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BY TONI



LUNA COUNTY, NEW MEXICO
FIRST AMENDED ORDINANCE 86

AN ORDINANCE ADOPTING THE COUNTY OF LUNA LOCAL ECONOMIC DEVELOPMENT PLAN TO IMPLEMENT THE AUTHORITY PROVIDED BY THE NEW MEXICO LOCAL ECONOMIC DEVELOPMENT ACT (5-10-1 TO 5-10-17)

WHEREAS, the development of the local economy is vital to the well-being of the County and its residents; and

WHEREAS, it can be difficult for municipalities and counties in New Mexico to attract and retain businesses capable of enhancing the local and State economy without the resources necessary to compete with other states and locales; and

WHEREAS, municipalities and counties may need to be able to provide land, buildings and infrastructure and other financial incentives as a tool for basic business growth and the introduction of basic business ventures into the State; and

WHEREAS, it is in the best interests of the State, municipalities and counties to encourage local and regional solutions to economic development; and

WHEREAS, the access to public resources needs to be carefully controlled and managed for the continued and future benefit of New Mexico citizens; and

WHEREAS, the New Mexico State Legislature enacted the Local Economic Development Act (“LEDA”) to implement the 1994 constitutional amendment to Article IX, Section 14 of the Constitution of New Mexico and, after substantive amendments in 2013, this Ordinance was originally enacted to further the aforementioned purposes in conformance to LEDA (Section 5-10-1 through 17, NMSA 1978), as amended from time to time; and

WHEREAS, the New Mexico State Legislature has substantively amended the Local Economic Development Act since enactment of this Ordinance; and

WHEREAS, the Board of County Commissioners of Luna County has determined that the substantive changes to LEDA warrant amendments to this Ordinance to implement the full scope of authority granted by LEDA.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LUNA COUNTY:

Section 1. LOCAL ECONOMIC DEVELOPMENT

This Ordinance may be cited as the “Local Economic Development Ordinance” or “LEDA Ordinance”.

Section 2. AUTHORITY AND LOCAL ECONOMIC DEVELOPMENT PLAN

2.1 This LEDA Ordinance is enacted pursuant to the authority conferred by LEDA to allow public support of economic development projects.

2.2 This Ordinance constitutes the Luna County Economic Development Plan and is adopted as part of the Luna County Comprehensive Plan in compliance with Section 5-10-6, NMSA 1978.

2.3 The Luna County Economic Development Plan allows the Board of County Commissioners of Luna County to direct the County Manager, or designees, to provide Public Support for Economic Development Projects that satisfy the applicable requirement of this Ordinance.

2.4 Public Support may take any form authorized by LEDA and includes, but is not limited to, the purchase or provision of land, buildings or infrastructure, whether already owned by the County or not, construction, purchase or lease of facilities or infrastructure deemed necessary for the Qualifying Project.

2.5 Subject to statutory limitations, the Board of County Commissioners of Luna County may provide Public Support for a portion or all of the eligible costs, including the waiver of applicable fees, including the provision of professional services by County personnel or independent contractors such as feasibility studies, planning and design services or enabling legislation.

2.6 This Ordinance does not create any right or entitlement in any person or entity to public support and nothing contained in this Ordinance or LEDA, nor the satisfaction of the requirements of either, establishes any obligation by Luna County or the Board of County Commissioners of Luna County to offer or provide any public support or any specific type or level of public support. The provision of public support to any Qualifying Entity or to any Qualifying Project, regardless of eligibility or satisfaction of applicable requirements, remains in the sole discretion of the Board of County Commissioners of Luna County.

Section 3. PURPOSE

3.1 The purpose of the LEDA 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. Additionally, it is a purpose of this Ordinance is to allow the County to enter into one or more joint powers agreements to plan and support regional economic development projects, including investments in Arts and Cultural Districts.

3.2 It is the intent of the Board of County Commissioners of Luna County to provide the maximum level of flexibility legally allowed when evaluating and approving public support for Economic Development Projects.

