ORDINANCE NO. 20090212-007

AN ORDINANCE AMENDING ORDINANCE 20070215-003 TO EXTEND THE BUSINESS RETENTION AND ENHANCEMENT PROGRAM AND REVISE AND ADOPT PROGRAM GUIDELINES.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. Part 2 of Ordinance No. 20070215-003 is amended to read:

PART 2. The Business Retention and Enhancement Program is created as an economic development program of the City, to remain in effect until terminated by City Council. The amended Program Guidelines attached as Exhibit A are approved and adopted.

PART 2. This ordinance takes effect on February 23, 2009.

PASSED AND APPROVED

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§
§

February 12, 2009

Will Wynn
Mayor

APPROVED: _____
David Allan Smith
City Attorney

ATTEST: _____
Shirley A. Gentry
City Clerk

Exhibit A

Business Retention and Enhancement (BRE) Program

~~(24-Month Pilot Program)~~

Program Guidelines

Definitions:

"**Applicant**" or "**Applicants**" means any individual person; private for-profit partnerships or corporations; nonsectarian, nonprofit organizations; and combinations thereof, including limited partnerships, partnerships or joint ventures that make application under the BRE Program guidelines.

"**Art Gallery**" means the use of a site for the display or sale of art.

"**Current Job**" means one or more budgeted full- or part-time positions of employment that amount to 40 hours of work with the Applicant that are in existence prior to receipt of a BRE Program loan which would otherwise be terminated if the financial assistance from BRE Program loan funds were not provided.

"**Downtown Area**" means the area generally bounded by IH-35, Martin Luther King, Jr. Boulevard, Town Lake, and Lamar Boulevard in the City of Austin, Travis County, Texas.

"**Eligible Area**" means the area of Congress Avenue bounded by 11th Street on the north, Town Lake on the south, and the alleys directly east and west of Congress Avenue, and the area of East 6th Street bounded by Congress Avenue on the west, the southbound frontage road of IH-35 on the east, and the alleys directly north and south of East 6th Street, as indicated on the BRE Program map.

"**Eligible Costs**" means the cost which can be paid for with the BRE Program loan funds made available under the loan agreement.

"**Food Sales**" means the use of a site for the retail sale of food or household products for home consumption. This use includes grocery stores, delicatessens, meat markets, retail bakeries, and candy shops

"**Full-Time Employee**" means a salaried position of not less than thirty (30) hours per week, or its contractual equivalent based on no less than the federal minimum wage. Two or more part-time employees whose hours total more than thirty (30) hours per week may be substituted for one Full-Time Employee.

"**General Retail Sales (Convenience)**" means the use of a site for the sale or rental of commonly used goods and merchandise for personal or household use, but excludes uses classified more specifically in this section. This use includes the provision of household cleaning and maintenance products, drugs, cards, stationery, notions, books, tobacco products, cosmetics, specialty items, apparel, jewelry, fabrics, cameras, photography services, household electronic equipment, records, sporting equipment, kitchen utensils, small home appliances, art supplies and framing, arts and antiques, paint, interior decorating services, office supplies, and bicycles.

"**General Retail Sales (General)**" means the use of a site for the sale or rental of commonly used goods for personal or household use, but excludes uses classified more specifically in this section. This use includes department stores, furniture stores, and establishments providing home furnishings, appliances, wallpaper, floor-covering or automotive parts and accessories (excluding service and installation).

"**Indoor Entertainment**" means the use is predominantly spectator use conducted within an enclosed building. This use includes meeting halls and dance halls.

"**Job Created**" means a permanent, full-time employee position offered by the Applicant that was not in existence prior to date on the loan application and represents a new salaried position that the Applicant commits in writing to employ until maturity of the loan.

"**Job Retained**" means a permanent, full-time employee position that is in existence as of the date of the loan application. The Applicant commits in writing to retain this position until maturity of the loan.

"**Locally-Owned Business**" means a business, including, without being limited to, a sole proprietorship, partnership, corporation, joint venture, limited liability company, or any other business or professional entity, that is controlled by or at least 51% owned by an individual who resides in or has his or her principal place of business in the Austin MSA, or a group of individuals of which more than half reside in or have their principal places of business in the Austin MSA, or by an organization having its principal place of business in the Austin MSA.

