



## Legislation Details (With Text)

**File #:** 16-1196      **Version:** 1      **Name:** Amended Citywide Commercial Façade Improvement Program

**Type:** Ordinance      **Status:** Adopted

**File created:** 7/14/2016      **In control:** Economic and Housing Development

**On agenda:** 8/23/2016      **Final action:** 9/21/2016

**Title:** AN ORDINANCE AMENDING TITLE II, CHAPTER 10, DEPARTMENT OF ECONOMIC AND HOUSING DEVELOPMENT, OF THE REVISED GENERAL ORDINANCES OF THE CITY OF NEWARK, NEW JERSEY (2000) AS AMENDED AND SUPPLEMENTED BY EXPANDING THE SCOPE AND REACH OF THE CITYWIDE COMMERCIAL CORRIDOR REVITALIZATION FAÇADE IMPROVEMENT PROGRAM.  
Deferred 6PSF-i 090816

**Sponsors:** Council of the Whole

### Indexes:

### Code sections:

Date	Ver.	Action By	Action	Result
9/21/2016	1	Municipal Council	Close on Public Hearing and Adopt	Pass
9/8/2016	1	Municipal Council	Maintained on Public Hearing and Deferred	Pass
8/23/2016	1	Municipal Council	Advance and Adopt on First Reading as 6F-	Pass

**AN ORDINANCE AMENDING TITLE II, CHAPTER 10, DEPARTMENT OF ECONOMIC AND HOUSING DEVELOPMENT, OF THE REVISED GENERAL ORDINANCES OF THE CITY OF NEWARK, NEW JERSEY (2000) AS AMENDED AND SUPPLEMENTED BY EXPANDING THE SCOPE AND REACH OF THE CITYWIDE COMMERCIAL CORRIDOR REVITALIZATION FAÇADE IMPROVEMENT PROGRAM.**

**Deferred 6PSF-i 090816**

**WHEREAS**, the City of Newark, Department of Economic and Housing Development (the “City”) wishes to rehabilitate and improve the character of building façades of the business districts and commercial corridors in the City of Newark; and

**WHEREAS**, the City was awarded a grant in the amount of Three Million Nine Hundred and Twenty-Three Thousand Five Hundred Dollars and Zero cents (\$3,923,500.00) for the creation of a Citywide Commercial Corridor Revitalization Façade Improvement Program (the “Façade Improvement Program” or “Program”);

**WHEREAS**, the City, by Ordinance 6PSF-j, adopted on November 22, 2010, created the “Façade Improvement Program” to facilitate business and commercial façade improvements and to appoint the Department of Economic and Housing Development, Office of the Urban Enterprise Zone (“UEZ Office”) as administrator of the Program; and

**WHEREAS**, the Façade Improvement Program, according to the five-year term set forth in the Sunset Clause of Section 2:10-4.20, expired on or about November 22, 2015; and

**WHEREAS**, the City, by Resolution 7R3-a(S), adopted on May 26, 2016, appointed Newark Community Economic Development Corporation ("Newark CEDC") as the City's administrator and manager of the City's UEZ Program, authorized CEDC to engage in redevelopment activities on behalf of the City, and undertake additional services as requested by the Mayor and/or Deputy Mayor/Director of the Department of Economic and Housing Development; and

**WHEREAS**, the Façade Improvement Program was geographically limited to applicants within certain Downtown and Neighborhood Areas and did not expand to all Urban Enterprise Zones within the City of Newark; and

**WHEREAS**, the geographic limits excluded otherwise eligible applicants and limited the scope and reach of the Façade Improvement Program; and

**WHEREAS**, the Façade Improvement Program has a reimbursement program requiring applicants to pay for façade improvements in advance of becoming eligible for reimbursement under the terms of the Façade Improvement Program; and

**WHEREAS**, the requirement that applicants pay in full for façade improvements has had the practical effect of excluding otherwise eligible applicants due to financial constraints and has thereby limited the scope and reach of the Façade Improvement Program; and

**WHEREAS**, the City wishes to renew the Façade Improvement Program effective the date of this First Amendment and shall sunset five (5) years from the date of adoption of this First Amendment.

**WHEREAS**, the City, wishes to expand the eligible geographic boundaries to all Urban Enterprise Zones and Urban Enterprise Zone-Impacted Business Districts thereby increasing the potential pool of applicants and the beneficial effect of the Façade Improvement Program within the Urban Enterprise Zones; and

**WHEREAS**, the City, wishes to expand the potential pool of applicants and the beneficial effect of the revised Façade Improvement Program by permitting the Deputy Mayor/Director of the Department of Economic and Housing Development and/or his designee or other entity authorized by the Municipal Council to administer and manage the City's Urban Enterprise Zone Program, in its sole discretion, pursuant to the Enterprise Zone Act, N.J.S.A. 52:27H-60 and all provisions of the contractual terms between the Newark Urban Enterprise Zone and the New Jersey Urban Enterprise Zone Authority, to determine on a case-by-case basis whether payments shall be made on a reimbursement basis to Borrower and/or contractors/vendors or paid directly to contractors/vendors without prior payment in full by Borrower.

