

ORDINANCE NO. O-03-01

AN ORDINANCE CREATING A LOCAL ECONOMIC DEVELOPMENT PLAN TO ALLOW PUBLIC SUPPORT OF ECONOMIC DEVELOPMENT WHICH CREATES BASE JOBS IN THE ECONOMY, AND TO ALLOW THE COUNTY TO ENTER INTO ONE OR MORE JOINT POWERS AGREEMENTS WITH OTHER LOCAL GOVERNMENTS TO PLAN AND SUPPORT REGIONAL ECONOMIC DEVELOPMENT PROJECTS.

This Economic Development Plan Ordinance is enacted pursuant to the express statutory authority conferred upon counties to allow public support of economic development (N.M. Stat. Ann. Section 5-10-1 through Section 5-10.13 (1978)).

WHEREAS, the County of Grant has written a Comprehensive Plan that contains an economic development component; and

WHEREAS, the County of Grant wishes to assist with the creation of base jobs in the economic region of the County and is willing to provide public support to enhance the creation of base jobs; and,

WHEREAS, the County is willing to enter into one or more joint powers agreements with other local governments to plan and support regional economic development projects;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF GRANT COUNTY, NEW MEXICO, THAT:

Article I

Section 1. Purpose

The purpose of the Economic Plan Ordinance is to allow public support of economic development projects to foster, promote and enhance the addition of base jobs to the region 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 agreements with other local governments to plan and support regional economic development projects which add base jobs to the economy.

Section 2. Definitions

Definitions of terms are as set out in New Mexico Statutes Annotated 5-10-3 (1978).

Section 3. Economic Development Plan

- A. The County may assist qualifying entities in any legally permissible manner including but not limited to provision of land, buildings and infrastructure provided that all the requirements of this ordinance are met. The County may provide land, existing buildings

or existing infrastructure it already owns, or it may build, purchase or lease the facilities needed for an economic development project, or it may build or contract to have built new infrastructure. The County at its discretion may bear the full cost or contribute a portion of the costs incurred in the application process.

- B. The County, at its discretion, may also contribute in the payment of costs for professional services contracts such as industry impact analysis.
- C. The County may use public funds, to the extent allowable by statute, to offset the costs of a prospective business for relocation, training, rent, or otherwise.
- D. The project participation agreement will show that the value of incentives provided to a project are in reasonable proportion to the projected economic gain the County of Grant will received from the project.
- E. The costs incurred by the County which are associated with the granting, leasing, or selling of County property or in the contracting of other services may be part of the County's contribution to the economic development project or may be assessed to the project. Any fees associated with the application and with the process will be based on direct costs acquired by the County in conducting the application review.
- F. The governing body 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.

Article II

Incentive Review Committee

Section 1. Composition

The incentive review committee shall be seven persons, all of whom must reside within Grant County. The persons will be qualified by training, experience, and ability to exercise sound and practical judgment on civic, social, economic and governmental affairs. Every effort will be made to represent, as much as possible, the racial, cultural, economic and gender make-up of the County of Grant.

Section 2. Appointment

The incentive review committee will be appointed by the Grant County Board of County Commissioners

Section 3. Terms

Appointments to the committee shall be for terms of two years except for the initial appointments of members. Initially, three members shall have a one year term and four members shall have a two year term. Each subsequent term of a member shall be for two years to maintain the original staggering of terms of membership. There shall be no limitation of the number of consecutive terms a member may serve on the incentive review committee.

Section 4. Officers

The committee shall elect its chairman from among its members for a term of one year with eligibility for reelection.

Section 5. Meetings, Rules

The committee shall hold at least one regular meeting each calendar month providing that a participation agreement has been submitted for review. The presiding officer may call meetings at such times and on such dates as determined necessary. The committee shall adopt rules for transaction of its business and keep a record of resolutions, transactions, findings and determinations which shall be a public record. This is a working committee, therefore, absences are discouraged. After three (3) unexplained absences, a board member will be presumed to have resigned, and the presiding officer will consult with the Board of County Commissioners for a replacement. Any committee member aggrieved by the determination of a presumed resignation may request, within ten (10) days from a receipt of a written notice that the resignation is effective, a public hearing before the County Commission. If the County Commission determines by a majority vote of the members present, that the aggrieved board member did have three unexplained absences, or if no public hearing is requested within the ten-day period, the resignation shall be presumed and the County Commission with the advice of the Incentive Review Committee shall appoint a new member to complete the term of the resigning member. Five members will constitute a quorum.

Section 6. Responsibilities

A. The incentive review committee shall:

- (1) Review proposed project participation agreements and make recommendations to the County Commission to accept the agreement as proposed, to accept the agreement with recommended changes, or to reject the agreement.
- (2) Maintain a fair, impartial review process and evaluate the project participation agreement on its economic merits rather than on political considerations.
- (3) Approve the application form which guides the project participation agreement.
- (4) Review staff's analysis of the impact of an agreement on the County.
- (5) Request necessary information to perform due diligence on the project.

- (6) Recommend the contractual obligations of the County and of the applicant.
- (7) Perform annual reviews of participation agreements during the term of the participation agreement to verify that the qualifying entity is meeting its contractual obligations.
- (8) Forward recommendations to the County Commission when failure of performance on the part of a qualifying entity warrants agreement cancellation or enactment of call-back provisions.