Section 4. DEFINITIONS AS USED IN THE LOCAL DEVELOPMENT ACT

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 (Sections 15-5A-1 through 15-5A-7 NMSA 1978);

4.2 "Broadband Telecommunications Network Facilities" means the electronics, equipment, transmission facilities, fiber-optic cables and any other item directly related to a system capable of transmission of internet protocol or other formatted data at current federal communications commission baseline speed standards, all of which will be owned and used by a provider of internet access services;

4.3 "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 compound educational organizations, performing arts venues and organizations, fine arts organizations, studios and media laboratories and live-work housing facilities;

4.4 "Department" means the New Mexico Economic Development Department;

4.5 "Economic Development Project" or "Qualifying Project" means the project of a Qualifying Entity for which public support may be provided pursuant to the Local Economic

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Development Act;

4.6 "Governing Body" means the Board of County Commissioners of Luna and, in joint projects, a city council, city commission or board of trustees of a municipality or the board of county commissioners of another county;

4.7 "Local Government" means a municipality or county;

4.8 "Municipality" means an incorporated city, town or village;

4.9 "New Full-time Economic Base job" means a job:

4.9.1 that is primarily performed in New Mexico;

4.9.2 that is held by an employee who is hired to work an average of at least thirty-two hours per week for at least forty-eight weeks per year;

4.9.3 that is:

4.9.3.1 involved, directly or in a supervisory capacity with the production of:

4.9.3.1.1 a service; provided that the majority of the revenue generated from the service is from sources outside the state; or

4.9.3.1.2 tangible or intangible personal property for sale; or

4.9.3.1 held by an employee who is employed at a regional, national or international headquarters operation or at an operation that primarily provides services for other operations of the qualifying entity that is located outside the state; and

4.9.4 that is not directly involved with natural resources extraction or processing, on-site services where the customer is present for the delivery of the service, retail, construction or agriculture except for value-added processing performed on agricultural products that would then be sold for wholesale or retail consumption;

4.10 "Person" means an individual, corporation, association, partnership or other legal entity;

4.11 "Plan Participation Agreement" means an agreement made pursuant to Section 5-10-10 NMSA 1978 between a Qualifying Entity and the County whereby the County provides assistance to an Economic Development Project without the participation of the State on the specified terms and conditions in exchange for the benefits promoted by the Local Economic Development Act.

4.12 "Public Support" means the provision of assistance by the state to a local or regional government or the provision of direct or indirect assistance to a Qualifying Entity by a local or regional government for an economic development project. "Public support":

4.12.1 includes the provision of:

4.12.1.1 land, buildings or other infrastructure, by purchase, lease, grant, construction, reconstruction, improvement or other acquisition or conveyance;

4.12.1.2 the placement of new broadband telecommunications network facilities; provided that the facilities shall not serve a public facility or location that already meets federal communications commission baseline speed standards;

4.12.1.3 rights-of-way infrastructure, including trenching and conduit, for the placement of new broadband telecommunications network facilities;

4.12.1.4 public works improvements essential to the location or expansion of a qualifying entity;

4.12.1.5 payments for professional services contract necessary for local or regional governments to implement a plan or provide public support for a project;

4.12.1.6 direct loans or grants for land, buildings or infrastructure;

4.12.1.7 technical assistance to cultural facilities;

4.12.1.8 loan guarantees securing the cost of land, buildings or infrastructure in an amount not to exceed the revenue that may be derived from and increment of the county gross receipts tax imposed at a rate not to exceed one-eighth percent and dedicated by the ordinance imposing the increment for projects;

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- 4.12.1.9 grants for public works infrastructure improvements essential to the location or expansion of a qualifying entity and grants or subsidies to cultural facilities;
- 4.12.1.10 land for a publicly held industrial park or a publicly owned cultural facility, by purchase; and
- 4.12.1.11 the construction of a building for use by a qualifying entity; but
- 4.12.2 does not include the purchase, lease, grant or other acquisition or conveyance of water rights;
- 4.13 "Qualifying Entity" means a corporation, limited liability company, partnership, joint venture, syndicate, association or other person that is one or a combination of two or more of the following:
 - 4.13.1 an industry for the manufacturing, processing or assembling of agricultural or manufactured products;
 - 4.13.2 a commercial enterprise for storing, warehousing, distributing or selling products of agriculture, mining or industry, but, other than as provided in 4.12.5, 4.12.6 or 4.12.9 of this subsection, not including any enterprise for sale of goods or commodities at retail or for distribution to the public of electricity, gas, water or telephone or other services commonly classified as public utilities;
 - 4.13.3 a business in which all or part of the activities of the business involves the supplying of services to the general public or to governmental agencies or to a specific industry or customer, but, other than as provided in 4.12.5 or 4.12.9 of this subsection, not including businesses primarily engaged in the sale of goods or commodities at retail;
 - 4.13.4 an Indian nation, tribe or pueblo or a federally chartered tribal corporation;
 - 4.13.5 a telecommunications sales enterprise that makes the majority of its sales to persons outside New Mexico;
 - 4.13.6 a facility for the direct sales by growers of agricultural products, commonly known as farmers' markets;
 - 4.13.7 a business that is the developer of a metropolitan redevelopment project;
 - 4.13.8 a cultural facility; and
 - 4.13.9 a retail business;
- 4.14 "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
- 4.14 "Retail Business" means a business that is primarily engaged in the sale of goods or commodities at retail and that is located in an unincorporated area of a county.
- 4.15 "State" means the State of New Mexico by and through the New Mexico Economic Development Department.
- 4.16 "Substantive Contribution" means a contribution of value by the Qualifying Entity to an Economic Development Project that may be paid in money, in-kind services, jobs, expanded tax base, property or other thing or service of value for the expansion of the local economy.