**NOW, THEREFORE, BE IT ORDAINED BY THE MUNICIPAL COUNCIL OF THE CITY OF NEWARK, NEW JERSEY, THAT:**

**Section 1.** Section 2:10-4 of the City of Newark General Code is hereby amended to read as follows:

**Editor's Note:** Additions are shown as **underlined and bold**. Deletions are strikethroughs.

#### **2:10-4.1. Program Established.**

The UEZ Office **Newark Community Economic Development Corporation and/or his designee or other entity authorized by the Municipal Council to administer and manage the City's Urban Enterprise Zone Program** is authorized to establish and administer a Citywide Commercial Corridor Revitalization Façade Improvement Program (the "Façade Improvement Program") pursuant to the guidelines set forth herein. Modifications of these guidelines may only be made by the Municipal Council of the City of Newark. (Ord. 6PSF-j, November 22, 2010)

#### **2:10-4.2. Definitions.**

*Applicant* shall mean the legal owner of a parcel of real property located in an eligible area, or a tenant whose business has been certified as a UEZ business and which business is located in an eligible area and the owner of the property in which such business is located, who is applying to the City for a loan under the Façade Improvement Program.

*Director* shall mean the Deputy Mayor/Director of the Department of Economic and Housing Development of the City of Newark.

*Façade Improvement Program Review Committee* or *FIPRC* shall mean the committee established hereunder vested with the authority to approve or deny all applications for loans under the Façade Improvement Program, as further defined in Section 2:10-4.9.

*Facade improvements* shall mean physical exterior improvements to the facade(s) of a commercial building which face(s) a public street including, but not limited to, installation or repair of windows, doors, awnings, signs, lighting, security gates, anti-graffiti measures, and fencing; brick repointing; painting; landscaping; and other decorative or architectural improvements.

**Lender shall mean the Newark Community Economic Development Corporation or other entity authorized by the Municipal Council to administer and manage the City of Newark's Urban Enterprise Zone Program.**

*Municipal Council* shall mean the Municipal Council of the City of Newark.

*Preliminary Property Improvement Plan* or *PPIP* shall mean a proposed property improvement plan submitted with an Applicants application.

*Property Improvement Plan* or *PIP* shall mean the written plan approved by the Façade Improvement Program Review Committee **FIPRC** describing the facade improvements and other improvements which must be made to a property improved in part through a loan under the Façade Improvement Program.

*UEZ business* shall mean a business that has been certified by the State of New Jersey as a qualified business in an urban enterprise zone or an urban enterprise zone-impacted business district.

(Ord. 6PSF-j, November 22, 2010)

#### **2:10-4.3. Eligible Areas and Funding Limitations.**

a. *Eligible Areas.* Applications for the Façade Improvement Program will be accepted by the UEZ Office **Newark Community Economic Development Corporation and/or his designee or other entity authorized by the Municipal Council to administer and manage the City's Urban**

**Enterprise Zone Program** from applicants for **projects located** in the **urban enterprise zones** or urban enterprise zone-impacted business districts following locations, without regard to age, color, creed, marital status, national origin, sexual orientation, gender identity, political party affiliation, race or sex of the applicant(s):

1. ~~Downtown Component:~~
  - a. ~~(a) Halsey Street, from its intersection with Market Street to its intersection with Central Avenue.~~
  - b. ~~(b) Commerce Street, from its intersection with Broad Street to its intersection with Mulberry Street.~~
  - c. ~~(c) Branford Place, from its intersection with Broad Street to its intersection with Washington Street.~~
  - d. ~~(d) Broad Street, from its intersection with Central Avenue to its intersection with William Street/Lafayette Place.~~
- 2. ~~Neighborhood Component:~~
  - e. ~~(a) South Orange Avenue, from its intersection with Stuyvesant Avenue to its intersection with Dover Street/ Longfellow Avenue at the Western boundary of Newark.~~
  - f. ~~(b) Mount Prospect Avenue, from its intersection with Elwood Avenue to its intersection with Tiffany Boulevard at the northern boundary of Newark.~~
  - g. ~~(c) Clinton Avenue, from its intersection with Hunterdon Street to its intersection with Fabyan Place.~~
  - h. ~~(d) Bloomfield Avenue, from its intersection with Broadway to its intersection with Park Avenue.~~
  - i. ~~(e) Broadway, from its intersection with Gouverneur Street to its intersection with Broad Street and Clay Street.~~
  - j. ~~(f) Park Avenue, from its intersection with Bloomfield Avenue to its intersection with Summer Avenue.~~
  - k. ~~(g) Ferry Street, from its intersection with NJRR Avenue to its intersection with Wilson Avenue.~~

*b. Funding Limits.* While generally, complete applications received from eligible applicants will be reviewed by the FIPRC on a first come, first served basis, if applications are received for loans in excess of amounts current funding levels allow, the FIPRC, reserves the right to prioritize applications based upon economic development priorities.

