accepted on a continuous basis until the City Council decides to terminate the program.

Processing

Applications will be processed when funds are available. The City has no obligation to process applications if all available funding has been exhausted.

SECTION 13: RISK ASSESSMENT

All loans are subject to analysis to determine risk. Loans will be awarded only to projects, which demonstrate that the service provided is commensurate with the risks incurred. In return for the public funds provided, the businesses will generate increased investment, jobs, business activity, and thus increased tax revenues.

General Credit Criteria

The business loan applications will be analyzed for the following criteria, based on criteria specified by the U.S. Department of Housing and Urban Development, Office of Community Planning and Development, and by the Small Business Administration:

- 1) Ability to repay in case of default or termination of business.
- 2) Balance Sheet Analysis
Balance sheet must be sound before the loan is made.
- 3) Historical earnings and cash flow records, from verifiable sources as determined by the loan committee, to ensure sufficient repayment of all requested credit, and to provide the owner(s) with a reasonable level of personal income to satisfy personal obligations. Typically, a borrower will have been profitable during the most recently completed year and will maintain a cash flow coverage ratio of 1:1 (defined as earnings before debt service, interest and taxes divided by debt service), with sufficient collateral. The ratio would be 2:1 without collateral. If partial collateral is pledged, the ratio may be prorated downward.
- 4) Collateral
Collateral, when available in any form, may be requested by the Loan Committee. Collateral will be pledged commensurate with the amount of requested credit, as well as a security interest in newly purchased assets, or those purchased with loan funds. If the project cannot repay the loan from cash flow, the City will collect payment by liquidating the asset and satisfying the specific lien securing the property. A letter of credit or bond may be accepted in lieu of collateral.

5) Commitment

Personal and corporate guarantees may be required. The borrower should sign personally for the loan.

6) Management Experience

The management team must have experience in all areas of running the business: sales, finance, operations, personnel, etc. The management team includes the principals, directors, senior management, and consultants.

The management team should have direct experience in these areas or have comparable business skills which can be transferred.

7) Business Plan

The business plan will help identify worthy ventures. The monthly cash flow statement for the first year is especially important.

8) Character

The owners and management should have favorable credit histories, a reputation for treating customers fairly, no bankruptcy in the past five years, and a clean criminal record. Good character will be determined by credit reports, payment history with verified vendors, personal interview, or other means as determined.

All of the above criteria are important, and the absence of any one item may be sufficient to deny a loan request.

Undesirable Credit Applications/Borrowers/Guarantors

Using the guidelines for the Small Business Administration and the Department of Housing and Urban Development, the following are undesirable without mitigating circumstances acceptable to the Loan Committee:

- 1) Applications for funding that would substantially reduce the amount of non-Federal support for the activity available in other recognized, reasonable loan programs available in the target areas;
- 2) Requests for credit to repay existing creditors
- 3) Funds used to repay debt to applicant owner(s), partners, and stockholders

- 4) Requests for funding from new start-up businesses not associated with a franchise chain or not adding an additional business location
- 5) Requests for funding for businesses which do not meet the criteria specified in Section VIII A through C.
- 6) Non-profit organizations, as designated by Charter/Bylaws, unless designated as approved Community Based Development Organizations (CBDO)
- 7) Lack of profitable operations, as demonstrated by sources acceptable to Loan Committee
- 8) Loans to restricted membership or discriminatory groups/organizations.
- 9) Loans to uses with complete access restrictions based on age.
- 10) Lack of sufficient equity/highly leveraged situations as determined by Loan Committee.
- 11) Personal or business bankruptcy, or prior business failure without sufficient, documented information to mitigate, as determined by Loan Committee;
- 12) Poor personal or business credit as evidenced by many derogatory items including public record items, tax liens, judgments, or excessive existing credit as determined by Loan Committee;
- 13) Undocumented aliens;
- 14) Felony convictions, dishonorable discharge or "Bad Conduct" discharge from military service (each situation will be independently evaluated);
- 15) Business active in any unlawful activity.

Exceptions to Loan Policy

If a project does not fall within the guidelines listed above, but is of such special character and will complement the area in which location is proposed, the City Manager or City Council (depending on loan amount) may consider the project for funding.

SECTION 14: PRICING AND TERMS

Considerations of loan product pricing extended to borrowers will be based on a rate equal to the average rate earned by the City's investment in the California Local Agency Investment Fund (LAIF) or the current prime rate for the fiscal year prior to the issuance of the loan (LAIF's Annual Returns: <https://www.treasurer.ca.gov/pmia-laif/historical/annual.asp>), but in no event to exceed 10 per cent (10%) per annum. Interest which accrues and is unpaid shall be added to principal on a monthly basis and thereafter bear interest as if it were part of principal. Principal and all accrued and unpaid interest shall be due and payable not later than the terms specified in the Note. Additional terms extended to borrowers will be based on the amount of risk involved.

SECTION 15: COLLATERAL

Collateral is a mandatory requirement, real property preferred but not required. Property such as equipment will be considered as collateral. It is intended that any available collateral from the borrower and/or guarantor(s) will be required, as well as a first lien position on any assets purchased with any loan funds. Junior liens on real property will be required at the discretion of the Loan Committee. However, it will be the policy that all collateral required for loan approval will be of material value. Caution will be used whenever taking a junior lien position on collateral where there is a substantial senior lien. It will be a determination of the Loan Committee whether to waive a collateral position when available.

Titled motor vehicles, when taken as collateral, must show the City as mortgagee/lienholder on the certificate of title, and held in safekeeping by the Finance Director or designee.

In all cases, a UCC-1 and security agreement will be taken against all business assets.

