

Ordinance No. 1668, 1999

An ordinance creating the Opportunity Fund Program to be funded from state authorized sales and use taxes for the purpose of improving the base economy of Clallam County by the financing of public facilities.

C.C.C. 5.40

OPPORTUNITY FUND PROGRAM

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5.40.010 Goals and Objectives

In 1997 and 1999 the state legislature authorized rural counties to impose a sales and use tax (.04% in 1997; increased to a total of .08% in 1999) to finance public facilities. The goal of the legislation is to provide additional funds to increase the economy of the rural counties by financing public facilities that will result in new jobs through business expansion and recruitment.

Funds from the Opportunity Fund Program, herein after referenced as OFP, shall be used to improve the base economy in the incorporated and unincorporated areas of Clallam County, through the attraction of businesses with grants and low interest loans for public facilities.

5.40.020 Policy

The administering of the moneys provided to Clallam County under RCW 82.14.370, shall be referred to as the Opportunity Fund Program, or the OFP. OFP money shall be used to support the creation of public facilities in a manner which is consistent with the goals, objectives, and policies outlined herein.

5.40.030 Program Activities

The essential activities of the OFP include the creation of new jobs and income, and improving the base economy by the following:

1. Promote the ongoing operation of businesses;
2. Promote the expansion of existing businesses;
3. Attract new businesses;
4. Assist in the development of new businesses from within the incorporated and unincorporated areas of Clallam County; and
5. Provide family wage jobs to the citizens of the County.

5.40.040 Priorities

The top priority of the OFP is to create new jobs by stimulating private investment which will, in turn, improve the economy of the residents of the incorporated and unincorporated areas within Clallam County. Grants and loans shall only be given to support the creation of public facilities that improve the base economy. Priority shall be given to the criteria in the following order:

1. Improvements which have a large job creation-to-funding ratio shall be given the highest priority.
2. Retention or expansion proposals that exhibit a higher probability for supporting immediate basic industry job opportunities, over recruitment proposals that do not provide a similar probability.
3. Projects that leverage public and public/private financial partnerships.
4. Fast repayment schedules.
5. Redevelopment, in-fill and expansion of existing infrastructure systems.
6. Higher match percentage and the use of outside fund leveraging. Match may include project-related expenditures for a period up to one year prior to the request for funding.
7. Projects which will immediately benefit the incorporated or unincorporated areas of Clallam County.
8. Projects which successfully mitigate for significant adverse environmental impacts, if applicable.

5.40.050 Consistency with Area Economic and Comprehensive Plans

. In addition to compliance with general federal, state and local laws, all projects must be consistent with the officially adopted county overall economic development plan, or the county economic development section of the county's comprehensive plan, or the comprehensive plan of a city or town located within Clallam County.

5.40.100 Standards for the OFP Portfolio

This section presents the standards to be achieved by the OFP portfolio as a whole. Individual loans and grants may vary but OFP loans and grants shall generally conform to the standards specified in this section. Variations shall be premised upon one or more of the following: critical timing; emergent opportunities; enhanced immediate or long term economic benefits.

5.40.110 Job/Cost Ratio

Job to cost analysis applies only to OFP loan applications.

Maximum OFP investment for an individual loan is \$50,000 per job. Maximum investment per job for the OFP portfolio average is \$30,000. Applications demonstrating a lower investment per job shall be given preference. The job types can be categorized as unskilled, semi-skilled, and skilled.

5.40.120 Funding Ratio

Funds provided shall not exceed 50% of the project cost. The cost may include in-kind expenses.

5.40.130 Activities Financed

OFP funds shall only be spent to support the construction of public facilities and the administration of the OFP.

OFP funds shall not be spent on the construction of public facilities which do not improve the base economy.

5.40.140 Eligible OFP Fund Recipients

Eligible OFP fund recipients shall include all Federal, State, and local public agencies located within Clallam County. All applications shall include a resolution of support adopted by the governing body of the public agency.

5.40.150 Allocation of Financial Resources

The fund balance, minus the administrative costs of the OFP, shall be allocated at 70% for loans, and 30% for grants. To conserve fund equity, principal deferrals or similar flexible repayment techniques should be used to offset financial hardship in lieu of grants. A reasonable amount should be left for emergent opportunities.