*c. Eligibility Limitation.* Only one (1) application will be accepted from each property, even if there are multiple tenant businesses in a particular property. A property is defined as a contiguous building or buildings that are connected by common hallway, use or ownership.  
(Ord. 6PSF-j, November 22, 2010)

#### **2:10-4.4. Eligible and Ineligible Activities.**

*a. Eligible Activities.* Improvements that contribute to the visual enhancement of the property as viewed from the public right-of-way including, but not limited to, the following, are eligible activities the costs of which may be funded with program loan proceeds:

1. Exterior painting;
2. Decorative or architectural treatment;
3. Replacement, repair or refinishing of stucco, wood, stone, brick, metal, tile or other

- exterior building materials; cleaning of masonry; recaulking;
- 4. Signage;
- 5. Awnings and canopies;
- 6. Exterior lighting;
- 7. Landscaping directly related to the overall exterior improvement plan of the building;
- 8. Repair/replacement of doors or windows visible from public view;
- 9. Anti-graffiti measures;
- 10. Fencing;
- 11. Exterior security gates.

*b. Ineligible Activities.* The costs of the following items are not eligible uses of program loan proceeds but may be undertaken as part of the applicant's total improvement project at the applicant's expense.

- 1. Improvements in progress or completed prior to preliminary approval
- 2. Removal of illegal improvements
- 3. Routine maintenance, cleaning or repair costs that is not part of an eligible façade improvement project.
- 4. Billboard
- 5. Roofing
- 6. Mechanicals and HVAC Systems
- 7. Interior work
- 8. New construction
- 9. Electronic security systems
- 10. Parking areas
- 11. Improvements to the rear or non-street facing side of buildings
- 12. Structural repairs
- 13. Other items as deemed inappropriate by the Department of Economic and Housing Development under the criteria set forth herein.

*c. Eligibility Determination.* The FIPRC will review all applications and PPIPs, and shall make the final determination as to whether a proposed facade improvement is eligible or ineligible under the Facade Improvement Program. The determination by Facade Improvement Program Review Committee is final, subject to approval by **Newark Community Economic Development Corporation and/or his designee or other entity authorized by the Municipal Council to administer and manage the City's Urban Enterprise Zone Program.**  
(Ord. 6PSF-j, November 22, 2010)

## **2:10-4.5. Loan Amount and Matching Funds.**

*a. Loan Amount.* If approved, and subject to receipt of grant funds, a loan shall be made available to an applicant by the **Lender** in an amount not to exceed fifty thousand (\$50,000.00) dollars per property. Any expenditure detailed in the PIP which exceed fifty thousand (\$50,000.00) dollars shall be the sole responsibility of the applicant, who must demonstrate to **Lender** his/her/its ability to finance such additional expenditures at the time an application is submitted for consideration.

*b. Matching Funds.* The applicant shall be required to contribute matching funds equal to twenty-five (25%) percent of the total project costs as detailed in the PIP, and shall, as a condition precedent to closing, ~~demonstrate the availability of such matching funds.~~

The following costs shall be eligible towards the matching requirement without limitation:

1. Construction costs for exterior improvements included in Property Improvement Plan; and
2. Design costs incurred in preparation of the PPIP and the PIP.

Not more than one-half (1/2) of the matching requirement may be satisfied by expenditures for the following items:

- (a) Insurance premiums mandated herein;
- (b) Costs for the following renovation types:
  - (1) Capital equipment with at least a five (5)-year depreciation
  - (2) Roof repairs
  - (3) Improvements to the rear and side of buildings (if approved by the Facade Improvement Program Committee)
  - (4) Interior renovations to commercial spaces
  - (5) Interior renovations to residential spaces (if approved by the Facade Improvement Program Committee);
  - (6) HVAC and mechanicals that are certified by the utility company to increase energy efficiency of the building or commercial space.

For any activity the cost of which may be used to satisfy the applicant's matching requirement, but which is an ineligible activity, the applicant must demonstrate to the FIPRC's satisfaction, in its sole and absolute discretion, such applicant's ability to finance the total cost of such activity solely from applicant's funds, without the need to use any portion of the loan towards such costs.

3. Evidence of Matching Funds. When submitting documents in support of a reimbursement request to the UEZ Office, the applicant must provide the UEZ Office with a copy of any and all contracts entered into with vendors/contracts, and original receipt(s) and signed certification(s) from all vendors/ contractors evidencing that costs were incurred in an amount not less than the matching requirement.

*c. Waiver of Matching Fund Requirement.*

1. Purpose. Applicants, in its application, may request a full or partial waiver of the twenty-five (25%) percent matching fund requirement set forth in Section 2:10-4.5b. A waiver request will be approved or denied by the FIPRC in its sole discretion, subject to approval by the Director or his designee.

