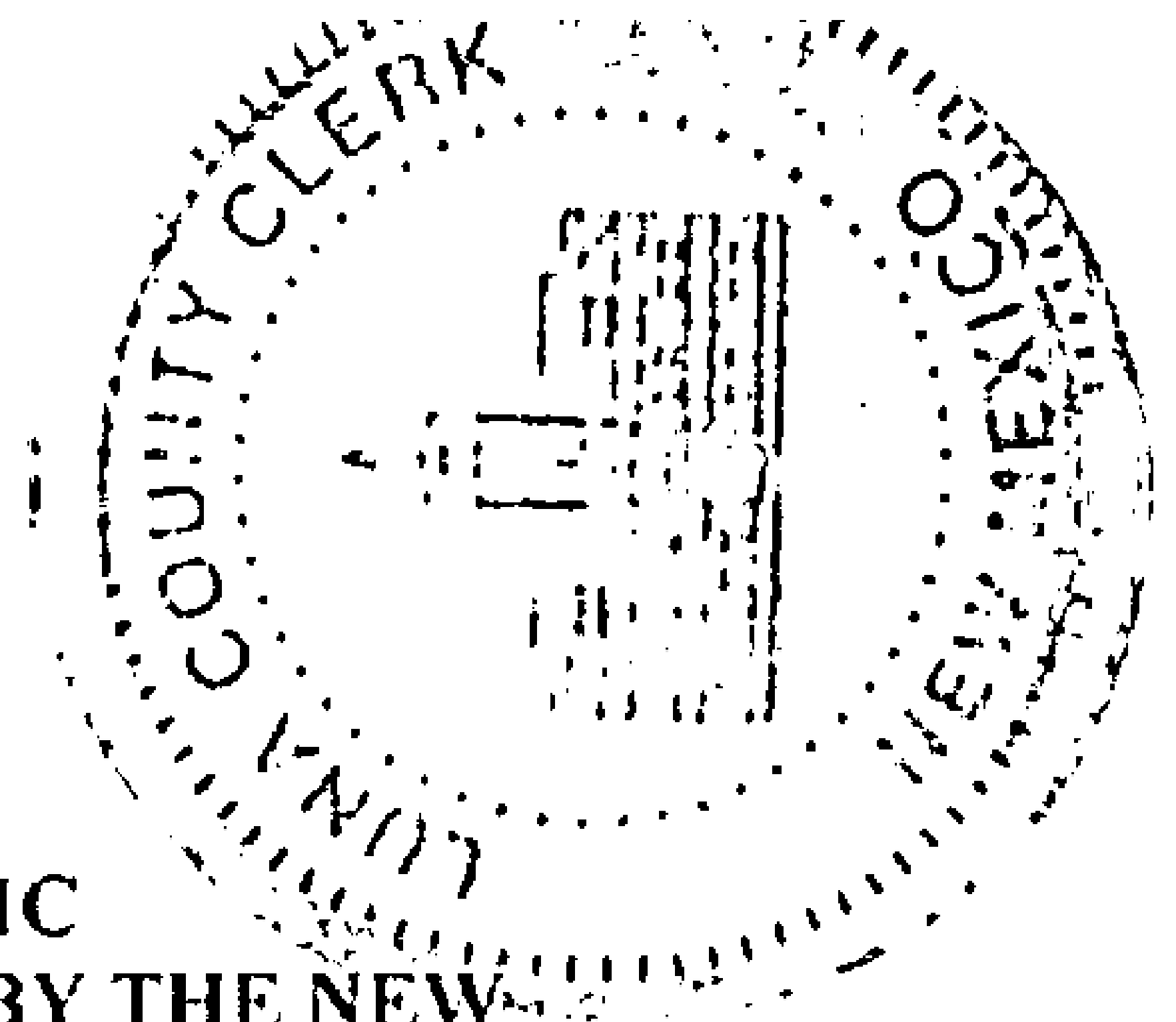


COUNTY OF LUNA, NEW MEXICO  
ORDINANCE NO. 86



**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 5-10-13 NMSA 1978)**

WHEREAS, the development of the local economy is vital to the wellbeing of the County and its residents and;

WHEREAS, local communities may need to provide land buildings infrastructure and other financial incentives to compete with other states and locales in efforts to attract and retain businesses and;

WHEREAS, the New Mexico State Legislature enacted NMSA 1978 sections 5 10 1 to 5 10 13, in titled the Local Economic Development Act, which provides to local governments the authority to use public resources for economic development purposes and;

WHEREAS, the County has a local economic development plan in accordance with the Act for the purpose of implementing the authority provided by the Act and that the plan is consistent with the requirements of the New Mexico Local Economic Development Act.

