

**STATE OF NEW MEXICO
McKINLEY COUNTY**

ORDINANCE NO. DEC-14-006

**AN ORDINANCE RELATING TO ECONOMIC DEVELOPMENT PLANNING.
BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF
McKINLEY COUNTY, NEW MEXICO:**

Section 1. ECONOMIC DEVELOPMENT PLAN

- 1.1 Short Title.
This Ordinance may be cited as the "Economic Development Plan Ordinance."

Section 2. Authority.

- 2.1 The Economic Development Plan Ordinance is enacted pursuant to the statutory authority conferred upon municipalities to allow public support of economic development (N.M. Stat. Ann. Section 5-10-1 through Section 5-10-13-1978-). This Ordinance is adopted as part of the County's economic development plan, as defined in the Economic Development Element of the McKinley County Comprehensive Plan Update, September 2012.

Section 3. Purpose.

- 3.1 The purpose of the Economic Development Plan/Ordinance is to allow public support of economic projects to foster, promote and enhance local economic development efforts while continuing to protect against the unauthorized use of public money and other public resources. Further, the purpose of the ordinance is to allow the County to enter into one or more joint powers agreement with other local governments to plan and support regional economic development projects, including investments in arts and cultural districts created pursuant to the Arts and Cultural District Act. See, NMSA 1978 §§ 5-10-1 *et. seq.*, The Local Economic Development Act; and, NMSA 1978 §§15-5A-1 *et. seq.*



3.2 Local Economic Development Act.

3.2.1 Local governments are allowed to provide direct or indirect assistance to qualifying business for furthering or implementing economic development plan and projects, furthermore local and regional governments have the authority to contribute assets to development projects subject to the limitations stated in NMSA 1978 §5-10-4.

3.2.2 Restrictions on Public Expenditures or pledges of credit and exceptions.

3.2.2.1 The total amount of public money expended and the value of credit pledged in the fiscal year in which that money is expended by a local government for economic development projects pursuant to Article 9, Section 14 of the constitution of New Mexico and the Local Economic Development Act shall not exceed ten percent of the annual general fund expenditures of the local government in that fiscal year.

3.2.2.2 Except that the limits listed above in 3.2.2.1 do not apply to specific revenue generated through the imposition of an approved county gross receipts tax dedicated for furthering or implementing economic development plans and projects

3.2.3 The approved tax that can be dedicated for the use of economic development projects, is the "County Infrastructure Gross Receipts Tax" NMSA 1978§7-20E-19.

3.2.3.1 McKinley County has, prior to the creation of the "Local Economic Development Act", adopted the County Infrastructure Gross Receipts Tax. The Ordinance imposing the tax was adopted in July of 1999.

3.2.3.2

For McKinley County to expend revenues of this tax on economic development plans and projects; McKinley County must amend the existing Ordinance and the amendment must be approved by the voters in referendum pursuant to NMSA 1978 §5-10-4(D); and, §7-20E-1.

3.2.3.3

If the referendum as mentioned above is approved; then no more than the greater of fifty thousand dollars (\$50,000) or ten percent of the revenue collected shall be used for promotion and administration of or professional services contracts related to the implementation of any such economic development plan.



3.2.4 **Eligible and Non-Eligible uses.**

3.2.4.1 Projects applied for by a qualifying entity and reviewed pursuant to this Ordinance.

3.2.4.2 Projects that receive funding by a specific revenue bond; or, those funded with revenue from the GRT mentioned above in sections 3.2.3 (if ever amended by the County Commission and approved through the required referendum.

3.2.4.3 The Legislature in 2013 amended the "Local Economic Development Act" to allow retail businesses as a qualifying purpose, and is now included in this Ordinance

Section 4. Definitions as used in the Economic Development Plan Ordinance:

- 4.1 "arts and cultural district" means a developed district of public and private uses that is created pursuant to the Arts and Cultural District Act
- 4.2. "cultural facility" means a facility that is owned by the state, a county, a municipality or a qualifying entity that serves the public through preserving, educating and promoting the arts and culture of a particular locale, including theaters, museums, libraries, galleries, cultural compounds, educational organizations, performing arts venues and organizations, fine arts organizations, studios and media laboratories and live-work housing facilities;
- 4.3 "*Economic development project*" means the provision of direct or indirect land, buildings or other infrastructure; public works improvements essential to the location assistance to a qualifying business and include the purchase, lease, grant, or construction, reconstruction, improvement or other acquisition or conveyance of expansion of a qualifying business; and payments for professional services contracts necessary for local or regional governments to implement a plan or project.
- 4.2 *Qualifying entity* means an existing or proposed corporation, limited liability company, partnership, joint venture, syndicate, association or other person that is one or combination of two or more of the following:
- A. An industry for manufacturing, processing, or assembling of any agricultural or manufactured products;