2. Effect on Loan and Term. All waivers which are granted shall be subject to the loan terms set forth in Section 2:10-4.6b.  
(Ord. 6 PSF-J, 11-22-10)

## **2:10-4.6. Loan Terms.**

*a. Loan with Matching Funds.* All loans which are subject to the matching fund requirement set forth in Section 2:10-4.5b., above, shall be for a term of five (5) years secured by a

mortgage on the property where facade improvements are to be made at a two (2%) percent rate of interest compounded annually. Provided that the owner is not in default as set forth in Section 2:10-4.7, at the end of the five (5) year term the principal and interest on the loan shall be one hundred (100%) percent forgiven. If applicant demonstrates that the granting of a subordinate mortgage will cause a default under any other agreement to which applicant is a party, and if the FIPRC determines in its sole discretion that the waiving the right to cause applicant to execute and deliver a mortgage will not substantially impair the City's ability to obtain repayment should applicant default, the FIPRC may waive the mortgage requirement.

*b. Loan without Matching Funds.* All loans where the matching fund requirement has been waived by the City of Newark **approved by the Lendor**, pursuant to Section 2:10-4.5ca., shall be in the form of an interest only loan bearing interest at the rate of two (2%) percent compounded annually, with a term of ~~ten~~ **five** (10**5**) years, and secured by a mortgage on the property where the facade improvements will be made. Interest payments shall be made not less than annually. Provided that the owner is not in default as set forth in Section 2:10-4.7., at the end of the ~~ten~~ **five** (10**5**) year term, **both** the principal **and accrued interest** on the loan shall be one hundred (100%) percent forgiven.

*c. Terms Applicable to All Loans.* All applicants awarded a loan shall also execute a promissory note to the **Lender** for the full value of the loan, and shall be jointly and severally liable to the **Lender** for complying with the terms of repayment of the loan. All facade improvement work must be completed within six (6) months from the date that the loan is approved **issued**.

#### **2:10-4.7. Default.**

a. In addition to a default under the loan agreement, note or mortgage, should any of the following occur prior to the end of the term of the loan, such event shall be deemed a default:

1. Applicant makes changes to the facade of the property without the prior express written consent of UEZ Office **Newark Community Economic Development Corporation and/or his designee or other entity authorized by the Municipal Council to administer and manage the City's Urban Enterprise Zone Program.**

2. Applicant does not maintain its UEZ Business Certification from the date of the application until the end of the loan term.

3. Applicant does not pay when due all tax obligations to the State of New Jersey, the City of Newark or any other entity with the power to tax the applicant.

4. Applicant sells or transfers the property at any time during loan term without the prior express written consent of UEZ Office **Newark Community Economic Development Corporation and/or his designee or other entity authorized by the Municipal Council to administer and manage the City's Urban Enterprise Zone Program,** and without the assumption of the note by the purchaser.

5. Applicant fails to operate in compliance with all applicable Federal, State and local laws and regulations.

6. Applicant fails to complete the facade improvement work within six (6) months from the

date that the loan is approved **issued**.

b. If the applicant ~~was subject to the loan matching requirement~~ and defaults as defined in Section 2:10-4.7a. or as provided in the loan agreement, note or mortgage, the applicant shall immediately repay the **Lender** as follows:

- e. One hundred (100%) percent of the original principal balance of the note plus all interest accrued through the date of repayment shall be due and payable to the City of Newark **Lender** if applicant defaults within one (1) year of the date that loan term begins;
- d. Seventy-five (75%) percent of said note and interest of two (2%) percent compounded annually from the effective date of the note shall be immediately due and payable to the City of Newark **Lender** if applicant defaults within two (2) years from this date that loan term begins;
- e. Fifty (50%) percent of said note and interest of two (2%) percent compounded annually from the effective date of the note shall be immediately due and payable to the City of Newark **Lender** if applicant defaults within three (3) years from this date that loan term begins;
- f. Twenty-five (25%) percent of said note and interest of two (2%) percent compounded annually from the effective date of the note shall be immediately due and payable to the City of Newark **Lender** if applicant defaults within four (4) years from this date that loan term begins;
- g. Ten (10%) percent of said note and interest of two (2%) percent compounded annually from the effective date of the note shall be immediately due and payable to the City of Newark **Lender** if applicant defaults within five (5) years from this date that loan term begins;
- h. If the applicant was granted a waiver from the matching fund requirement by the City of Newark **Lender** and defaults as provided in Section 2:10-4.7a. or as provided in the loan agreement, note or mortgage, the applicant shall repay the City of Newark as follows:
  1. One hundred (100%) percent of the original principal balance of the note plus all accrued interest shall be due and payable to the Lender if applicant defaults within one (1) year from the date that loan term begins;
  2. Eighty (80%) percent of said note **plus all accrued interest** and interest of two (2%) percent shall be due and payable to the City of Newark **Lender** if applicant defaults within two (2) years from this date that loan term begins;
  3. Seventy **Sixty** (7 **60**%) percent of said note **plus all accrued interest** and interest of two (2%) percent shall be due and payable to the City of Newark **Lender** if applicant defaults within four three (4 3) years from this date that loan term begins;