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

**Section 1. LOCAL ECONOMIC DEVELOPMENT PLAN**

This Ordinance may be cited as the "Local Economic Development Plan Ordinance."

**Section 2. AUTHORITY**

The Local Economic Development Plan Ordinance is enacted pursuant to the statutory authority conferred upon municipalities and counties to allow public support of economic development (NMSA 1978 sections 5 10 1 to 5 10 13). This Ordinance is adopted as part of the County of Luna's economic development plan.

**Section 3. PURPOSE**

3.1 The purpose of the Local 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.

**3.2 Local Economic Development Act.**

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. Counties may impose county infrastructure gross receipts tax and dedicate the revenue for economic development projects. A total of 0.25% tax (in four increment of 0.0625%) may be imposed. Municipalities may impose municipal infrastructure gross receipts tax and dedicate the revenue for economic development projects. Cities may impose up to .1255% in two .0625 increments. The imposition of a tax must be approved by the voters in referendum.

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Section 4. DEFINITIONS AS USED IN THE LOCAL ECONOMIC 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 [15-5A-1 through 15-5A-7 NMSA 1978];

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 "department" means the economic development department;

4.4 "economic development project" or "project" means the provision of direct or indirect assistance to a qualifying entity by a local or regional government and includes the purchase, lease, grant, construction, reconstruction, improvement or other acquisition or conveyance of land, buildings or other infrastructure; public works improvements essential to the location or expansion of a qualifying entity; payments for professional services contracts necessary for local or regional governments to implement a plan or project; the provision of direct loans or grants for land, buildings or infrastructure; technical assistance to cultural facilities; loan guarantees securing the cost of land, buildings or infrastructure in an amount not to exceed the revenue that may be derived from the municipal infrastructure gross receipts tax or the county infrastructure gross receipts tax; grants for public works infrastructure improvements essential to the location or expansion of a qualifying entity; grants or subsidies to cultural facilities; purchase of land for a publicly held industrial park or a publicly owned cultural facility; and the construction of a building for use by a qualifying entity;

4.5 "governing body" means the city council, city commission or board of trustees of a municipality or the board of county commissioners of a county;

4.6 "local government" means a municipality or county;

4.7 "municipality" means an incorporated city, town or village;

4.8 "person" means an individual, corporation, association, partnership or other legal entity;

4.9 "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:

- a) an industry for the manufacturing, processing or assembling of agricultural or manufactured products;
- b) a commercial enterprise for storing, warehousing, distributing or selling products of agriculture, mining or industry, but, other than as provided in Paragraph (5), (6) or (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;
- 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 governmental agencies or to a specific industry or customer, but, other than as provided in Paragraph (5) or (9) of this subsection, not including businesses primarily engaged in the sale of goods or commodities at retail;
- d) an Indian nation, tribe or pueblo or a federally chartered tribal corporation;
- e) a telecommunications sales enterprise that makes the majority of its sales to persons outside New Mexico;
- 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;
- h) a cultural facility; and
- i) a retail business;

4.10 "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

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4.11 "retail business" means a business that is primarily engaged in the sale of goods or commodities at retail and that is located in a municipality with a population of ten thousand or less.

**Section 5. RESTRICTIONS ON PUBLIC EXPENDITURES OR PLEDGES OF CREDIT**

5.1 No local or regional government shall provide public support for economic development projects as permitted pursuant to Article 9, Section 14 of the constitution of New Mexico except as provided in the Local Economic Development Act or as otherwise permitted by law.

5.2 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. The limits of this subsection shall not apply to:

- a) the value of any land or building contributed to any project pursuant to a project participation agreement;
- b) revenue generated through the imposition of the municipal infrastructure gross receipts tax pursuant to the Municipal Local Option Gross Receipts Taxes Act [Chapter 7, Article 19D NMSA 1978] for furthering or implementing economic development plans and projects as defined in the Local Economic Development Act or projects as defined in the Statewide Economic Development Finance Act [Chapter 6, Article 25 NMSA 1978]; provided that 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 adopted by the governing body;
- c) revenue generated through the imposition of a county infrastructure gross receipts tax pursuant to the County Local Option Gross Receipts Taxes Act [Chapter 7, Article 20E NMSA 1978] for furthering or implementing economic development plans and projects as defined in the Local Economic Development Act or projects as defined in the Statewide Economic Development Finance Act; provided that 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 adopted by the governing body;
- d) the proceeds of a revenue bond issue to which municipal infrastructure gross receipts tax revenue is pledged;
- e) the proceeds of a revenue bond issue to which county infrastructure gross receipts tax revenue is pledged; or
- f) funds donated by private entities to be used for defraying the cost of a project.