- B. A commercial enterprise for storing, warehousing, distributing, or selling products of agriculture, mining or industry, but other than provided in Paragraph (D) of this subsection, not including any enterprise for sale of goods or commodities at retail or for the distribution to the public of electricity, gas, water, or telephone or other services commonly classified as public utilities;
 - C. A business in which all or part of the activities of the business involves the supplying of services to the general public or to government agencies or to a specific industry or customer, but, other than provided in Paragraph (D) of this subsection, not including business primarily engaged in the sale of goods or commodities at retail;
 - D. A telecommunications sales enterprise that makes the majority of its sales to persons outside of New Mexico.
 - E an Indian nation, tribe or pueblo or a federally chartered tribal corporation;
 - F a facility for the direct sales by growers of agricultural products, commonly known as farmers' markets;
 - G a business that is the developer of a metropolitan redevelopment project; (8) a cultural facility; and
 - H retail business: The Legislature in 2013 amended the "Local Economic Development Act" to allow retail businesses as a qualifying entity subject to the definition of "retail business" in section 4.6 below.
- 4.3 ***Project participation agreement*** means an agreement between a qualifying entity and the County whereby the county provides assistance to an economic development project in exchange for the benefits received as set forth in this section.
- 4.4 ***Governing body*** means McKinley County
- 4.5 "regional government" means any combination of municipalities and counties that enter into a joint powers agreement to provide for economic development projects pursuant to a plan adopted by all parties to the joint powers agreement; and
- 4.6 "retail business" means a business that is primarily engaged in the sale of goods or commodities at retail and that is located in a community with a population of ten thousand or less.



- 4.7 **Joint Regional Projects.** The County may engage in economic development projects involving one or more other government entities for projects, which encompass more than one municipality or county. In such instances, the relevant governing bodies shall adopt a joint powers agreement. This agreement will establish the application criteria and the terms of all project participation agreements. Criteria established under a joint powers agreement shall be consistent with the provisions of this ordinance.

Section 5. Economic Development Plan.

- 5.1 The County Manager after approval of the County Commission may assist Economic Development Projects in any legally permissible manner including but not limited to provisions of land, buildings and infrastructure provided that all the requirements of this ordinance are met. The County may provide land, buildings or infrastructure it already owns, or it may build, purchase or lease the facilities needed for an economic development project. The County at its discretion may bear the full cost or contribute a portion of the costs including the waiver of applicable fees. The County at its discretion may also contribute to the payment of costs for professional service contracts such as Industry feasibility studies and planning and design services needed to implement a project.
- 5.2 The County Commission may consider offering all forms of assistance allowed under this ordinance and any other legally permissible forms of assistance; however, this does not establish any obligation on the County's part to offer any specific type or level of assistance.

Section 6. McKinley County Project Evaluation.

- 6.1 The County Commission assigns the Smart Growth Commission the following responsibilities with regard to this Economic Development Plan for McKinley County.
- A. Accept, review (with input from the regional State EDD representative; or, in cooperation with NM EDD) and make recommendations on applications for assistance to the County Commission; and,
 - B. Hold appropriate hearings and meetings to properly review applications; all in accordance with the Open Meetings Act, and the McKinley County "Policy Governing Rules of Order and Procedure for Meetings" Number P-23 (as amended).



Section 7. Application Requirements.

- 7.1 Any qualifying entity meeting the definitions set forth in section 4 of this Ordinance may prepare an application to propose an economic development project to the County. Meeting the definition of a qualifying entity does not create any obligation on the part of the McKinley County.
- 7.2 Applications from qualifying entities shall be submitted to the Smart Growth Commission on forms provided by the McKinley County. The Application form template, which may change from time to time without the need to amend this Ordinance, is attached hereto at the end of this Ordinance; and, is called the McKinley County New Mexico Request for Economic Development Incentives.
- 7.3 Applications shall contain the following information for business applicants.