5.40.160 Eligible Loan Types

All OFP funds shall be used only for projects found to be consistent with all other goals, policies, and requirements as defined herein. Loan projects must meet the following criteria:

1. The project must be for the planning, acquisition, construction, repair, reconstruction, replacement, rehabilitation, or improvement of bridges, roads, domestic and industrial water, earth stabilization, sanitary sewage, storm sewer, railroad, electricity, natural gas, telecommunications, buildings or structures and port facilities, all for the purpose of job creation, job retention, or job expansion, herein before and hereinafter referred to as a public facility.
2. The loan term shall be shorter than the useful life of the assets.
3. The loan must improve the base economy for the incorporated or unincorporated areas of Clallam County.

4. Loan projects shall result in the direct and immediate creation of a public facility.

5.40.170 Eligible Grant Types

Grants shall be used to match grants from other public or private sources for the purpose of financing public facilities found to be consistent with all other goals, policies and requirements as set forth herein.

5.40.200 Grant and Loan General Financing Policies

OFP loans to a single eligible borrower shall be a minimum of \$20,000. OFP grants to a single grant recipient shall be a minimum of \$5,000. The maximum allowed loan should not exceed 70% of the balance of OFP funds available. An OFP grant should not exceed 30% of the balance of OFP funds available.

5.40.210 Standard Terms Applicable to All Loans

Subject to final approval by the Board of County Commissioners, the terms for repayment of the OFP loan are subject to negotiation with the borrower, in accordance with the following guidelines:

1. The date of interest payment, unless negotiated otherwise, shall be due every June 1st until the loan is paid off. The date of interest payment and principal shall be due every December 1st until the loan is paid off. A negotiated moratorium on the principal may be considered, but for no more than six (6) months from the date of disbursement. Proposed exceptions shall be reviewed by the OFB.
2. Loan terms shall not exceed ten (10) years, and shall be interest free for the first three (3) years of the loan.
3. The OFB may specify or limit the uses of OFP funds if deemed necessary and prudent.
4. The OFB and Treasurer may include special clauses in a loan agreement which stipulate payments, decreased payments, or increased repayment amounts under certain circumstances. Such circumstances include one or more of the following: any delay in repayment, project cost overrun, or project cost overestimate. In each case where such a clause is utilized, the language shall clearly establish the thresholds which would cause a change in the payment schedule. These thresholds may include, but are not limited to, the completion of a project ahead of the deadline(s).
5. Specific performance required of the borrower, including meeting payment schedules, timely completion of project phases, and other conditions of the loan, shall be specified in each contract between the

County and the borrower. Failure to comply with the contract places the borrower in default enabling the OFP Administrator to accelerate debt repayment or demand full payment. The terms will also include the rights of the borrower to remedy the default.

6. Detailed penalty fees, and rates in case of default, and late payment penalties shall be contained in the contract between the County and the borrower.
7. No penalty of any kind shall be levied against any borrower who chooses to repay all or any part of a loan prior to the repayment schedule.
8. A monitoring system shall be in place which states deadlines for completing specific project phases directly related to the loan. The monitoring system should include penalties for not achieving predetermined deadlines.

5.40.220 Standard Terms Applicable to All Grants

Subject to final approval by the Board of County Commissioners, the terms for OFP grants are subject to negotiation, in accordance with the following guidelines:

1. One (1) payment at the completion of the project or payments based on a schedule determined in the monitoring system shall be used.
2. The OFB may specify or limit the uses of OFP funds if deemed necessary and prudent.
3. Detailed penalty fees and rates in case of breach of grant agreement or other noncompliance will be contained in the contract between the County and the OFP fund recipient.
4. The OFB and the Treasurer may include special clauses in a grant agreement which stipulate decreased payments or repayment amounts under certain circumstances. Such circumstances include one or more of the following: any delay in repayment, project cost overrun, or project cost overestimate. In each case when such a clause is utilized, the language shall clearly establish the thresholds which would cause a change in the payment schedule. These thresholds could include, but are not limited to, completing a project ahead of the schedule.
5. A monitoring system shall be in place which states deadlines for completing specific activities directly related to the grant. The activities should be detailed as to the characteristics. The monitoring system should include penalties for not achieving predetermined deadlines.
6. Recapture provision

5.40.230 Modifying Loan and Grant Terms

OFP loan and grant terms shall be properly documented by the OFP Administrator. There may be circumstances which may warrant modifying the original terms of the loan or grant. The borrower or grantee may apply for modification upon forms provided by the OFP Administrator and shall clearly state the facts supporting the request for modification. Supporting documentation shall also be provided by the borrower or grantee. The OFP Administrator shall review and process the request in the same manner as the original application. As with the original loan or grant, final approval rests with the Board of County Commissioners.