SECTION 16: CESSATION OF BUSINESS

If Participant should cease business at the site, participant shall repay its obligations to City as provided in the Note which shall be executed when Agreement is signed. The term "cease business" shall mean when the site is no longer used as the principal place of business for Participant's business. Participant shall give City written notice not less than thirty (30) days prior to cessation of business. If Participant should cease business at the site, Participant shall pay to the City, in cash, within fifteen (15) days of the Participant's receipt of written notification from the City of the balance due on the Note. If the Participant moves the business to a new location within Eastvale the City may elect to not treat this relocation as a cessation of business.

SECTION 17: GUARANTORS

The City will generally follow the rules of the Small Business Administration as to qualification of guarantors:

- A. Active Management with any ownership equity in borrower must guaranty
- B. Shareholders/owners of 20% or more equity in borrower must guaranty regardless of active involvement in management

Guarantees may be secured or unsecured as determined by the Loan Committee.

SECTION 18: PROBLEM CREDITS

While it is the intent of this policy to be sensitive to the borrower's financial needs, and the intent to match any repayment schedule to the borrower's ability to repay, it is inevitable that there will be delinquencies and defaults. It is the responsibility of the Program Administrator to monitor all loan payments, especially those that are in arrears. It will be the stated policy that upon determination of a "problem credit" the City will pursue any and all remedies allowed by Regulation or Law in a professional, aggressive, and consistent manner until resolution is reached.

SECTION 19: ACTION OCCURENCES

The following occurrences will warrant action on the part of the Program Administrator and/or City Council.

- A. Delinquent payment – whenever the terms of the Promissory Note are not being met in a timely manner (delinquent by more than 30 days);
- B. Violation of Loan Covenants – whenever the terms of the Loan Agreement are not being met in a timely fashion. The severity and immediacy of action is dependent on the type of breach; some covenants are more serious and lead to a default, while others less severe can sometimes be tolerated at the discretion of the Program Administrator.
- C. Receipt of bankruptcy notice;
- D. Filing of a "Notice of Default" by another lienholder on real property;
- E. Legal Service, such as Writs of Attachment, Tax Liens, Subpoenas

for records;

- F. Death of debtor or guarantor;
- G. Notice of significant legal action against borrower/guarantor;
- H. Returned mail from borrower's address by Post Office;
- I. "Skip Trace" inquiry from another creditor.

SECTION 20: COLLECTION ACTION

It is important to be clear and specific about any breach of the Note, Loan Agreement, or any of the above-mentioned occurrences. The circumstances of a particular situation will often dictate the method to use in taking corrective action. Telephone contact with the borrower/guarantor is the most expedient and cost effective; however, some cases demand more formal notification such as "Demand Letters", Legal Action, and Foreclosure. Personal site visits and conversations with the borrower are warranted at the discretion of the Program Administrator.

SECTION 21: NON-ACCURAL LOAN STATUS

Credits will be moved to a non-accrual status at the 90-day delinquency point unless otherwise directed by the City Council. At this point, many of the aforementioned "Action Steps" should have been started; a collection plan, if applicable, should be in process at this point. Rewriting the entire Note in an effort to provide relief to the borrower should be considered after a detailed analysis of the financial condition of the borrower and his/her prospects for timely payments in the future. In any case, the City Manager or the City Council must approve a re-structured Note, depending on the dollar value of the re-structured Note.

SECTION 22: COLLATERAL APPRAISALS

Collateral taken as security for any type of credit should be appraised if it has any significant value. In most cases, real property will be the collateral that is most needed for a third-party appraisal (the City will accept "drive-by" and short-form appraisals). Since the City is not under the scrutiny of Federal and State Banking Regulators, there is more flexibility as to the extent of any appraisal and in which circumstances. It is the stated policy that some form of valuation be used to determine the equity of any collateral taken

by the City, remembering that the cost and time of obtaining such appraisals may have an adverse affect on the borrower considering the size of the credit involved. The Loan Committee shall use its discretion in all collateral matters, unless otherwise dictated by the City Council.

SECTION 23: FINANCIAL INFORMATION

It will be the policy of the City to require financial statements from each applicant in the form of a balance sheet and income statement for any and all fiscal year-ends since inception of the business (up to 3 years), and within the past 90 days of application date. Current personal financial statements for each business owner and personal and business federal tax returns for the prior three years are required, including all supporting schedules and statements. The City will obtain the written permission of the applicant to verify any and all tax returns with the Internal Revenue Service for accuracy (IRS Form 4506). Month-to-month projections covering any interim period until year-end, plus one full fiscal year is required, including the assumptions that the projections were based upon. Additional information will be requested at the discretion of the Program Administrator with direction from the Loan Committee and/or City Council.

All borrowers may be required in the Loan Agreement to provide financial information when requested by the Loan Committee and/or City Council:

- A. Fiscal Year End balance sheet and income statement.
- B. More frequent statements such as Accounts Receivable Agings, work in progress reports, or any other documents requested by the Loan Committee to assist the borrower in the monitoring of the credit.
- C. Payroll reports showing employee status.

SECTION 24: FINANCIAL INQUIRIES

The City will not provide responses to inquiries regarding credit status of program participants. The financial information provided by applicants for the City will be kept confidential to the extent permitted by law.

SECTION 25: INSURANCE

All collateral taken as security for any credit must be insured appropriately as determined by the Loan Committee; evidence of that coverage must be provided showing the City as

“Additional Insured,” “Loss Payee,” or “Mortgagee,” whichever is appropriate for the collateral insured. The lapse of any insurance will create a default on the Loan Agreement, and must be remedied immediately by the borrower. If necessary, the City will obtain appropriate insurance to protect its collateral and debit the premium to the borrower.

Additionally, in the case where real estate collateral is taken, a Policy of Insurance Record Title (PIRT) of short form title policy will be required.