5.3 A regional or local government that generates revenue for economic development projects to which the limits of Subsection B of this section do not apply 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.

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5.4 In order to expend money from an economic development fund for arts and cultural district purposes, cultural facilities or retail businesses, the governing body of a municipality or county that has imposed a municipal or county local option infrastructure gross receipts tax for furthering or implementing economic development plans and projects, as defined in the Local Economic Development Act, or projects, as defined in the Statewide Economic Development Finance Act, by referendum of the majority of the voters voting on the question approving the ordinance imposing the municipal or county infrastructure gross receipts tax before July 1, 2013 shall be required to adopt a resolution. The resolution shall call for an election to approve arts and cultural districts as a qualifying purpose and cultural facilities or retail businesses as a qualifying entity before any revenue generated by the municipal or county local option gross receipts tax for furthering or implementing economic development plans and projects, as defined in the Local Economic Development Act, or projects, as defined in the Statewide Economic Development Finance Act, can be expended from the economic development fund for arts and cultural district purposes, cultural facilities or retail businesses.

- a) The governing body shall adopt a resolution calling for an election within seventy-five days of the date the ordinance is adopted on the question of approving arts and cultural districts as a qualifying purpose and cultural facilities or retail businesses as a qualifying entity eligible to utilize revenue generated by the Municipal Local Option Gross Receipts Taxes Act or the County Local Option Gross Receipts Taxes Act for furthering or implementing economic development plans and projects as defined in the Local Economic Development Act or projects as defined in the Statewide Economic Development Finance Act.
- b) The question shall be submitted to the voters of the municipality or county as a separate question at a regular municipal or county election or at a special election called for that purpose by the governing body. A special municipal election shall be called, conducted and canvassed as provided in the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978]. A special county election shall be called, conducted and canvassed in substantially the same manner as provided by law for general elections.
- c) If a majority of the voters voting on the question approves the ordinance adding arts and cultural districts and cultural facilities or retail businesses as an approved use of the local option municipal or county economic development infrastructure gross receipts tax fund, the ordinance shall become effective on July 1 or January 1, whichever date occurs first after the expiration of three months from the date of the adopted ordinance. The ordinance shall include the effective date.

## Section 6 ECONOMIC DEVELOPMENT PROJECT APPLICATIONS

6.1 Any qualifying entity meeting the definition set forth above may 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 County.

6.2 Applications from qualifying entities shall be submitted to the County.

6.3 County's evaluation of an application shall be based on the provisions of the economic development plan, the financial and management stability of the qualifying entity, the demonstrated commitment of the qualifying entity to the community, a cost-benefit analysis of the project and any other information deemed necessary for a full review of the economic development project application.

6.4 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.

6.5 Projects shall be approved by ordinance.

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**Section 7 PROJECT PARTICIPATION AGREEMENT; DUTIES AND REQUIREMENTS**

7.1 The qualifying entity shall enter into a project participation agreement with the County.

7.2 Public support provided for an economic development project shall be in exchange for a substantive contribution from the qualifying entity. 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 of the economy.

7.3 The qualifying entity shall provide security to each local or regional government, the state or any other New Mexico governmental entity providing public support for an economic development project. The security shall secure the qualifying entity's obligations based on terms stated in the project participation agreement with the local or regional government and shall reflect the amount of public support provided to the qualifying entity and the substantive contribution expected from the qualifying entity.

7.4 If a qualifying entity fails to perform its substantive contribution, each local or regional government shall enforce the project participation agreement to recover that portion of the public support for which the qualifying entity failed to provide a substantive contribution. The recovery shall be proportional to the failed performance of the substantive contribution and shall take into account all previous substantive contributions for the economic development project performed by the qualifying entity, based on the terms stated in the project participation agreement. The project participation agreement 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.

7.5 The project participation agreement at a minimum shall set out:

- a) the contributions to be made by each party to the participation agreement;
- b) 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 qualifying business's financial or material participation and cooperation to guarantee the qualifying entity's performance pursuant to the project participation agreement;
- c) a schedule for project development and completion, including measurable goals and time limits for those goals; and
- d) provisions for performance review and actions to be taken upon a determination that project performance is unsatisfactory.