4. ~~Fifty~~ Forty (540%) percent of said note **plus all accrued interest** and interest of two (2%) percent shall be due and payable to the City of Newark **Lender** if applicant defaults within ~~six~~ four (6 4) years from this date that loan term begins;
5. ~~Twenty-five~~ (205%) percent of said note **plus all accrued interest** and interest of two (2%) percent shall be due and payable to the **Lender** if applicant defaults within ~~eight~~ five (8 5) years from this date that loan term begins; and
6. ~~Ten~~ Zero (10%) percent of said note and **accrued** interest of two (2%) percent shall be due and payable to the City of Newark **Lender at the end of year five (5) where the Lendor releases the mortgage in full.** if applicant defaults within ~~ten~~ (10) years from this date that loan term begins.

a. **Full Mortgage Release.** A full mortgage release will be issued to the Applicant by the Lendor at the end of the five (5) year loan period indicating that the mortgage on the property where the façade improvements were made, together with the loan secured by said mortgage, has been fully paid, satisfied, released, and discharged, and that the property secured thereby has been released from the lien of such mortgage.

b. Remedies. In the event of default, the City of Newark **Lender** may exercise any combination of the remedies available to it with respect to the security agreement(s). The City of Newark **Lender** may take whatever action at law, or in equity, as may appear necessary or desirable to collect any outstanding balance or to enforce the performance and observation of any other obligation or agreement of the recipient. Failure of the Lender to take action shall not be deemed a waiver.

c. Notice and Right to Cure Default. In the event that the applicant is in default pursuant to Section 2:10-4.7a or pursuant to the loan agreement, note or mortgage the **Lender** shall notify the applicant in writing of the exact nature of the default.

With regard to a default under Section 2:10-4.7a, 2., 3. or 5., applicant shall have thirty (30) days from the date of the notice of default to cure the default. As defaults under Section 2:10-4.7a, 1., 2., 4. and 6. are not capable of cure, the City **Lender** shall be immediately entitled to seek to enforce any remedy available at law or in equity or to enforce any security agreement;

The applicant shall not be relieved of any of its obligations to comply by reason of any failure of the City **Lender** to enforce prompt compliance.  
(Ord. 6PSF-j, November 22, 2010)

#### **2:10-4.8. Application Process.**

a. Applications. Applicants may obtain an application from the UEZ Office **Newark Community Economic Development Corporation and/or his designee or other entity authorized by the Municipal Council to administer and manage the City's Urban Enterprise Zone Program.** At a minimum, the application will require the submission of the following:

1. Minimum Required Submissions.

- (a) Application Form
- (b) Proof of UEZ certification or if not certified, UZ-5-SB-A form
- (c) A copy of lease on property if not occupied by the owner
- (d) Three (3) years of most recent Federal tax returns
- (e) Preliminary Property Improvement Plan (as more fully explained in Section 2:10-4.8(a)(2).
- (f) Nonrefundable application fee fifty (\$50.00) dollars in the form of a money order or cashier's check
- (g) Proof of title and property insurance
- (h) **Submission of all required administrative documents:**
  - 1. Non-Collusion Affidavit**
  - 2. Stockholder Disclosure**
  - 3. Hold Harmless Agreement**
  - 4. Certificate of Compliance with Contractor Pay to Play**
  - 5. Political Contribution Disclosure Form**
  - 6. Business Registration Certificate**
  - 7. Certificate of Liability**
  - 8. Business Insurance**

2. Preliminary Property Improvement Plan (**PPIP**). The PPIP shall describe the proposed Façade Improvements and any other improvements applicant intends to make to the property concurrently with the façade improvements, and shall include a reasonably estimated budget for such improvements.

b. Eligibility Verification and Completeness Review. Once completed, an applicant must submit its application, along with all required documents as provided in the application, to the UEZ Office **Newark Community Economic Development Corporation and/or his designee or other entity authorized by the Municipal Council to administer and manage the City's Urban Enterprise Zone Program** to confirm an applicant's eligibility and that an application is complete. Upon receipt, the UEZ Office **Newark Community Economic Development Corporation and/or his designee or other entity authorized by the Municipal Council to administer and manage the City's Urban Enterprise Zone Program** shall submit the PPIP to the Division of City Planning and the UEZ Office **City of Newark Office of Planning, Zoning & Sustainability** for review and initial approval. The City of Newark Office of Planning, Zoning & Sustainability shall provide its **determination and comments**, if any, to the applicant **the Newark Community Economic Development Corporation and/or his designee or other entity authorized by the Municipal Council to administer and manage the City's Urban Enterprise Zone Program** within thirty (30) days of receipt, and **the Newark Community Economic Development Corporation and/or his designee or other entity authorized by the Municipal Council to administer and manage the City's Urban Enterprise Zone Program** shall then, along with the comments provided by the **City of Newark Office of Planning, Zoning, & Sustainability**, provide its own comments, if any, to the applicant within thirty (30) days of receipt from the City of Newark Office of Planning,

