

INCORPORATED COUNTY OF LOS ALAMOS ORDINANCE NO. 543

AN ORDINANCE AMENDING AND RESTATING THE ECONOMIC DEVELOPMENT PLAN OF THE COUNTY IN ACCORDANCE WITH THE LOCAL ECONOMIC DEVELOPMENT ACT, SECTIONS 5-10-1 THROUGH 5-10-13 NMSA 1978, AS AMENDED AND SUPERSEDING ORDINANCE NO. 501.

THE INCORPORATED COUNTY OF LOS ALAMOS HEREBY ORDAINS:

Section 1. Short Title. This ordinance shall be known as the Los Alamos County Economic Development Plan.

Section 2. Authority. This ordinance is enacted pursuant to the express authority conferred upon municipalities and counties by the Local Economic Development Act (NMSA, 1978, §§5-10-1 et seq.) hereinafter referred to as "the Act".

Section 3. Purpose. The purpose of this ordinance is to amend and restate the Economic Development Plan, in accordance with the Local Economic Development Act, Sections 5-10-1 through 5-10-13 NMSA 1978, as amended, to allow public support of economic development to foster, promote and enhance local economic development efforts through the use of project participation agreements with qualifying entities while continuing to protect against the unauthorized use of public money and other public resources. This ordinance also allows the County to enter into joint powers agreements with other local governments to plan and support regional economic development projects.

Section 4. Definitions. As used in this ordinance:

A. "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.

B. "Economic development project" means the provision of direct or indirect assistance to a qualifying business by the County or another 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 business; 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; 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 business; 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 business.

C. "Project participation agreement" means an agreement between a qualifying entity and the County whereby the County provides assistance in the form of an economic development project in exchange for benefits received as set forth in this ordinance.

D. "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:

- (1) an industry for the manufacturing, processing or assembling of any agricultural or manufactured products;
- (2) a commercial enterprise for storing, warehousing, distributing or selling products of agriculture, mining or industry, but, other than as provided in paragraph (5) or (6) 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;
- (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 paragraph (5) of this subsection, not including businesses primarily engaged in the sale of goods or commodities at retail;
- (4) an Indian nation, tribe or pueblo or a federally chartered tribal corporation;
- (5) a telecommunications sales enterprise that makes the majority of its sales to persons outside New Mexico;
- (6) a facility for the direct sales by growers of agricultural products, commonly known as farmers' markets; or
- (7) a business that is the developer of a metropolitan redevelopment project.

Section 5. Economic Development Assistance.

A. The County may provide any type of direct or indirect assistance as an economic development project which is authorized under the Act.

B. The total amount of public money expended and the value of credit pledged in the fiscal year in which that money is expended or credit pledged by the County for economic development projects shall not exceed ten (10) percent of the annual general fund expenditures of the County in that fiscal year. The foregoing restrictions shall not apply to those items which are not subject to the limitations on public expenditures or pledges of credit under the provisions of the Act.

C. This ordinance shall not be construed to create any right, entitlement or expectation in any person to receive assistance or funds from the County for an economic development project.

Section 6. Application Requirements.

A. Application from qualifying entities shall be submitted to the County Administrator's Office in a format established by the County.

B. To the maximum extent permitted by the Inspection of Public Records Act [NMSA, 1978, §§14-2-1 to 14-2-12], all personal and business financial records and proprietary information furnished to verify any information required to complete an application for assistance for an economic development project shall be treated as and remain confidential.

Section 7. Application Review Process.

A. The County Administrator's Office shall review each application, verify the information furnished by the applicant and evaluate the feasibility of the project, the financial and management capabilities and stability of the applicant and the demonstrated commitment of the applicant to the community. The County Administrator's Office shall also determine whether the project is permitted and the applicant qualifies for economic assistance under this ordinance, and whether the project will provide a public benefit to the residents of the County by contributing to the achievement by the County of self-sufficiency through economic diversification and increased job and income opportunities.

B. Each application shall contain a cost-benefit analysis in a format acceptable to the County Administrator's Office. The proposed project shall be consistent with the provisions of this ordinance and the objectives and priorities of the Los Alamos County Economic Development Strategic Plan, the County Council's strategic goals and objectives or the County's Master Plan-Downtown Los Alamos, as applicable.

C. Upon completion of the review process, the County Administrator shall make a recommendation to the County Council whether the proposed project should be approved. Each economic development project shall be approved by ordinance.

D. An application by a qualifying entity requesting economic assistance and industrial revenue bonds from the County shall require the same review. This review shall focus on economic, environmental and community impacts of the proposed project.

Section 8. Objectives and Priorities.

A. OBJECTIVES

The economic development objective of the County is to establish a community and economic climate attractive to private businesses and to thereby achieve self-sufficiency through:

- (1) economic diversification;
- (2) expansion of the tax base;
- (3) increased job and income opportunities;
- (4) retention and expansion of existing businesses and industries;

- (5) recruitment of businesses that utilize the County's science and technology assets and which complement and support the Los Alamos National Laboratory;
- (6) strong entrepreneurship and business start-up activities; and
- (7) strengthening the business sector and redevelopment of nonresidential areas.