"**Minority-Owned Business Enterprise**" means a business, including, without being limited to, a sole proprietorship, partnership, corporation, joint venture, limited liability company, or any other business or professional entity, which is at least 51 percent owned by one or more minority persons, or in the case of a publicly owned business, at least 51 percent of all classes of the stock of which is owned by one or more minority persons.

"**Project**" means a proposed commercial development, for which the Applicant is requesting a loan.

"**Restaurant (General)**" means the use of a site for the preparation and retail sale of food and beverages and includes the sale and on-premises consumption of alcoholic beverages as an accessory use.

"**Restaurant (Limited)**" means the use of a site for the preparation and retail sale of food and beverages and excludes the sale of alcoholic beverages for on-premises consumption.

"**Theater**" means the use of a site for presentation of plays, motion pictures, or other dramatic performances within a building.

"**Women-Owned Business Enterprise**" means a business, including, without being limited to, a sole proprietorship, partnership, corporation, joint venture, limited liability company, or any other business or professional entity, which is at least 51 percent owned by one or more women, or in the case of a publicly owned business, at least 51 percent of all classes of the stock of which is owned by one or more such women.

Background:
In 1960 Downtown Austin was a thriving retail district that served the City's residential neighborhoods and surrounding communities. Within a few blocks of Austin's "100% corner" at Congress Avenue and East 6th Street, there was a concentration of local and national department stores such as Scarborough's, Yaring's, Levine's, JC Penney, Sears Roebuck, Woolworth, Western Auto, and Kress ,as well as over one hundred smaller retailers, most selling clothing or home goods.

Through the 1960's and 1970's development of suburban shopping malls and centers coincided with the decline of Congress Avenue and East 6th Street as a retail destination. JC Penney in Downtown closed in 1970; Levine's in 1973; Western Auto in 1974; and Kress in 1980. In 1981, the year that the one million square foot Barton Creek Square Mall opened three miles from Downtown, Scarborough's Department Store closed its Congress Avenue location. Woolworth closed the next year, effectively signaling the end of Downtown as a significant retail destination.

As early as the late 1980's, groups began calling for a reinvestment in Downtown retail vitality. In their 1988 *Downtown Neighborhood Plan*, the City's Downtown Commission stated a goal to "promote the development of street-level, consumer-oriented retail establishments" in Downtown.

The City of Austin's 1990 report *East 6th Street Business Changes – 1975-1990*, found that the problems associated with the conversion of the street to an area of nighttime-only uses will continue without an infusion of daytime pedestrian traffic, and that "the loss of a critical mass of complementary retail businesses has made recovery of retail business problematic."

In a 1991 study of Downtown Austin by the American Institute of Architecture's Regional/Urban Design Assistance Team (R/UDAT), the team stated that "Downtown Austin is in desperate need of a stronger retail base." R/UDAT further stated that "It may well be that a significant new retail base in the area near East 6th Street and Congress Avenue can never be developed without some form of public financial participation in the project". R/UDAT recommended that "Existing and new small business aids, such as revolving loan programs, should be packaged to accomplish this objective."

The follow-up 1992 study, *R/UDAT Austin – A Call to Action,* adopted by the City Council "as a guide to implementing Downtown Austin revitalization," recommended actions focused on economically enhancing the Downtown area by increasing shopping and eating destinations for Austin's citizens and visitors.

In a 1997 visit, R/UDAT noted that "In most, if not all, cities, substantial Downtown retail and residential developments have only happened with public participation." In a 2000 visit, R/UDAT called on the community to develop a critical mass of retail and to establish and work towards a vision for Downtown that includes retail.

In their 2003 *Austin's Sixth Street Opportunities* the consulting firm Nichols-Gilstrap found that a successful broadening of the tenant mix to include more retail would increase sales volumes, resulting in higher property values, and would enhance the performance of the Convention Center.

In a separate consultant study, *Downtown Austin Retail Market Strategy,* prepared in May 2005 for the City of Austin and the Downtown Austin Alliance (DAA), the consultant recommended that efforts be

made to revitalize retail in Downtown Austin. The City and DAA contracted with the same consultant to develop the retail strategies for Congress Avenue and East 6th Street. Both studies stressed the need to shift the balance from non-retail uses to retail uses, especially those that sell merchandise, and recommended a specific merchandising mix plan. In addition, the study recommended a 6th Street strategy – an Urban Entertainment District anchored by a mixture of entertainment including cultural attractions, live music and performance venues, movie theaters, restaurants, nightclubs/bars, and retail uses.