**Section 8 PROJECT REVENUES; SPECIAL FUND; ANNUAL AUDIT**

8.1 Local or regional government 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.

8.2 In the case of a regional government, revenues of each local government dedicated or pledged for economic development purposes shall be deposited in a special account of that local government and may be expended only by that local government as provided by the regional government's economic development plan and joint powers agreement.

8.3 The local or regional government shall provide for an annual independent audit in accordance with the Audit Act [12-6-1 to 12-6-14 NMSA 1978] of each special fund and project account. The audit shall be submitted to the local or regional government. The audit is a public record.

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Section 9 PLAN AND PROJECT TERMINATION

9.1 At any time after approval, the governing body of the County may enact an ordinance terminating the economic development plan and dissolving or terminating any or all projects. An ordinance repealing an economic development plan shall not be effective unless the ordinance provides for satisfying existing contracts and the rights of the parties arising from those contracts.

9.2 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 of the local government holding the fund or account. In the case of funds or accounts of a regional government, the unexpended and unencumbered balances shall be divided among the local governments as provided in the joint powers agreement.

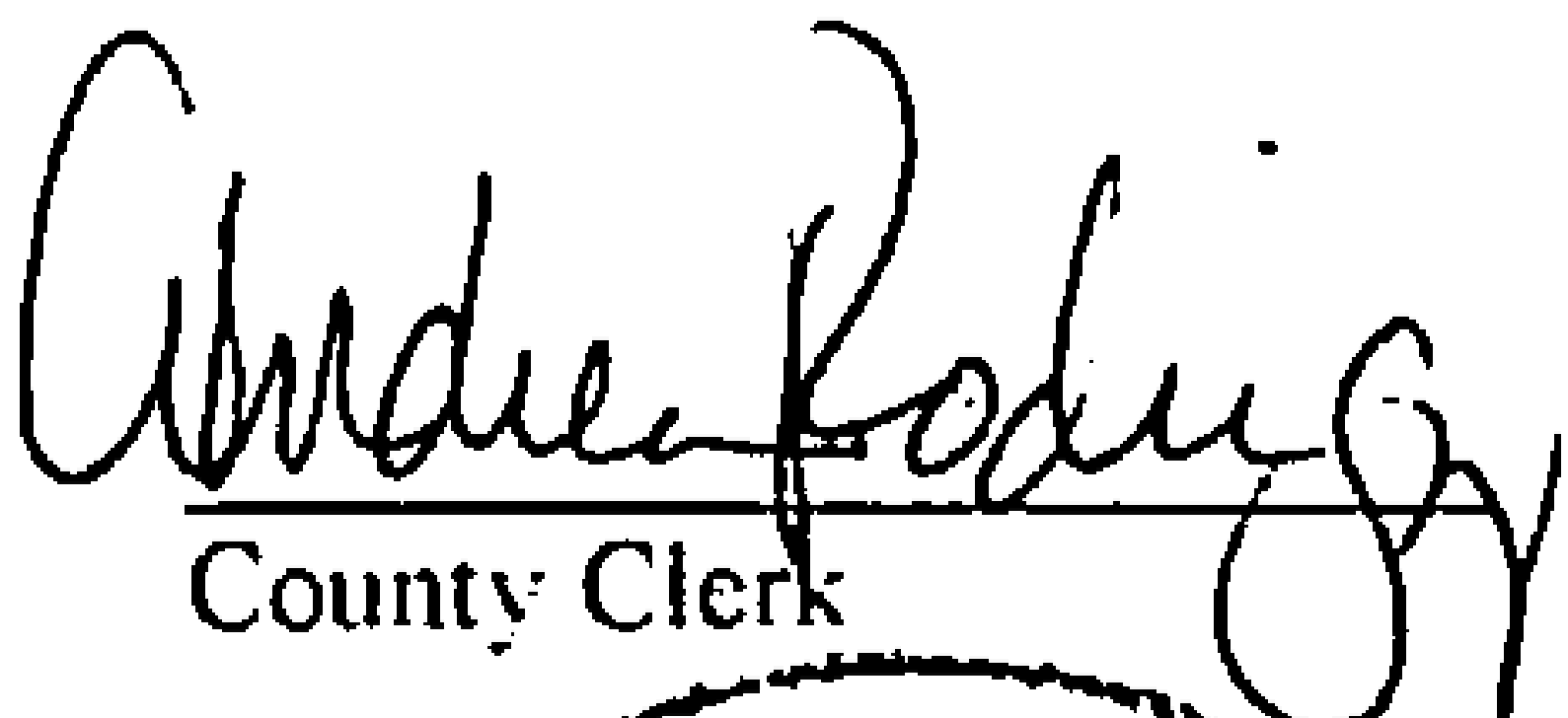
Section 10 The officers of the County are hereby authorized and directed to take all action necessary or appropriate to effectuate the provisions of this Ordinance.