B. PRIORITIES

Those qualifying entities which fall within any one or more of the following categories shall receive priority:

- (1) private businesses seeking to build, expand or relocate facilities;
- (2) private businesses that provide facilities or services which enhance the ability of Los Alamos businesses to operate and expand;
- (3) research and development and high technology firms that enhance the technology base of Los Alamos;
- (4) private businesses which enhance their exporting capacity or reduce the net level of imports in the local economy; and
- (5) organizations which assist business start-ups or bring small businesses together to increase their competitive abilities by undertaking tangible projects that will promote an industry, increase the value of jobs or positively impact County tax revenues. Examples include, but are not limited to:
 - (i) business incubators;
 - (ii) research and development facilities;
 - (iii) public markets for farmers, gardeners or crafts persons; and
 - (iv) organizations which foster economic development by promoting work force development efforts such as apprenticeships or other job training programs.

Section 9. Project Participation Agreement. Upon approval of the project by the County Council, the County and qualifying entity shall enter into a project participation agreement. The agreement shall identify and include the following provisions:

- A. economic development goals of the project;
- B. contributions of the County and the qualifying entity;
- C. provisions for performance audits and the specific measurable objectives upon which performance audits will be based;

D. a schedule for project development and completion, including measurable goals and time limits for those goals;

E. the security provided for the County's investment by the qualifying entity in the form of a lien, mortgage or other indenture and the pledge of the qualifying entity's financial or material participation and cooperation to guarantee the qualifying entity's performance pursuant to the project participation agreement;

F. procedures by which the project can be terminated;

G. a description of the safeguards of public resources that will be required, including specific ways the County can recover costs, land, buildings or other things of value if a qualifying entity ceases operation, relocates or otherwise defaults or reneges on its contractual or implied obligations to the County;

H. the time period for which the County shall retain an interest in the economic development project; and

I. a sunset clause, after which the County shall relinquish interest in and oversight of the project.

Each project participation agreement and any subsequent amendments shall be approved by the County Council.

Section 10. Public Safeguards.

A. All qualifying entities receiving assistance from the County shall be subject to an annual performance audit conducted by the County Administrator or his or her designee to evaluate whether the qualifying entity is attaining the goals and objectives set forth in the project participation agreement. Consistent with provisions of any participation agreement, the County Council may terminate assistance to the qualifying entity by ordinance.

B. If a qualifying entity moves, sells, leases or transfers a majority interest in the economic development project before expiration of the project participation agreement, the County shall retain the right to deny any and all assignments, sales, leases or transfers of any interest in the economic development project until adequate assurances are made that the transferee, assignee or lessee is a qualifying entity and that terms of the agreement will be satisfied by the transferee, assignee or lessee.

C. The County shall retain a security interest that shall be specified in the project participation agreement.

D. The County may call any promissory note executed by a qualifying entity in accordance with the project participation agreement such that the principal and interest becomes due and immediately payable.

Section 11. Project Monies. All project monies shall be kept in clearly identified separate accounts by the qualifying entity and the County, subject to an annual independent audit.

Section 12. Termination. The County Council may terminate this ordinance or projects undertaken under the authority of this ordinance. If this ordinance or a project participation agreement is terminated, all contract provisions of the project participation agreement regarding termination shall be satisfied. Upon termination of any project, any County funds remaining in the County project accounts shall be transferred to the general fund or other appropriate County fund.

Section 13. Joint or Regional Projects. The County may engage in economic development projects involving one or more other governmental entities for projects that encompass more than one municipality or county. Criteria established under a joint powers agreement shall be consistent with provisions of this ordinance.

Section 14. Administrative Regulations.

A. The County Administrator or his or her designee, is authorized and directed to promulgate any and all regulations, guidelines, policies and procedures necessary and sufficient to carry out the provisions and intent of this ordinance, and such shall become effective immediately upon their promulgation.

B. All regulations, guidelines, policies and procedures promulgated under this Ordinance shall be applied prospectively only, unless there appears a statement in the regulations, guidelines, policies and procedures that they shall have a retroactive effect and a statement of the extent of any retroactive effect, consistent with the preservation of the right of contract for parties to existing project participation agreements.


Section 15. Severability. Should any section, paragraph, clause or provision of this ordinance, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this ordinance.

Section 16. This ordinance supersedes the provisions of Incorporated County of Los Alamos Ordinance No. 501.

Section 17. This ordinance shall become effective thirty (30) days after the publication of the notice of adoption of this ordinance.

ADOPTED this 9th day of June, 2009.

COUNCIL OF THE INCORPORATED
COUNTY OF LOS ALAMOS


Michael G. Wheeler
Council Chair

ATTEST: 


Mary Pat Kraemer
Los Alamos County Clerk