Purpose:
The BRE Program is a City of Austin ("City") economic development program in accordance with Chapter 380 of the Local Government Code to support re-establishing Congress Avenue and East 6th Street as retail and urban entertainment district destinations. The BRE Program is intended to provide low-interest loans for Eligible Costs to:

- Existing businesses located within the Eligible Area that are being displaced because of development, and
- Attract new businesses to the Eligible Area.

Goals:
The goals of the BRE Program are to:

- Improve the image of Congress Avenue and East 6th Street as destinations for the community, visitors and tourists.
- Enhance East 6th Street's live music and entertainment district
- Stimulate private retail investment within the Eligible Area through property improvement, business development, retention and expansion.
- Improve the quantity and quality of goods and services available within the Eligible Area.
- Create and retain jobs.

Financial Assistance:

- The City may provide a loan to any one Applicant, in an amount not to exceed $250,000.
- ~~Special Circumstances: For existing businesses within the Eligible Area that are required to relocate due to development, but remain within the Eligible Area, the City may increase the loan to any one Applicant up to $750,000, of which the outstanding loan balance may be forgiven if the Project continues to successfully operate for a period of five (5) years after loan closing, the loan is not in default, and all loan payments have been made in a timely manner.~~

Eligible Applicant Preferences:
Preference will be given to the following categories of eligible businesses:

- Locally-Owned Businesses
- Minority-Owned Business or Women-Owned Business Enterprises

Eligible Business Uses:
The BRE Program is available only for the types of commercial uses listed below. Applicants must have a minimum of two (2) years of business operating experience in these types of commercial uses.

- Art Gallery
- Food Sales
- General Retail Sales (Convenience)

- General Retail Sales (General)
- Indoor Entertainment
- Restaurant (General)
- Restaurant (Limited)
- Theater

[Note: All commercial uses are as defined in City Code Section 25-2-4.]

Eligible Project Costs:
The loan proceeds may be used to finance Project fixed-asset costs whose useful life equals or exceeds five (5) years.

Table 1: Represents the Eligible Project Costs for fixed assets by Applicant type

Eligible Project Costs	Owner	Owner-Tenant	Tenant
1. Tenant finish-out improvements	X	X	X
2. Acquisition of machinery and equipment necessary for the operation of the business.		X	X
3. Building façade improvements that meet Storefront Design Guidelines [to be developed]. Eligible façade improvements may include:	X	X	
a. exterior treatment systems (i.e., painting, murals, siding, and bricking)			
b. repair, replacement, or installation of exterior doors, windows, and trim work, visible from the street			
c. structural improvements to building façade			
d. exterior electrical and lighting improvements			
e. masonry or tile cleaning and repair			
f. restoration of details in historically contributing or significant buildings			
g. removal of elements that cover architectural details			
h. costs associated with design work for the eligible facade improvements which do not exceed 10% of the total cost of the improvements			

Ineligible Project Costs:
The loan proceeds shall not be used for the following Project costs:
- Costs encumbered prior to closing on a BRE Program loan
- Speculative projects
- Purchase or lease of vehicles
- Incorporation and organization expenses
- Finders fee for financing
- Commitment fees on the first mortgage
- Application fees
- Working capital

- Inventory
- Intangible property (examples of intangible property include, but are not limited to, patents, franchises, goodwill, fees, trademarks or trade names.)
- Refinancing (other than construction financing approved by the City)

Loan Conditions and Considerations:

Financial:

- The Applicant must demonstrate the financial need for a BRE Program loan for the Project and demonstrate that without the BRE Program loan the Project will not be economically feasible.
- The Applicant must demonstrate that projected Project revenues are sufficient to repay the BRE Program loan
- A negotiated number of permanent, full-time position(s) must be created or an equivalent of two (2) permanent full-time jobs retained. This requirement shall be maintained during the term of the loan.
- The Applicant shall agree to make its financial records available for inspection by City representatives during the term of the loan.

Zoning:

- The Applicant must demonstrate compliance with all applicable zoning requirements for the Project and remain in compliance for the duration of the loan.
- The Applicant must adhere to all City building and technical codes and acquire all required building permits.

