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COLFAX COUNTY, NM - Freda L. Baca - County Clerk
DOC# 201502684 PAGE: 1 of 6

Ordinance No. 2015-03

Local Economic Development Act

AN ORDINANCE REPEALING COLFAX COUNTY ORDINANCE 2011-01; AN ORDINANCE RELATING TO ECONOMIC DEVELOPMENT PLANNING IN ITS ENTIRETY; EXPANDING A BUSINESS THAT IS A QUALIFIED ENTITY FOR PURPOSE OF THE LOCAL ECONOMIC DEVELOPMENT ACT TO INCLUDE RETAIL BUSINESSES; AND REMOVING THE PROHIBITION ON PUBLIC SUPPORT OF ECONOMIC DEVELOPMENT PROJECTS IN RURAL AREAS INVOLVING RETAIL SALES.

AN ORDINANCE PERTAINING TO ECONOMIC DEVELOPMENT; ADOPTING AN ECONOMIC DEVELOPMENT PLAN; DESCRIBING TARGETED BUSINESS AND INDUSTRY; ESTABLISHING CRITERIA TO DETERMINE ELIGIBILITY FOR AID;

DESCRIBING THE INFORMATION REQUIRED IN AN ECONOMIC DEVELOPMENT APPLICATION; DESCRIBING THE PROCEDURE TO VERIFY APPLICATION INFORMATON; DESCRIBING THE PROJECT PARTICIPATION AGREEMENT; DECRIBING THE PROCEDURE FOR HANDLING PROJECT REVENUES; IDENTIFYING OTHER REVENUE SOURCES USED TO SUPPORT ECONOMIC DEVELOPMENT PROJECTS; IDENTIFING LOCAL RECOURCES AVAILABLE FOR ECONOMIC DEVELOPMENT PROJECTS; DETAILING THE MINIMUM BENEFITS REQUIRED FROM A QUALIFYING ENTITY; AND DESCRIBING THE SAFEGUARDS OF PUBLIC FUNDS THAT WILL BE ENSURED.

BE IT ORDAINED by the Board of County Commissioners of Colfax County, New Mexico:

Section 1. Findings

It is the public interest of Colfax County, New Mexico, to afford all

reasonable assistance which is permitted by the authority vested in the County Commission to assist the communities of Colfax County and neighboring counties to obtain new economic and industrial development projects. This assistance benefits the citizens of Colfax County by affording employment opportunities, by furnishing new sources of income, and in general by improving the economic environment of Colfax County.

It is 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. Municipalities and counties may need to be able to provide land, buildings and infrastructure as a tool for basic growth and the introduction of basic business ventures into the state. It is in the best interest of the state, municipalities and counties to encourage local or regional solutions to economic development. The access to public recourses needs to be carefully controlled and managed for the continued and future benefits of the citizens of Colfax County, New Mexico.

It is the purpose of this ordinance to implement the Local Economic Development Act, Section 5-10-1 through 5-10-3 NMSA 1978. The 1994 constitutional amendment to Article 9, Section 14 of the Constitution of New Mexico to allow support of economic development to foster, promote and enhance local economic development efforts while continuing to protect against the unauthorized use of public money and other public resources. This act also allows municipalities and counties to enter into joint powers agreements to plan and support regional economic development projects.

Section 2. Target Business and Industry

The economy of Colfax County has historically been supported by four basic industries: agriculture, energy and mining, recreation, and railroad. Emerging industries, such as renewable energy, information technologies, and highway transportation will be added as new sectors in Colfax County's economic development efforts. Colfax County will focus on new or expanding industries which enhance these base sectors, as well, as other light to moderately heavy industries which would further diversify the County's economy. The purposes of the Economic Development Ordinance are to allow public support of economic projects and 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 local governments to plan and support regional economic development projects.

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: however, the imposition of a tax must be approved by the voters in referendum.

Eligible uses: Upon approval by voter referendum, the County may direct the proceeds of a County infrastructure gross receipts tax and dedicate the revenue for economic development projects. A total of 0.125% tax (in two increments of 0.0625%) may be imposed.