The OFP Administrator may recommend corrective action to the terms of a loan or grant to the Board of County Commissioners without a request from the borrower or grantee.

5.40.240 Standard Interest Rates

Interest shall be set on loans 1% below the interest rate set by "Local Option Capital Asset Lending Program" prepared by the Washington State Treasurer's Office or such higher amount as the Board of County Commissioners deems prudent. OFP income will be reinvested into the OFP lending, grant, and administration fund.

5.40.250 Special Financing Techniques

OFP loans and grants should be part of a larger package involving another lender such as the Community Economic Revitalization Board. OFP loans and grants should be used to fill a gap in the total project financing.

The OFB shall receive recommendations on the terms for financing each OFP loan or grant from the OFP Administrator. To determine whether OFP Administrator recommendations reflect maximum efficiency, the OFB must evaluate:

- The strength of the proposal
- The credit worthiness of the borrower
- The realism of the projected job to dollar ratio, and
- The terms generally available for financing

5.40.260 Collateral and Equity Requirements

Collateral will not be required for OFP fund recipients. OFP loans shall be made on a direct basis by the loan fund to the borrower. The County shall receive all payments of principal, interest, and penalties.

Loans to eligible borrowers will not be secured. However, loans will be general obligations of the eligible OFP fund recipient, committing its full faith and credit. Care will be taken that proper borrowing or grant funding resolutions are obtained. Loans shall not be made which will cause the jurisdiction to exceed its legal borrowing limits.

5.40.270 Fees to Borrowers

All customary and usual loan fees may be charged to applicants including, but not limited to, title insurance, escrow, attorney fees, recording fees, and loan origination fee.

5.40.300 Administrative Elements of the Plan

The Clallam County Department of Community Development shall assume the responsibility for administering the funds. The final policy making authority for the Opportunity Fund Program, shall rest with the Clallam County Board of Commissioners. However, in order to effectively achieve the goals and policies of the OFP, the County shall establish an Opportunity Fund Board.

5.40.310 Composition of the Opportunity Fund Board

The OFB shall consist of no more than seven (7) members. The Port of Port Angeles, and the Cities of Forks, Port Angeles, and Sequim shall each have the right to recommend at least one (1) representative for the OFB. Clallam County shall have the right to appoint three (3) members. The Clallam County Board of Commissioners shall appoint the members of the OFB by the adoption of a resolution.

Criteria For OFB Members

Members of the OFB should possess the technical knowledge necessary to evaluate project proposals based on their technical and economic development merits. To avoid political conflicts of interests, no publicly elected officials shall serve on the OFB. Each OFB member shall have significant experience in one or more of the following at a senior management or supervisory level:

- Business finance or banking

- Regional economic planning
- Business recruitment and retention
- Industrial or manufacturing business management
- Civil engineering

Staggering Terms

It is advantageous to assure that all member terms do not expire simultaneously. Therefore, for 1999, one representative member for Clallam County, one member for the city of Port Angeles, and the one member for the city of Sequim shall be appointed until December 31, 2001. For 1999, two representative members for Clallam County, one member for the city of Forks, and the one representative for the Port shall be appointed until December 31, 2002. All other terms thereafter shall expire two years from the date of the replacement term. There is no limit to the number of terms any board member may serve.

5.40.320 Responsibilities of Opportunity Fund Board

The OFB shall be responsible for making recommendations to the Board of Clallam County Commissioners which shall have final authority to approve or deny an application submitted by an eligible borrower.

It shall be the responsibility of the OFB to make recommendations for improving the administration of the OFP to the Board of Clallam County Commissioners.