**Zoning, & Sustainability, and** the applicant shall then revise such PPIP in accordance with such comments.

c. Review by FIPRC. Upon a determination by the UEZ Office **Newark Community Economic Development Corporation and/or his designee or other entity authorized by the Municipal Council to administer and manage the City's Urban Enterprise Zone Program and the City of Newark Office of Planning, Zoning & Sustainability** that an application is complete and the applicant eligible, and the Division of Planning's **the Newark Community Economic Development Corporation and/or his designee or other entity authorized by the Municipal Council to administer and manage the City's Urban Enterprise Zone Program** shall forward a complete and eligible application to the FIPRC for review. The FIPRC shall complete its initial review of an application within sixty (60) days of transmission from the UEZ Office **Newark Community Economic Development Corporation and/or his designee or other entity authorized by the Municipal Council to administer and manage the City's Urban Enterprise Zone Program**. While the FIPRC retains sole discretion to approve or deny an application, such decision shall be based on the following criteria:

~~1. The applicant has demonstrated its ability to meet the match requirement;~~

1. The applicant has secured all approvals necessary to commence the project;

2. The applicant is undertaking other improvements to the property;

3. The applicant has sought and/or secured other financial assistance for improvement of the building;

4. The scope of work to be performed conforms to other economic development priorities;

5. The amount of outstanding debt secured by the property or otherwise carried by the applicant;

d. Applicant(s) are required to obtain all necessary permits from the appropriate City agencies (Building, Zoning, Planning, Historic Preservation Commission, etc.). In no way does approval by the Façade Improvement Program Review Committee substitute for appropriate approval by City agencies. An approval issued by the Façade Improvement Program Review Committee shall be conditional, subject to the receipt of required permits and approvals. Copies of permits and all approvals required by the City of Newark and other agencies including, but not limited to, those by Building, Zoning, Planning, Historic Preservation Commission shall be provided to the City of Newark, Division of City Planning **Office of Planning, Zoning & Sustainability** before grant reimbursements can be issued.

(Ord. 6PSF-j, November 22, 2010)

#### **2:10-4.9. Façade Improvement Program Review Committee.**

a. There shall be created a Façade Improvement Program Review Committee, which shall have five (5) members comprised as follows:

1. One (1) staff member of the Division of City Planning **City of Newark Office of Planning, Zoning & Sustainability;**

2. The UEZ Office **Newark Community Economic Development Corporation and/or his designee or other entity authorized by the Municipal Council to administer and manage the City's Urban Enterprise Zone Program** and one (1) of **its appointed** staff members; of the UEZ Office appointed by the Director of the UEZ;

3. One (1) staff member of the Building Department (Office of the Uniform Code Construction Official); and

4. **A Councilmember, or his or her designee, whose Ward is affected by a particular facade project under review by the FIPRC.** representative from a local Special Improvement District, merchant organization or community development corporation from each of the six (6) targeted areas who shall be acting and voting members of the Committee only on projects within the targeted area they represent. The representative is to be nominated from the Special Improvement District's Board of Directors (if applicable) and shall be confirmed by the Director of the Department of Economic and Housing Development.

b. The FIPRC will be responsible for reviewing all applications, approving the PIP and making the final approval or denial of loans for the Facade Improvement Program, subject to approval by the Director **Newark Community Economic Development Corporation and/or his designee or other entity authorized by the Municipal Council to administer and manage the City's Urban Enterprise Zone Program**. The FIPRC has the right to reject any or all applications or parts of applications, to negotiate modifications of applications submitted, and to negotiate specific work elements with an applicant for a project of lesser or greater magnitude than described in the applicant's proposal.  
(Ord. 6PSF-j, November 22, 2010)

#### **2:10-4.10. Selection of Contractors.**

All applicants must present three (3) cost estimates from qualified **pre-approved** contractors for the facade improvements following approval of an application. City **Lender** must approve the contractor estimate before owner is authorized to accept a contractor's bid, and prior to entry into the loan documents. (Ord. 6 PSF-J, 11-22-10)

#### **2:10-4.11. Right of Entry.**

By accepting a loan under the Façade Improvement Program and by executing the loan agreement, note and mortgage, an applicant thereby grants the Lender a right of entry, without the necessity of execution of any further documentation, which shall permit the Lender or their agent's access to the property for the purpose of confirming compliance with the terms of this chapter, the loan agreement, note and mortgage. (Ord. 6PSF-j, November 22, 2010)

#### **2:10-4.12. ~~City of Newark Architects.~~**

Applicants are entitled to receive up to eight (8) hours of architectural services at no charge. Program architects are under contract with City of Newark will be assigned to provide architectural services on a project upon request by an applicant. Architectural services in excess of eight (8) hours will be separately charged and billed to the applicant by the architect at the contract rates charged to City of Newark. The City of Newark shall not be responsible for any architectural service charges in excess of eight (8) hours, which shall be the sole responsibility of the applicant. The applicant may wish to hire their own architect at their own expense. (Ord. 6 PSF-J, 11-22-10)