Section 3. Definitions as used in the Economic Development Plan Ordinance

A. **Arts and Cultural District** means a facility owned by the state, a county, municipality or a qualifying entity that serves the public through preserving, educating and promoting the arts organizations, studios and media laboratories and live-work housing facilities:
B. **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 theatres, museums, libraries, galleries, cultural compounds, educational organizations, performing arts venues and organizations, fine art organizations, studios and media laboratories and live-work housing facilities:
C. **Colfax County Economic Development Committee (CCEDC) means a committee of not more than seven (7) voting members consisting of the County Commissioner in whose district the proposed economic development project is located, the County Manager and including a representative from each economic development organization (EDO), designated by that EDO, in each of the following localities: Angel Fire, Cimarron, Eagle Nest, Raton, and Springer. The CCEDC shall be chaired by the County Manager. The CCEDC shall be a standing committee that meets on a quarterly basis or at the call of the County Manager. The County Manager shall convene the CCEDC after the receipt of a formal application and a review by the County Manager, or a designated Third Party, as to the appropriateness of the application.**
D. **Department** means the New Mexico Economic Development Department:
E. **Economic Development Corporation (EDC) means the economic development organization (EDO) from either Angel Fire, Cimarron, Eagle Nest, Raton or Springer, designated annually in a resolution by the County Commission to promote economic development throughout the County and to fulfill specific responsibilities with regard to the County's economic development plan.**
F. **Economic Development Organization (EDO) means a non-profit organization operating within the County whose mission includes local economic development.**
G. **Economic Development Project or "projects"** means the provision of direct or indirect assistance to a qualified entity by a local or regional government and includes the purchase, lease, grant, construction, reconstruction, improvement or other acquisition or conveyance of land, building 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, building, 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; grant for public works infrastructure improvements essential to the location or expansion of a qualifying entity; grants or subsidies to cultural facilities; purchase 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.

H. **Governing Body** means the city council, city commission or board of trustees of a municipality or the board of county commissioners.

I. **Local Government** means a municipality or county.

J. **Municipality** means an incorporated city, town or village.

K. **Person** means as individual, corporation, association, partnership or other legal entity.

L. **Qualifying Entity** means as 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 , that is current on any state tax liability:

  A. An industry for manufacturing, processing, or assembling of any agricultural or manufacturing projects:

  B. A Commercial enterprise for storing, warehousing, districting, or selling products of agriculture, mining or industry, but other than provided in Paragraph (D) of this subsection, not including any enterprise for the distribution to the public or 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 generates the majority of its sales to persons outside of New Mexico.

  E. A facility for the direct sales by growers of agricultural products, commonly known as farmer's markets:

  F. A cultural facility: and

  G. A retail business

  H. An Indian Nation, tribe or pueblo or a federally chartered tribal corporation:

M. **Project Participation Agreement** means an agreement between a qualifying entity and the village whereby the village provides assistance to an economic development project in exchange for the benefits received as set forth in this section.

N. **Regional Government** means any combination of municipalities and counties that enter into a joint powers agreement to provide for economic development projects pursuant to plan adopted by all parties to the joint powers agreement.

O. **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.

Q Third Party means the New Mexico Economic Development Department, local bank or other institution possessing the requisite knowledge, skills and resources to conduct the analysis of the project shall serve as a Third Party administrator for the due diligence process and make a recommendation to the CCEDC as to the financial feasibility of the requested project.

Section 4. Economic Development Project Assistance Application Processing

The applicant shall prepare a detailed application in writing in the format found on the County website as established by the County Commission. The application shall be accompanied by an application fee in the amount established from time to time by resolution of the County Commission. The application shall be delivered to the Colfax County Manager for initial review and processing by the CCEDC. Proceeds from the application fees shall be restricted solely for the purpose of funding the activities of the County's economic development plan. In no event shall any part of the application fee be refundable to the applicant, regardless of the cost of processing the application.

Information Required to Determine that Applicate is Financially Solvent and Committed to the Community. The Colfax County Manager or designee will receive all applications. The initial evaluation shall determine the financial feasibility of the project, the financial strength, reputation and competence of the applicant, a cost-benefit analysis of the project. The evaluation of proposals shall be done by the Colfax County Manager or a qualified Third Party. For the purposes of this ordinance a Third Party is defined as the New Mexico Economic Development Department, a bank, or other institution possessing the requisite knowledge, skills and resources to conduct the analysis of the project. The results of this evaluation shall then be provided to the CCEDC.