OFB members shall receive a copy of all completed loan and grant applications submitted by eligible borrowers. Board members shall be expected to carefully review these materials prior to each meeting of the OFB. Members shall be expected to attend all OFB meetings scheduled by the OFP Administrator.

5.40.330 Opportunity Fund Board Meetings

Meetings of the OFB shall be conducted in accordance with State law and the procedures commonly known as "Robert's Rules of Order." The OFB shall meet no more than 45 days after a completed application has been received or an emergency meeting has been called. The Board meetings may be held during the day or in the evening.

All actions by the Board shall be expressed by motion and/or resolution. All motions and resolutions, once in final written form, shall be signed as approved by the chairperson on behalf of the OFB.

The OFB may transact business via teleconference. Teleconference meetings shall be announced in accordance with state law. A speaker phone shall be utilized during the public meeting to allow members of the public to hear OFB proceedings and, at the discretion of the Chair, participate in discussions by OFB members.

No representations shall originate from any member of the OFB utilizing the name of the Opportunity Fund Board to endorse or oppose any issue, unless a majority of the members of the OFB approve such position.

Quorum

A quorum shall be considered present for a meeting of an OFB meeting when at least five (5) members are present.

Voting

The voting on elections, motions, and resolutions shall be by voice vote. In lieu of voice vote, members may request a roll call vote. A roll call vote may be requested by any member of the OFB.

A majority of affirmative votes by OFB members present at the meeting are necessary for the exercise of any power or function of the OFB.

5.40.340 Conflict of Interest

Any person acting in pursuance of the OFP shall comply with all state and local ethic and conflict of interest laws.

5.40.400 OFP Administrator Capacity

The Clallam County Department of Community Development, herein after referenced as DCD, shall be the administrator of the Opportunity Fund Program. The OFP Administrator shall be designated by the Director of DCD. The administrative costs associated with the OFP shall be covered by the funds submitted to the County Treasurer's Office as a result of RCW 82.14.370.

5.40.410 Clallam County Administrative Staff Responsibilities

The County shall provide adequate staffing to carry out the responsibilities of administering the OFP. Guidelines and application materials shall be available to eligible borrowers. The OFP Administrator shall review all preliminary applications for the OFP submitted by eligible borrowers. This

review shall determine the suitability of the proposal for funding under these program guidelines and judge the overall integrity of the proposal.

The OFP Administrator is also responsible for ensuring that all the special conditions required by the OFP are met by each OFP fund recipient through the period of the loan or grant. The OFP Administrator shall delineate the federal, state, and local requirements the OFP fund recipient must meet in order to receive OFP funding. A monitoring and tracking system shall be established which ensures that both financial responsibilities and programmatic responsibilities will be met prior to the issuance of any loan or grant.

The County Department of Community Development is accountable for the proper management of the OFP. The Department of Community Development and the County Treasurer's Office are responsible for the prudent management of the funds. This role includes substantial responsibilities to ensure that federal, state, and local requirements are met. The responsibilities include determining annually how consistent the OFB's actions are with the policies and procedures contained in the OFP plan, and if the loan and grant portfolio meets the standards contained herein.

5.40.500 Loan Selection, Approval Process and Servicing

The Clallam County Department of Community Development shall develop all forms necessary for implementation of the OFP. The application shall describe the basic eligibility requirements and the selection criteria essential to successful applications.

5.40.510 Application Review Process - Staff Functions

Staff shall review the applications for program objectives, eligibility requirements, selection criteria, and loan terms with any potential applicant. When a completed application is submitted, the OFP Administrator shall take responsibility for reviewing the application. The application shall be checked against eligibility criteria, program objectives, financial feasibility, selection criteria, environmental requirements, civil rights requirements, and other program considerations. The OFP Administrator may request any additional information not submitted with the application which the OFP Administrator deems necessary for the OFB to review the application.

A decision to approve or deny a loan or grant application is not appealable. However an eligible borrower may submit a proposal more

then once, but may not submit more than four (4) applications per year unless five (5) members of the OFB approve the submittal of additional applications by an eligible borrower.

Treasurer's Office Services

The Clallam County Treasurer's Office shall be responsible for reporting delinquent loans. Any loan which is in excess of thirty (30) days past due must be brought to the attention of the OFP Administrator. In the case that the Treasurer's Office learns of adverse circumstances which may affect the loan, the Treasurer's Office shall notify the OFP Administrator.