## **2:10-4.12. Disbursement of Funds Loans.**

- a. All **Fifty (50%) percent of the Loan shall be disbursed by Lendor upon final approval by the FIRPC in accordance with Section 2:10-4.8(c) of this Ordinance. The remaining Fifty (50%) percent shall be made by Lendor upon Applicant's satisfactory completion of the façade improvements.** disbursement of funds shall be made to City on a reimbursement basis only. ~~The UEZ Office shall, in its~~ **The Lender, in its sole discretion, determine on a case-by-case basis the best manner of disbursing funds to accomplish the goals of the program.** No payments shall be made under this Program until all of the improvement work for which a payment request is being made have been inspected and approved by the City of Newark **Lender** and applicant has provided **sufficient** documents sufficient to the UEZ Office to **Newark Community Economic Development Corporation and/or his designee or other entity authorized by the Municipal Council to administer and manage the City's Urban Enterprise Zone Program** and , in the UEZ Office's sole discretion, that applicant has satisfied the matching requirement, if applicable, and each of the conditions precedent to disbursement **found in Section 2:10-4.12(c) of this Ordinance,** below, have has been satisfied. Payments shall **may** be made to borrower, and contractors/vendors **or Borrower and contractors/vendors jointly.**
- b. Applicant(s) shall be required to submit **a notification of completion to Lender for requisition for of** payment to the City of Newark upon the completion of the façade improvement project. The City of Newark's architect **Newark Community Economic Development Corporation and/or his designee or other entity authorized by the Municipal Council to administer and manage the City's Urban Enterprise Zone Program and one (1) of its appointed** shall inspect the work to determine compliance with the application no later than thirty (30) days from notification of completion by applicant and prior to disbursement of any funds.
- c. The applicant must comply with the following conditions precedent to disbursement before any funds will be disbursed:
- i. Submit to the **Lender** all final invoices from contractors and suppliers marked "Paid in Full" along with copies of the checks made payable to the contractor or supplier. ii. Provide copies of waivers of lien from all contractors. iii. Supply proof that the improvements meet all City code requirements (Building, Planning, Zoning, Historic Preservation Commission, etc.); and ii. Supply proof that the improvements have passed all final inspections from the City's Construction Official and provide the City **Lender** with a copy of fully executed certificate of occupancy.(Ord. 6PSF-j, November 22, 2010)

## **2:10-4.13. Prevailing Wages.**

The Office of Attorney General has determined that N.J.A.C. 12A:2A-3.1, et seq. concerning the payment of prevailing wage in connection with certain construction contracts applies to projects funded by Urban Enterprise Zone Assistance Fund. (Ord. 6PSF-j, November 22, 2010)

## **2:10-4.14. Insurance Requirements/Indemnification.**

- a. General Requirements. The applicant, its subsidiaries and/or its contractors and/or

subcontractors shall maintain for the duration of the contracts, at its cost and expense, insurance against claims for injuries to persons and damages to property, including contractual liability, which may arise from or in connection with the performance of the work by the applicant, its agents, employees, representatives, assigns or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission and shall be in the amounts of \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate.

b. Primary Insurance. The applicant's insurance coverage shall be primary insurance with respect to the City of Newark **Lender**, its officers, officials, employees and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by the Lender, its officers, officials, employees or volunteers shall be excess of the applicant's insurance and shall not contribute with it.

c. Additional Insured Status. The City of Newark **Lender** is to be listed as additional insured for liability arising out of activities performed by or on behalf of the applicant. This can be achieved by Subsection (c)(2)(a) and (b), below:

1. The following language on the face of the insurance certificate and in the policy:  
Certificate Holder is included as additional insured.

2. Provide the City of Newark **Lender** with a copy of the Additional Insured Broad Endorsement Form.

(a) Certificate of Insurance/Endorsements: A certificate of insurance from an insurer with a Best's rating of no less than A indicating compliance with the required coverages, must be supplied to the City of Newark **Lender**. The applicant must notify the City of Newark **Lender** immediately, of any material change in insurance coverage, such as changes in limits, coverages, change in status of policy, etc. The City of Newark **Lender** reserves the right to require complete copies of insurance policies at all times.

(b) Workers Compensation Insurance. The applicant shall procure and maintain during the life of this contract, Workmen's Compensation Insurance in the statutory amounts pursuant to N.J.S.A. 34 et seq. and Employers' Liability with minimum limits of \$500,000.00 each accident/\$500,000.00 policy limit by disease/\$100,000.00 bodily injury each employee.

(c) Amounts: All insurance shall be written for up to the following limits of liability for general liability and/or commercial liability insurance.