Section 5. RESTRICTIONS ON PUBLIC EXPENDITURES OR PLEDGES OF CREDIT

5.1 Local governments are prohibited from providing public support, whether direct or indirect assistance, by Article IX, Section 14 of the Constitution of New Mexico EXCEPT as provided by LEDA or as otherwise permitted by law and is limited to Qualifying Entities for furthering or implementing Qualifying Projects, further an Economic Development Plan.

5.2 Counties may provide support to Qualifying Projects from general fund revenues, the imposition of an increment of the county gross receipts tax, proceeds of a county revenue bond issue and donations from private entities.

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5.3 The total amount of public money expended and the value of credit pledged in a fiscal year in which the money is expended shall not exceed ten percent (10%) of the annual general fund expenditures of the local government in that fiscal year, except that this restriction does not apply to the value of any land or building contributed to any Qualifying Project pursuant to a Project Participation Agreement.

5.4 A County may impose a gross receipts tax and dedicate the revenue for economic development projects through an increment to the county gross receipts tax at a rate not to exceed one-eighth percent. The imposition of a tax must be approved by the voters in referendum.

5.5 The County may use the proceeds of a revenue bond issue to which the revenue from an increment of the county gross receipts tax, imposed at a rate not to exceed one-eighth percent.

5.5 A regional or local government that generates revenue for economic development projects to which the limits herein do not apply, as set out in this subsection and more specifically enumerated in Section 5-10-4, NMSA 1978, shall create an economic development fund into which such revenues shall be deposited. The economic development fund and income from the economic development fund shall be deposited as provided by law. Money in the economic development fund may be expended only as provided in the Local Economic Development Act or the Statewide Economic Development Finance Act.

5.4 If the County imposes, by referendum of the voters, a local option infrastructure gross receipts tax to generate revenue for furthering or implementing Economic Development Plans and Economic Development Projects, as defined in LEDA or in the Statewide Economic Development Finance Act, and seeks to expend such revenue for Arts and Cultural Districts or Retail Businesses shall adopt a Resolution calling for an election to approve approving Arts and Cultural District and Retail Businesses as Qualifying Entities and comply with other applicable statutory requirements, including Section 5-10-4(D), (E), (F) and (G), NMSA 1978.

Section 6. ECONOMIC DEVELOPMENT PROJECT APPLICATIONS

6.1 Only Qualifying Entities seeking public support may submit an Application proposing an Economic Development Project to the Luna County Economic Development Department.

6.2 The County shall provide the form of Application which shall, at a minimum, require the following information, in addition to other information deemed relevant:

6.2.1 Identification of the Qualifying Entity.

6.2.1.1 Name, physical and mailing address of Qualifying Entity;

6.2.1.2 Primary Contact for the Application;

6.2.1.3 Organizational documents i.e Articles of Incorporation, Bylaws, Management Agreement;

6.2.1.4 Owners, Directors, Members and/or Trustees for Qualifying Entity.

6.2.2 Evidence of Financial Solvency

6.2.2.1 For established businesses, financial statements for preceding three (3) years comprised of income statements, balance sheets and tax returns;

6.2.2.2 For new or expanding businesses, personal financial statements for each of the principals in the Qualifying Entity;

6.2.2.3 Federal Tax ID number (EIN or TIN) or social security numbers for principals;

6.2.2.4 New Mexico Business Tax ID number;

6.2.2.5 Luna County business license;

6.2.2.6 Project budget and projected income statement;

6.2.2.7 Banking information;

6.2.2.8 Source and amount of assets, equipment, capital and other funding.

6.2.3 Organizational Capacity

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- 6.2.3.1 Market research, competitive analysis and/or feasibility study;
- 6.2.3.2 Business plan;
- 6.2.3.3 Organizational chart, including workforce projections for Qualifying Entity;
- 6.2.3.4 Projected start-up costs and cash flow analysis;
- 6.2.3.5 Required licenses, certificates and permits;
- 6.2.3.6 Proof of necessary insurance coverage;
- 6.2.3.7 Marketing plan.
- 6.2.4 Environmental impacts.
- 6.2.5 Community and cultural impacts.
- 6.2.6 Description and valuation of the Qualifying Entities Substantive Contribution to the project.
- 6.2.7 Proposed Project Participation Agreement and other necessary documents, such as Promissory Notes and Inter-Governmental Agreements.