A. Identification information:

- 1) Complete name and address of entity; copy of driver's license for primary contact.
- 2) Incorporation papers with by-laws or list of board of directors, executive director, with addresses, contact information, and resumes of all directors and officers, where applicable

B. Evidence of financial solvency (personal statement of principles);

- 1) Financial statement (income statement and balance sheets) for the past three years. All proprietary and/or confidential information shall be provided to the New Mexico Economic Development Department as a neutral third party with the ability to protect the information as outlined by the Statewide Economic Development Finance Act;
- 2) Federal tax number; the New Mexico State Taxation and Revenue number; and, county business license;
- 3) Projected income statement for at least three years.

C. Evidence of organizational capacity:

- 1) Brief history of the entity;
- 2) Organizational chart of the entity;
- 3) Business plans for the entity and proposed project (shall include pro-forma cash flow analysis);

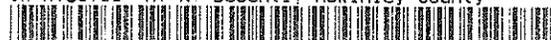
- D. The project participation agreement and any other pertinent information will be provided to the County Commission for final consideration at a regular meeting and shall include the recommendation and report of the Smart Growth Commission.

Section 8. Applicable Review Criteria.

8.1 Applications for economic development projects requesting economic assistance from the County, which meet the policies and objectives of the County's economic development plan – Phase II shall receive priority. Examples Include, but are not limited to:

- A) Manufacturing firms (including intellectual property such as computer software);
- B) Projects, which enhance the exporting capacity of companies and/or provide goods and services, which currently have to be imported into McKinley County.
- C) Private companies seeking to build, expand or relocate facilities;
- D) Private companies which provide facilities or services which enhance the ability of McKinley County businesses to operate;
- E) Organizations, which assist business start-ups or bring small companies together to increase their competitive abilities. This must involve a tangible project, which will create jobs and promote an industry. Examples include, but are not limited to:
 - 1) Business incubators;
 - 2) Art incubators or coalition (e.g. a performing arts coalition seeking construction rehearsal or performance facilities);
 - 3) Public markets for farmers, gardeners, crafts, etc.; and,
 - 4) Organizations which foster economic development by promoting work force development efforts such as apprenticeships or other job training programs;
- F) Projects in industry clusters listed above are particularly encouraged, but others are eligible to apply as well. The intention is to retain flexibility in the use of incentives; and,
- G) Qualifying entities with existing contract or projects with the county when this plan is adopted may propose a restructuring of their projects as an economic development project.

Section 8.2 All applications for economic development projects requesting economic assistance from the County shall submit a cost benefit analysis. Preparing a cost benefit analysis shall be the responsibility of the applicant. The County retains the right to specify a format and methodology for the cost-benefit analysis. The Smart Growth Commission shall review and



approve the methodology used. The source and rationale for any multiplier effects shall be identified. The cost-benefit analysis shall show that the county will recoup the value of its donation within a period of ten years. The analysis shall address the following:

Section 8.3 All applicants, applications, and proposed Project Participation Agreements, requesting economic assistance from the County shall require a review by the Smart Growth Commission for them to be able to make informed recommendations to the County Commission; and, submission of the materials to the New Mexico Economic Development Department for their advice and guidance with the review of projects. This review shall among the financial aspects of the project focus on environmental and community impacts of proposed projects. Special attention shall be given to job training and career advancement programs and policies. Projects shall demonstrate a strong commitment to providing career opportunities for McKinley County area residents. Cultural impacts of projects shall also be considered.

8.4 Any qualifying entity seeking assistance shall prepare and make available a job training and career development plan for their employees.

8.5 All applicants for economic development projects requesting economic assistance from the County shall clearly demonstrate the benefits, which will accrue to the community as a result of the donation of public resources. The County has considerable flexibility in determining what is considered as adequate benefits. Benefits such providing components or production capabilities, which enhance a targeted industry cluster, or addressing critical deficiencies in regional economy, may be recognized. The benefits claimed of any proposal will receive careful scrutiny. However, it is the intent of this ordinance to be flexible in the evaluation of these benefits, and to recognize the qualitative as well as quantitative impact of a proposal.

8.6 All applicants for economic development projects requesting assistance from the County shall clearly demonstrate how the qualifying entity is making a substantive contribution. The contribution shall be of value and may be paid in money, in-kind services, jobs, expanded tax base, property or other thing or service of value for the expansion or improvement of the economy. The County retains flexibility in defining the “substantive contributions”. The benefits identified in the previous paragraphs may be accepted as adequate contributions on their own, or as cash donations may be required. Determination of what constitutes an acceptable contribution for a given project shall be at the discretion of the County Commission.