Section 5. <u>Economic Development Corporation (EDC)</u>

The County recognizes that economic development is a necessary component for a growing community. The creation of additional and higher paying jobs is of high importance for the improvement of the quality of life for the residents of Colfax County. Additional business in the County helps add to, stabilize and diversify the County revenues. The County shall designate annually, by resolution of the County Commission, one of the County EDO's as the Economic Development Corporation for the County during that fiscal year.

Section 6. <u>Economic Development Projects- Restrictions on Public Expenditures or Pledges of Credit on Public Expenditures or Pledges of Credit</u>

All applications for economic development projects requesting economic assistance from the county shall undergo a cost-benefit and financial feasibility analysis. This analysis shall be conducted by the Colfax County Manager or a qualified Third Party, as defined herein. The analysis shall include, at minimum, the financial feasibility of the project, the financial strength, reputation, and competence of the applicate, the cost-benefit analysis of the project, the ratio of money to private money invested in the project, and the estimated schedule for return on the county's investment. The analysis shall demonstrate the number of jobs created, the types of jobs created, total expected payroll at startup through ten years, and the anticipated impact on local tax rolls.

Upon receipt of an application for county assistance the County Manager shall forthwith cause an investigation of the applicant and of the matters contained in the application, which shall include an investigation of at least the following factors:

A. Determine whether the project can be lawfully instituted, constructed or operating with the county assistance proposed in the application.
B. Insure that the project conforms to the Colfax County Economic Development Plan.
C. Develop any other information the County Commission may deem necessary for a full review of the economic development project application.
D. Upon completion of the investigation, the County Manager and the CCEDC shall formulate a written report concerning the application and shall submit it to the Colfax County Commission. The written report shall summarize the findings of the investigation and shall conclude with a recommendation to the County Commission. The decision to fund the proposed project shall be made solely by the County Commission.

Section 7. <u>The Project Participation Agreement</u>

Upon approval by the Colfax County Commission, the County and the applicant will enter into a project participation agreement which shall set out:

A. The contributions to be made by each party to the participation agreement.
B. The security provided to the County by the qualifying entity in the form of a lien, mortgage or other indenture and the pledge of the qualifying businesses 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.

D. Provisions for performance review and actions to be taken upon Determination that project performance is unsatisfactory.

E. Specific procedures to determine success and methods for recouping investments in the event an economic development project is determined to be unsuccessful, or if a qualifying entity seeks to leave the area.

Section 8. Project Revenues

County revenues dedicated or pledged for funding or financing of economic development projects under this ordinance shall be accounted for separately for each individual project.

Funds dedicated to an economic development project may include the payment of professional services contracts.

Section 9. Other Revenue Sources

If revenue sources other than those of the County are used to support an economic development project, the source and amount of any such funding must be disclosed.

Section 10. County Resources Available

Available resources the County may offer qualifying businesses include:

A. Land the County is willing to lease, sell, or grant.

B. Buildings the County is willing to lease, sell, or grant.

C. Infrastructure the County is willing to build, extend, or expand.

D. Financial Resources Available

1. Industrial Revenue Bonds

2. Local Economic Development Act revenues

Section 11. Minimum Benefit Required from a Qualifying Entity

The County may require any or all the following criteria as a minimum benefit from a qualifying entity in order to provide economic development assistance.

A. Number and type of jobs created.

B. proposed payroll.

C. Repayment of loans, if any.

D. Purchase by the qualifying basic business of County-provided land, building or infrastructure.

E. Pubic-to-private investment ratio. The amount of private dollars invested in a project must be at least twice the amount of public dollars invested in the economic development project.

F. Serves the public benefits of the citizens of Colfax County or neighboring counties, or municipality within the region, as determined and approved by the County Commission.

Section 12. Safeguard of Public Resources

If a qualifying entity ceases operations, relocates, or otherwise defaults or reneges on its contractual or implied obligations to the County, the County will recover any costs, land, buildings, or other thing of value. The Project Participation Agreement shall contain a specific term to establish default provisions and remedies for recoupment of public resources.

PASSED, AND APPROVED AND ADOPTED this 11th day of August, 2015.

APPROVED:

Colfax County Board of Commissioners

BY: William E. Sauble

BY: James L. Newton

BY: R. J. Ferrari

Freda L. Baca

Freda L. Baca
Colfax County Clerk

BOARD OF COUNTY COMMISSIONERS
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COLFAX COUNTY