Staff Administrator Monitoring Activities

A system for monitoring the progress of each loan and grant shall be in place prior to issuance of the loan or grant, and is the responsibility of the OFP Administrator. The monitoring system should utilize financial reports from the Treasurer's Office and gather information on project completion and performance. Failure to comply with the terms and conditions of the loan or grant, whether financial or programmatic, shall require the OFP Administrator to initiate corrective action with the OFP fund recipient. Corrective action plans shall be prepared in writing and shall be signed by the OFP fund recipient. Penalties may be assessed in accordance with the OFP fund recipient's loan or grant agreement. Corrective action plans shall become a legally binding part of the loan or grant agreement between the recipient and the County.

In the event of serious failure to comply with the terms and conditions of the program or financial default, the OFP Administrator shall call an emergency meeting of the OFB to consider remedial steps. Decisions of the OFB regarding non-complying loans and grants shall be in writing and appealable to the Board of Clallam County Commissioners.

The OFP Administrator shall prepare an annual summary evaluation of the OFP including financial performance, number of jobs directly created, comparison of projected and actual benefits, recommendations to improve operations, the number of activities financed and their outcomes, the uses made of interest payments, the achievement of environmental goals, benefits of the program, and an evaluation of the program's overall administration.

5.40.600 Opportunity Fund Administrative Costs

Administrative costs for managing the OFP shall be funded by moneys provided to the Clallam County Treasurer's Office per RCW 82.14.370. OFP funds shall not be spent on the administration of other programs. In those years when OFP income is to be used for administrative fees, a budget and plan for expending projected OFP income shall be developed by the OFP Administrator, and submitted to the Clallam County Board of Commissioners, prior to adoption. With the exception of the 1999 biennium, administrative costs shall not exceed five percent (5%) of annual fund proceeds.

5.40.700 Availability of Loans and Grants

Proceeds returned to the funds, pending the approval of new loans or grants, shall be held with the Clallam County Treasurer's Office. The Treasurer's office shall manage the funds in a manner consistent with law and shall return all interest income to the fund.

5.40.800 Other Considerations

The project must comply with all federal, state, county, and city regulations.

5.40.900 Definitions

1. **Emergent Opportunity** - A project attracting a business that would significantly improve the base economy. The business that the project is intended to attract must be prepared to locate to Clallam County. The project would also have a low job to cost ratio, or employ a large number of individuals.
2. **Improve the Base Economy** - The creation of new wealth through primary economic activity (such as manufacturing, or extra-regional trade) as compared to those sectors of the economy that recycle existing wealth such as retail trade or government.
3. **In-kind Expenses** - The donated or loaned real or personal property, volunteer services, and employee services.
4. **OFB** - Opportunity Fund Board.
5. **OFP** - Opportunity Fund Program, as prescribed by Clallam County Code 5.40.

6. **OFP Administrator** - The person(s) stipulated by the Director of the Clallam County Department of Community Development to carry out the duties of the OFP assigned within this ordinance to the OFP Administrator, and any other duties relating to the OFP assigned by said Director.
7. **OFP Portfolio** - A list of projects which have received OFP funding. The OFP Portfolio should include a job to cost ratio, annual income, and the current fund balance.
8. **Project** - The planned construction of a public facility which has applied for OFP funding.
9. **Public Facility** - Shall include bridges, roads, domestic and industrial water facilities, sanitary sewer facilities, earth stabilization, storm sewer facilities, railroad, electricity, natural gas, buildings, structures, telecommunications infrastructure, transportation infrastructure, or commercial infrastructure, and port facilities, if listed as an item in the officially adopted county overall economic development plan, or the economic development section of the county's comprehensive plan, or the comprehensive plan of a city or town located within Clallam County.

DATED this 1st day of June, 1999

BOARD OF CLALLAM COUNTY COMMISSIONERS

Carole Y. Boardman
Carole Y. Boardman, Chair

Martha M. Ireland
Martha M. Ireland

Howard V. Doherty, Jr.
Howard V. Doherty, Jr.

ATTEST:

Karen Flores
Karen Flores
Clerk of the Board

*cc: Community Development
minutes
file*