Other Requirements:

- The Applicant must be current on all fees and taxes owed to the City.
- Applicants must have fee simple ownership or a lease with a term of five (5) or more years.
- The Applicant must repay the balance of the loan in full upon sale or discontinuance of the Project.
- Facade improvements may require Historic Landmark Commission review and approval.

Loan Term, Interest Rate, Collateral, Early Repayment, and Default:

- The loan term will be negotiated based on the BRE Program loan amount, pledged collateral, and demonstrated financial need.
- The loan interest rate will be negotiated based on the BRE Program loan amount demonstrated financial need. In no case shall the loan interest rate be greater than six percent (6%) per annum.
- The City will take a lien position on the fixed-assets being financed. The City may also secure sufficient collateral coverage via liens or security interests against real property related and unrelated to the Project, or personal property. Other forms of collateral and security may include accounts receivable, cash and bank deposits; personal guarantees may be required. All loans must be fully secured prior to loan closing.
- The Applicant must secure and maintain appropriate property insurance during the entire term of the loan for any property pledged as security. The City must be named as an additional insured party.
- There is no penalty for early repayment of the BRE Program loan.
- Funds will be disbursed as reimbursements for an Applicant's payment of Eligible Project Costs, or paid out of an escrow account in accordance with the loan agreement, which shall establish terms and conditions deemed necessary, advisable or required by the City.

- A default shall consist of any use of BRE Program loan funds for any purpose other than as authorized in the loan agreement, or any breach of any loan agreement covenant or provision. Non-compliance with City development or zoning regulations will be an event of default.

Application Submission Information Requirements:
The Applicant must submit a loan application on a form to be provided by the City, with supporting documentation as required by the City.

Table 2: Represents the loan application information that Applicants are required to submit to the City, unless otherwise determined by EGRSO.

Loan Application Information	Owner	Owner-Tenant	Tenant
1. The Applicant must submit a Benefits Statement that addresses, but is not limited to the following issues:			
a. The extent to which the Project will contribute to any revitalization of the Eligible Area.	X	X	X
b. The number of permanent jobs to be created and/or retained directly by the Project excluding the period of construction or development, if applicable.	X	X	X
c. The increased valuation of real property in the City as a result of the completion of the Project.	X	X	X
2. The Applicant must provide a description and purpose of the improvements to be made:			
a. Façade improvements, if applicable.	X	X	
b. Tenant finish-out improvements or other physical improvements to be made to the property, if applicable.	X	X	X
c. Machinery and equipment to be acquired, if applicable.		X	X
3. The Applicant must provide the following financial information:			
a. A complete three (3) year business plan composed of four distinct sections: description of business, marketing, finances, and management.	X	X	X
b. Financial statements for the last two (2) years, including profit and loss statements and balance sheets in a manner acceptable by the City.	X	X	X
c. A cash flow pro-forma that supports the Applicant's repayment of the BRE Program loan in a manner acceptable by the City.	X	X	X
d. Business tax returns for the last two (2) years.	X	X	X
e. A current personal financial statement of each guarantor of the BRE Program loan.	X	X	X
f. Personal tax returns for the last two (2) years for each guarantor of the BRE Program loan.	X	X	X
g. Proof of business ownership, i.e. partnership agreement, articles of incorporation, or other documentation and similar documentation for non-profits.	X	X	X

Administration:

The City's Economic Growth and Redevelopment Services Office (EGRSO) is responsible for the administration of the BRE Program and guidelines. In that capacity, the City shall perform the following duties:

- Receive applications from interested Applicants;
- Analyze Applicant information submitted for compliance with the BRE Program guidelines; and
- Select Applicants for BRE Program loans to be placed on the City Council agenda for consideration.

Interpretation of terms, conditions and requirements in these guidelines is delegated to EGRSO.

The adoption of the BRE Program and these guidelines does not:

- Limit the discretion of the City Manager or the EGRSO to review loan applications, reject loan applications, or place particular loan applications on the City Council agenda for consideration; or,
- Limit the discretion of the City Council to decide whether to approve a specific loan; or,
- Create any property, contract, or other legal right in any person or entity to have the City staff or City Council consider or approve a specific loan application

BRE Program loans are limited to the amount of budget appropriations authorized by City Council for the Program.

Business Retention and Enhancement Program Map