Section 7. EVALUATION OF APPLICATIONS

7.1 The County Manager, with the assistance of the Luna County Economic Development Department, will evaluate Applications on a cost/benefit analysis of the project taking into consideration the financial and management stability of the Qualifying Entity, the demonstrated commitment of the Qualifying Entity to the community and other information deemed relevant in making a full review and recommendation regarding approval to the Board of County Commissioners of Luna County.

7.2 The Qualifying Entity is responsible for providing information necessary to prepare the cost/benefit analysis, including but not limited to:

- 7.2.1 Projected number and type of jobs resulting from any construction or start-up activities;
- 7.2.2 Projected number of New Full-Time Economic Base Jobs created over the course of the Project;
- 7.3.3 Projected labor costs;
- 7.3.4 Projected resources utilized for the Project;
- 7.3.5 Projected impact on Gross Receipts Tax;
- 7.3.6 Projected impact on real property values;
- 7.3.7 Projected other direct and indirect costs, including regulatory costs, for the term of the Project;
- 7.3.8 Projected financing and debt service costs;
- 7.3.9 Alternative scenarios for operations and costs.

7.2 Qualifying Entities with Economic Development

The County may negotiate with a qualifying entity on the type or amount of assistance to be provided or on the scope of the economic development project.

7.3 Evaluations shall be presented on a scoring matrix and presented for determination by the Board of County Commissioners of Luna County at a public hearing and Economic Development Projects chosen for public support shall be approved by ordinance.

7.4 Economic Development Projects will receive priority points when evaluation when the Project will operate in a designated industry cluster designated or identified in Luna County's Comprehensive Plan or elsewhere, from time time. Priority Areas include, but are not limited to:

- 7.4.1 Agricultural processing, value-added, delivery and retail operations;
- 7.4.2 Manufacturing plants, including intellectual property;
- 7.4.3 Projects creating or enhancing domestic and international exporting of goods and/or services;

- 7.4.4 Projects building new facilities or expanding or relocating existing local facilities;
- 7.4.5 Projects which complement and increase or expand production capacity, markets or sales of existing businesses, including incubators or accelerators;
- 7.4.6 Projects which create foundational building blocks for future economic development, such as public markets, work force development, apprenticeships, housing or transportation.

Section 8. PROJECT PARTICIPATION AGREEMENT; DUTIES AND REQUIREMENTS

8.1 All Economic Development Plans approved for public support shall require the Qualifying Entity to enter into a Project Participation Agreement with the County.

8.2 Economic Development Plans which involve the Department may also require an Inter-Governmental Agreement specifying additional terms and conditions for the County and Qualifying Entity.

8.3 Public Support provided of Economic Development Project must clearly demonstrate the benefits to the local economy in shall be in exchange for a specified Substantive Contribution expressly stated in the PPA.

8.4 The Qualifying Entity shall provide security for each approved Economic Development Project to each New Mexico governmental entity providing Public Support for the Project. The security shall secure the Qualifying Entity's obligations based on terms stated in the Project Participation Agreement and shall reflect the amount of Public Support provided to the Qualifying Entity and the substantive contribution expected from the Qualifying Entity and may take the form deemed appropriate, in the sole discretion of the County. Contemplated forms of security include but are not limited to:

- 8.4.1 Liens;
- 8.4.2 Mortgages;
- 8.4.3 UCC Financing Statements;
- 8.4.4 Security Agreements and Security Interests;
- 8.4.5 Promissory Notes;
- 8.4.6 Letters of Credit;
- 8.4.7 Performance or Surety Bonds; and
- 8.4.8 "Claw-back Provision".

8.5 If a Qualifying Entity fails to provide the specified Substantive Contribution or otherwise fail to satisfy all obligations in the PPA, the County shall enforce the Project Participation Agreement provisions securing the Public Support to recover that all or a portion of the Public Support. The recovery shall be at least the proportional share of the Public Support tied to the failed performance of the Qualifying Entity but may take into account prior performance under the PPA and the portions of Substantive Contributions made by the Qualifying Entity.

8.6 The PPA for an Economic Development Project that uses Public Support provided by the State to a local or regional government shall include a recapture agreement for the State.