Article III

Project Participation Agreement

Section 1. Project Participation Agreement Process

- A. Any qualifying entity meeting the definition set forth in Article III, Section 2 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.
- B. Applications from qualifying entities shall be submitted to the County Manager on a project participation agreement application form provided by the County.
- C. Applications will require summary narration of the project and its principals, evidence of financial solvency, evidence of organizational capacity, summaries of funding sources for the project, a description of anticipated environmental impacts, a proposed agreement outlining the economic impact of the project, and the assistance requested from the County.
- D. The incentive review committee will evaluate the application and make a recommendation to the County Commission to approve, approve with modifications, or reject the project participation agreement.
- E. Applicants whose agreements are forwarded with recommendations for approval or approval with modifications, will be required to submit documentation to verify the financial information submitted in the application.
- F. A narrative summary of project participation agreements presented to the incentive review committee will be made available to the public two weeks prior to the incentive review committee's meeting. Public comment will be allowed at the incentive review committee meeting.

- G. The County Commission will make a final determination on the approval of a proposed participation agreement and will adopt approved agreements by resolution in open meeting.

Section 2. Review Criteria

- A. Proposed project participation agreements from qualifying entities must meet the adopted policies of the County and the County's objectives for economic development.
- B. Incentive review committee will review proposed projects to determine if they:
- (1) employ citizens of Grant County
 - (2) offer job opportunities that will develop higher level job skills that pay above minimum wage
 - (3) offer job opportunities that diversify the types of employment in the region
 - (4) offer health insurance, retirement programs, and other employee benefits such as child care assistance
 - (5) offer existing business in Grant County an opportunity to expand
 - (6) offer Grant County citizens an opportunity to start a business
- C. The incentive review committee may not approve an applicant whose project poses a threat to the environment.
- D. The participation agreement shall contain a cost-benefit analysis. Preparing the cost-benefit analysis shall be the responsibility of the applicant. The County retains its right to specify a format and methodology for the cost-benefit analysis. The incentive review committee shall review and approve the methodology for the cost-benefit analysis. The source and rationale for any multiplier effects shall be identified. Multiplier formulas may include counts for indirect jobs and for induced impact of payroll created through indirect jobs. The cost-benefit analysis shall address the following:
- (1) The number and types of jobs to be created, both temporary construction jobs and permanent jobs, both direct and indirect jobs.
 - (2) pay scales for jobs.
 - (3) Businesses offering jobs to be filled by residents of Grant County versus those which are expected to be filled by transfers from the company or by those recruited from outside Grant County.
 - (4) total payroll expected at business start-up and after one year.

- (5) anticipated impact of project on local tax base, both gross receipts taxes and property taxes.
 - (6) anticipated impact on local school system.
 - (7) anticipated impact on water and sewer capacity.
 - (8) anticipated impact on roads and other services such as fire, police, and health services.
 - (9) anticipated impact on the general quality of life of the community.
 - (10) any additional factors established by policy.
- E. All applicants for economic development projects which request assistance from the County shall clearly demonstrate the benefits which accrue to the community as a result of the contribution of public resources. The County has considerable flexibility in determining what is considered an adequate return for the public investment or public contribution. It is the intent of this ordinance to be flexible in the evaluation of these benefits, and to recognize the qualitative as well as the quantitative impacts of a proposal.
- (1) benefits derived from a project may be dollars, in-kind services, jobs, expanded tax base, or other services that expand or improve the economy.
 - (2) a project will be evaluated on the level of risk that is assumed by the County in the event that the project fails to meet its objectives.

Section 3. Public Safeguards

- A. All economic development projects receiving assistance from the County shall be subject to an annual performance review for the duration of the contract. 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 incentive review committee for its consideration. The County Commission at a public hearing may terminate assistance to the economic development project by passage of a resolution which terminates the agreement and specifies the dispositions of all assets and obligations for the project as set forth in section 4.
- B. The County may choose to retain ownership in a project.
- C. The County may choose to provide an incentive which is unsecured if the incentive review committee and the County deem the level of risk of the project to succeed is such that relying on good faith performance is appropriate security for the assistance contributed.

- D. The County may include provisions in a project participation agreement that provide for forgiveness of obligations if the economic development project performs in good faith but is unable to meet its contractual obligations to the County.
- E. 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 agreement, lease or transfer or may negotiate a new agreement with the new operator or the County may reclaim the property and enter into an agreement with a new qualifying entity.
- F. Any qualifying entity seeking assistance from public resources shall commit to operate in accordance with its project participation agreement for the specified time period in the contract.

Section 4. Project Monies.

All monies budgeted and allocated for a project shall be kept in separate accounts by the entity and the County, with such accounts clearly identified. These accounts shall be subject to an annual independent audit.

Section 5. Termination.

The County may terminate this ordinance and the County's economic development plan and any or all project participation agreements undertaken under its authority. Termination of this plan or any projects shall be by ordinance at a public hearing or in accordance with the terms of the project participation agreement. If either 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 monies remaining in County project accounts shall be transferred to the County's general fund.

Section 6. Joint Regional Projects.

The County may engage in economic development projects involving one or more other governmental entities for projects which encompass more than one municipality or county. In such instances, a joint powers agreement shall be adopted by the relevant governing bodies. 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 7. Policies and Procedures

The Grant County Comprehensive Plan and such other forms, policies and procedures as are deemed necessary by the County in order to implement this ordinance are hereby adopted as part of the County's Economic Development Plan and are incorporated by reference.

Section 8. Severability.

The provisions of the ordinance are severable and the invalidity of any part of this ordinance shall not affect the validity of the rest of the ordinance.

PASSED, APPROVED AND ADOPTED THIS 13 Day of March, 2003.

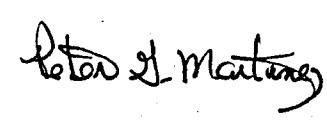
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OF GRANT COUNTY




HENRY TORRES, CHAIRMAN


JOE ARELLANO, MEMBER


CHARLES KELLY, MEMBER

ATTEST: 


JEFF CARBAJAL
COUNTY CLERK

Approved as to form:


SHERRY TIPPETT
COUNTY ATTORNEY