General Liability Insurance:	\$1,000,000.00 per occurrence \$2,000,000.00 aggregate
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Commercial Liability Insurance:	\$1,000,000.00 per occurrence \$2,000,000.00 aggregate
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Upon commencement of the contract, the applicant must provide the City with written evidence of compliance with required coverage as listed above.

- d. Hold Harmless/Indemnification.

1. To the fullest extent permitted by law, the applicant shall, at its sole cost and expense, indemnify, defend and satisfy all judgments, and hold the lender, its officers, employees, agents, servants and representatives, harmless from and against any and all claims, actions, judgments, costs, penalties, liabilities, damages, losses and expenses, including but not limited to attorney's fees

and worker's compensation benefits arising out of or resulting from the performance of this agreement.

2. The applicant has agreed to execute a Hold Harmless Agreement prescribed by the City of Newark **Lender**, which is incorporated by reference and made part of this agreement.

3. The applicant further agrees that failure to execute a Hold Harmless Agreement is not a waiver by the City of Newark **Lender**.  
(Ord. 6PSF-j, November 22, 2010)

#### **2:10-4.15. Program Administration.**

The UEZ Office **Newark Community Economic Development Corporation and/or his designee or other entity authorized by the Municipal Council to administer and manage the City's Urban Enterprise Zone Program** and the Division of City Planning are authorized to develop additional procedures, application materials, and program guidelines necessary to implement and administer the program authorized by this chapter and to enter into all contracts necessary to accomplish the purpose of this chapter, subject to the approval of the City of Newark Corporation Counsel as to form and legality. **All contracts entered into by the City of Newark shall be approved as to form and legality by the Corporation Counsel.** (Ord. 6PSF-j, November 22, 2010)

#### **2:10-4.176. Waiver of Mortgage Requirement.**

If an applicant demonstrates to the satisfaction of the **Lender** that the granting of a mortgage against the property to be improved with a program loan will result in a default under any other loan or contract to which such applicant is a party, and such applicant provides alternate security in the form of a performance bond, letter of credit, or, but only for applicants who have demonstrated to the satisfaction of the Newark Community Economic Development Corporation sufficient financial capacity, a personal guaranty. (Ord. 6PSF-j, November 22, 2010)

#### **2:10-4.16. Program Administration.**

The UEZ Office and the Division of Planning are authorized to develop additional procedures, application materials, and program guidelines necessary to implement and administer the program authorized by this chapter and to enter into all contracts necessary to accomplish the purpose of this chapter, subject to the approval of the City of Newark Corporation Counsel as to form and legality. (Ord. 6 PSF-J, 11-22-10)

#### **2:10-4.17 Authorization to Enter Into Contract.**

The Director of the Department of Economic and Housing Development, or his designee, is authorized to enter into loan agreements with approved applicants for the implementation of this program in the attached form (Attachment C). In addition, the Director of the Department of Economic and Housing and Development may execute such other documents as are necessary to effectuate the loan agreement, including but not limited to the mortgage and note. **All contracts shall filed with be attested to by the City Clerk by the Lender and approved as to form and legality by the Corporation Counsel.** (Ord. 6 PSF-J, 11-22-10)

**Editor's Note:** Attachment C, referred to herein, may be found on file in the office of the City Clerk.

#### **2:10-4.1817. Waiver of Mortgage Requirement.**

If an applicant demonstrates to the satisfaction of the **Lender** Deputy Mayor/Director of the Department of Economic and Housing Development that the granting of a mortgage against the property to be improved with a program loan will result in a default under any other loan or contract to which such applicant is a party, and such applicant provides alternate security in the form of a performance bond, letter of credit, or, but only for applicants who have demonstrated to the satisfaction of the director sufficient financial capacity, a personal guaranty. (Ord. 6PSF-j, November 22, 2010)

**2:10-4.198. Annual Report to Council.**

**Newark Community Economic Development Corporation and/or his designee or other entity authorized by the Municipal Council to administer and manage the City's Urban Enterprise Zone Program** Deputy Mayor/Director of the Department of Economic and Housing Development shall provide the Municipal Council with an annual report each year identifying:

- a. Names and number of contracts entered into.
- b. The amount of said contracts.
- c. The property addresses for such contracts.
- d. Any additional requested information by the Municipal Council.

(Ord. 6PSF-j, November 22, 2010)

**2:10-4.2019. Sunset Clause.**

This Program is **hereby renewed effective the date of this First Amendment** and shall sunset five (5) years from the date of adoption **of this First Amendment.** (Ord. 6PSF-j, November 22, 2010)

**Section 2.** Any prior Ordinances or parts there of inconsistent herewith are hereby repealed.

**Section 3.** If any part of this Ordinance is declared unconstitutional or illegal the remaining provisions shall continue in full force and effect.

**STATEMENT**

An Ordinance amending Title II, Chapter 10, Department of Economic and Housing Development, of the Revised General Ordinances of the City of Newark, New Jersey (2000) as amended and supplemented by expanding the scope and reach of the City-wide Commercial Corridor Revitalization Façade Improvement Program.