8.7 Project Participation Agreement.

8.7.1 The qualifying entity shall prepare a proposed project participation agreement, for review and negotiation with the County. This agreement is the formal document, which states the contribution and obligation of all parties in the economic development project. The agreement must state the following items:

- A) The economic development goals of the project;
- B) The contribution of the County and the qualifying entity;
- C) The specific measurable objectives upon which the performance review will be read;
- D) A schedule for project development and goal attainment;
- E) The security being offered for the County's investment;
- F) The procedures by which a project may be terminated and the County's investment recovered; and,
- G) The time period for which the County shall retain an interest in the project. Each project agreement shall have a "sunset" clause after which the County shall relinquish interest in and oversight of the project.

8.7.2 Each project participation agreement shall be subject to review and approval by the County Commission at a public hearing.

Section 9. Public Safeguards.

9.1 All economic development projects receiving assistance from the County shall be subject to an annual performance review conducted by the Smart Growth Commission with the participation of NM EDD as stated above in section 6.1(A). This review shall evaluate whether the project is attaining the goals and objectives set forth in the project participation agreement. This review shall be presented to the County Commission for their consideration. The County Commission at a public hearing may terminate assistance to the economic development project by provisions set forth in the agreement, which terminates the agreement and specifies the disposition of all assets and obligations of the project.

9.2 The County shall retain a security interest, which shall be specific in the project participation agreement. The type security given shall depend upon the nature of economic development project and assistance provided by the county. Types of security may include, but are not limited to:

- A) Letter of credit in the name of McKinley County;
- B) Performance bond equal to the County's contribution;
- C) A mortgage or lien on the real property, and should be made part of the Application;



- D) Pro-rated reimbursement of donation if company reduces work force or leaves the community before the term agreed to; and
- E) Other security agreeable to both parties.

9.3 Should a qualifying entity move, sell, lease or transfer a majority interest in the economic development project before the expiration of the project participation agreement, the County retains the right to deny any and all assignments, sales, leases or transfers of any interests in the economic development project until adequate assurances are made that the transferee, assignee or lessee is a qualifying entity and that the terms of the agreement will be satisfied by the transferee, assignee or lessee. At its discretion, the County may choose to deny said assignment, lease or transfer or may negotiate a new agreement with the new operator, or the town may reclaim the facility and enter into an agreement with the new qualifying entity.

9.4 Any qualifying entity seeking assistance from public resources shall commit to operate in accordance with its project participation agreement from the date the ordinance is adopted and the County Commission passes the project participation agreement.

Section 10. Project Monies. All project monies shall be kept in a separate account by the entity and the County, with such account clearly identified. These accounts shall be subject to an annual independent audit.

Section 11. Termination. The County Commission may terminate this ordinance and the County's economic development plan and any or all project participation agreements undertaken under its authority. Termination shall be by ordinance at a public hearing or in accordance with the terms of the project participation agreement. If an ordinance or a project participation agreement is terminated, all contract provisions of the project participation agreement regarding termination shall be satisfied. Upon termination of the ordinance or any project participation agreement, any County monies remaining in the county project accounts shall be transferred to the County's general fund.

Section 12. HISTORY and REPEALOR

12.1 By Ordinance No. JAN-07-088 McKinley County adopted the first Economic Development Plan signed on January 16, 2007; and, recorded in the records of the County Clerk on January 17, 2007 as Document Number 329385 consisting of nine (9) pages.

12.2 This Ordinance No DEC-14-006, on its effective date, hereby repeals and replaces Ordinance No. JAN-07-088.

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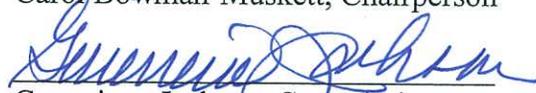


12.3 This Ordinance No. DEC-14-006 will become effective thirty (30) days after it is approved and signed by the Board of County Commissioners, AND recorded for record with the Clerk of McKinley.

ADOPTED BY THE COUNTY COMMISSIONERS OF MCKINLEY COUNTY ON THE 16th DAY OF DECEMBER, 2014.



Carol Bowman-Muskett, Chairperson



Genevieve Jackson, Commissioner



Anthony Tanner, Commissioner

ATTEST:


Harriett K. Becenti, County Clerk

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