Section 11 If any section, paragraph, 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.

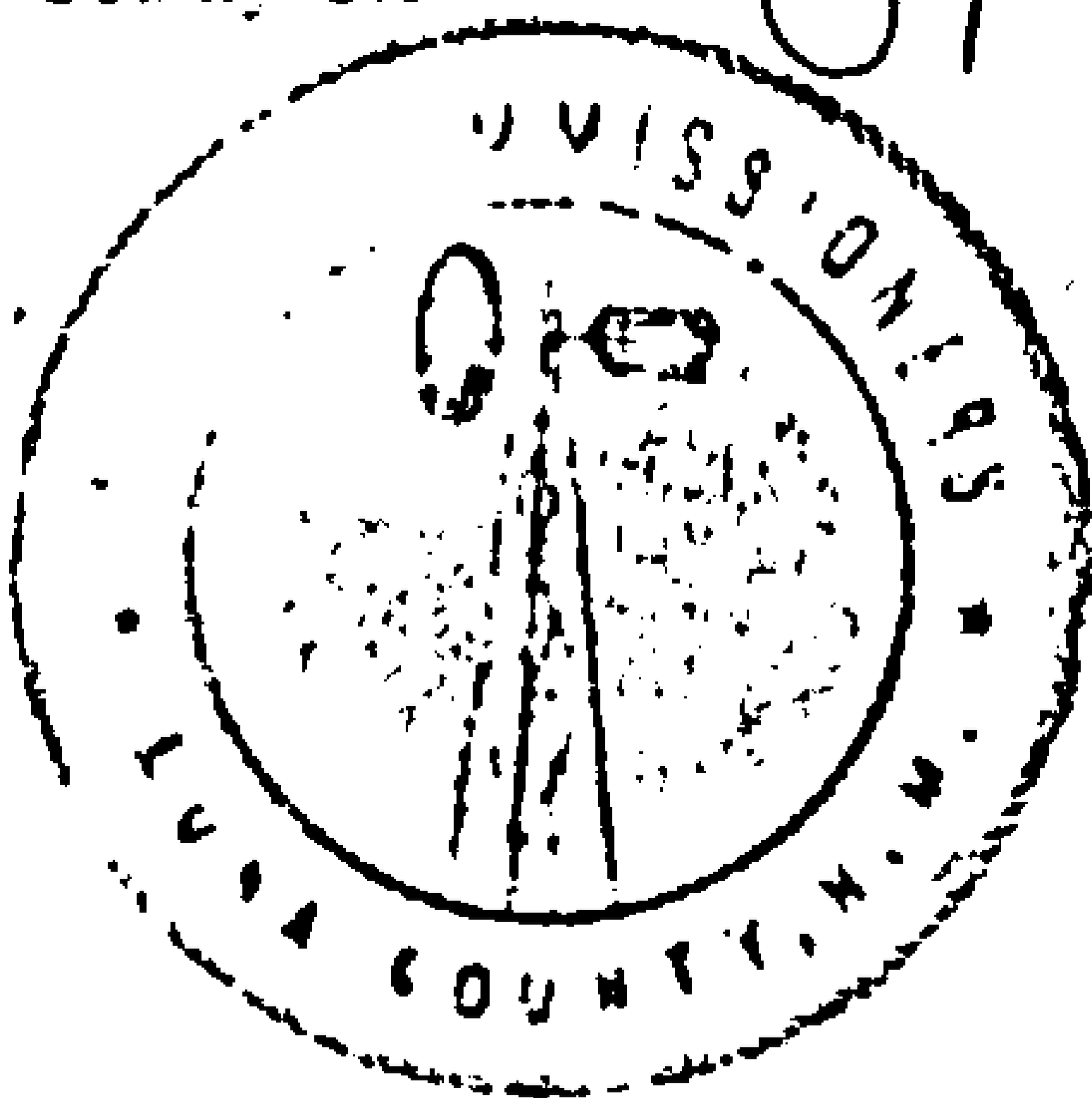
Section 12 All ordinances or resolutions, or parts thereof, inconsistent herewith are hereby repealed. This repealer shall not be constructed to revive any ordinance, or resolution, or part thereof, heretofore repealed.

Passed, Approved, Signed and Adopted this 10<sup>th</sup> day of April, 2014

ATTEST:

  
County Clerk

  
Chairman of the Board of Commissioners



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