8.7 Project Participation Agreement shall, at a minimum, set out:

- 8.7.1 the contributions to be made by each party to the agreement;
- 8.7.2 the security provided to each governmental entity that provides Public Support for an Economic Development Project by the Qualifying Entity in the form of a lien, mortgage or other indenture and the pledge of the business's financial or material participation and cooperation to guarantee the qualifying entity's performance pursuant to the project participation agreement;
- 8.7.3 a schedule for project development and completion, including measurable goals and time limits for those goals; and

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8.7.4 provisions for performance review and actions to be taken upon a determination that project performance is unsatisfactory.

8.8 The County reserves the right to receive advance written notice and consent to any intent by a Qualifying Entity to relocate, sell, lease, merge, encumber, assign or otherwise substantively alter The ownership, control or operation of approved Economic Development Projects prior to the expiration of the PPA. The County may withhold consent until the provision of adequate assurance, in a form determined in the sole discretion of the Board of County Commissioners of Luna County, sufficient to ensure compliance with the requirements of this Ordinance, applicable laws, including a new determination of Qualifying Entity status, the PPA and other project requirements.

8.9 In the event of a refusal to consent, the County may seek to negotiate a new agreement with the new parties, require a new Application, evaluation and determination or exercise all rights of recovery of the Public Support previously provided.

Section 9. PROJECT REVENUES; SPECIAL FUND; ANNUAL AUDIT

9.1 Revenues dedicated or pledged for funding or financing of Economic Development Projects shall be deposited in a separate account. Separate accounts shall be established for each separate project. Money in the special account shall be expended only for economic development project purposes, which may include the payment of necessary professional services contract costs.

9.2 In the case or joint projects with other entities, regional government projects or state involvement, revenues of each governmental entity dedicated or pledged for economic development purposes shall be deposited in a special account of that governmental entity and may be expended only by that governmental entity as provided by its economic development plan and any joint powers agreement.

9.3 An annual independent audit for each approved Economic Development Plan shall be conducted in accordance with the Audit Act (Sections 12-6-1 to 12-6-14, NMSA 1978) of each special fund and project account. The audit shall be submitted to each participating governmental entity and shall be a public record for purposes of the Inspection of Public Records Act (Sections 14-2-1 through 14-2-12, NMSA 1978).

Section 10. PLAN AND PROJECT TERMINATION

10.1 At any time after approval, the Board of County Commissioners of Luna County may enact an ordinance terminating the Economic Development Plan and dissolving or terminating any or all Projects. An ordinance repealing or substantively amending the Economic Development Plan or Luna County Comprehensive Plan shall not be effective unless the ordinance provides for satisfying existing contracts and the rights of the parties arising from those contracts.

10.2 Any unexpended and unencumbered balances remaining in any project fund or account upon repeal of a plan and termination or dissolution of a Project may be transferred to the general fund. In the case of funds or accounts of joint projects, the unexpended and unencumbered balances shall be divided among the governmental entities as provided in the joint powers agreement.

Section 11. MISCELLANEOUS PROVISIONS

11.1 Nothing in the Local Economic Development act or this Ordinance shall be construed to affect any other requirements of the Constitution of New Mexico, other laws regarding local government debt, the issuance of bonds, use of tax revenues, lease or sale of land or other tangible property.

11.2 The County is specifically authorized to participate programs and projects authorized by LEDA, as it may be amended from time to time, including the recent amendment regarding grants for reimbursement of rent, lease or mortgage payments, pursuant to Section 5-10-17, NMSA 1978.


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11.3 The County Manager, through any appropriate officers or designees, is hereby authorized and directed to take all actions necessary or appropriate to effectuate the provisions of this Ordinance.


11.4 If any section, paragraph or clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such a section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

11.5 All ordinances or resolutions, or parts thereof, inconsistent herewith are hereby repealed. This repealer shall not be constructed to revive any ordinance, or resolution or part thereof, heretofore repealed.


APPROVED and ADOPTED THIS 9th DAY OF DECEMBER, 20'21

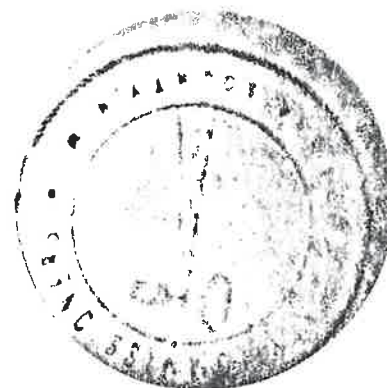

Barbara L. Reedy, Chair
Commissioner, District 1

ATTEST:


Berenda McWright,
County Clerk

APPROVED TELEPHONICALLY
Linda M. Smrkovsky,
Commissioner, District 2


John S. Sweetser,
Commissioner, District 3



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