

**QUAY COUNTY
ORDINANCE NO. 56**

**AN ORDINANCE RELATING TO ECONOMIC DEVELOPMENT PLANNING,
BE IT ORDAINED BY THE GOVERNING BODY OF THE QUAY COUNTY,
NEW MEXICO;**

Section 1. Quay County Economic Development Plan*

Short title.

The ordinance codified in this section may be cited as the "economic development plan ordinance."

Section 2. Authority.

The economic development plan ordinance is enacted pursuant to the express statutory authority conferred upon municipalities to allow public support of economic development (NMSA, 1978, Section 5-10-1 through Section 5-10-17 (2021)). The ordinance codified in the section is adopted as part of the County's economic development plan.

Section 3 Purpose.

The purpose of this section is to allow public support of economic development 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 this section 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.

Section 4. Definitions.

"Economic development project" means the provision of direct or indirect assistance to a qualifying business 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; and payments for professional services contracts necessary for local or regional governments to implement a plan or project.

"Governing body" means the Quay Board of Commissioners.

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

"Qualifying entity" means an existing or proposed 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 provided in Paragraphs (5), (6), or (9) of this subsection, not including any enterprise for sale of goods or commodities at retail or for the distribution to the public of electricity, gas, water or telephone or other services commonly classified as public utilities;
3. A business, including a restaurant or lodging establishment, 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 provided in Paragraph (5) or (9) 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 of New Mexico;
6. A facility for the direct sales by growers of agricultural products, commonly known as farmers' markets;
7. A business that is the developer of a metropolitan redevelopment project;
8. A cultural facility;
9. A retail business.

Section 5. Economic Development Plan Generally.

- 5.1 The governing body may assist economic development projects in any legally permissible manner including but not limited to provision of land, buildings, and infrastructure provided that all the requirements of this section are met. The County may provide land, buildings, or infrastructure it already owns, or it may build, purchase, or lease the facilities needed for an economic development project. The County at its discretion may bear the full cost or contribute a portion of the costs including the waiver of applicable fees. The County, at its discretion, may also contribute to the payment of costs for professional services contracts such as industry feasibility studies and planning and design services needed to implement a project.
- 5.2 The governing body may consider offering all forms of assistance allowed under this section 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.

Section 6. Application Requirements.

- 6.1 Any qualifying entity meeting the definition set forth in Section 4 of this section, 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 economic development office on forms provided by the County.

6.3 Applications shall contain the following information for business applicants:

A. Identification information:

- 1) Complete name and address of entity;
- 2) Incorporation papers with by-laws;
- 3) List of board of directors and executive director, with addresses; and
- 4) Resumes of all directors and officers.

B. Evidence of financial solvency (personal statements of principals):

- 1) Financial statements (income statements and balance sheets) for the past three years;
- 2) Federal tax number, New Mexico State Taxation and Revenue Number and County business license;
- 3) Projected income statement for at least three years.

C. Evidence of organizational capacity:

- 1) Brief history of the entity;
- 2) Organizational chart of entity;
- 3) Business plans for the entity and proposed project (shall include pro-forma cash flow analysis).

D. Evidence of ability to manage the project, such as, but not limited to:

- 1) List and description of previously completed projects;
- 2) Resumes of key staff involved with project.

E. Entity shall disclose the following information (if the answer is yes, entity shall attach a written explanation):

- 1) Has the business or any of its officers ever been involved in a bankruptcy?
- 2) Has the business or any of its officers ever defaulted obligations on which payments are not current?
- 3) Does the entity have any loans or other financial obligations on which payments are not current?
 - a. Equity investment of qualifying entity;
 - b. Assistance being requested of the County (e.g. specific parcel of land, applicable fees etc.), with estimate of value; and,
 - c. Funding sources other than the County with letters of commitment of intent to fund.

6.4 Identification of the terms, conditions, location, scope and requirements to the economic development project.

6.5. Any other information required of the applicant by the County manager, his designated agent or assign, or the governing body.

Section 7. Application Review Process.

7.1 The county manager, his designated agent or assign shall determine whether the entity and the proposed project qualify under this section.

- 7.2 The county manager, his designated agent or assign shall then coordinate with the qualifying entity to develop a project participation agreement as set forth in Section 10 of this section.
- 7.3 The county manager, his designated agent or assign shall consider the economic development project and the project participation agreement in accordance with the criteria set forth in Section 8 of this section. The county manager, his designated agent or assign shall recommend to the governing body that the proposal be adopted, conditionally adopted or not adopted.
- 7.4 The recommendation will be forwarded with the project participation agreement, and any other pertinent information to the governing body for final consideration at a public hearing.

Section 8. Application Review Criteria.

- 8.1 Applications for economic development projects requesting economic assistance from the County that meet the policies and objectives of the County's community economic development plan shall receive priority. Examples include, but are not limited to:
- A. Manufacturing firms (including intellectual property such as computer software);
 - B. Projects which enhance the exporting capacity of companies and/or provide goods and services which currently have to be imported into the County
 - C. Private companies seeking to build, expand or relocate facilities;
 - D. Private companies which provide facilities or services which enhance the ability of County businesses to operate;
 - E. Organizations that assist business start-ups or bring small companies together to increase their competitive abilities. This must involve a tangible project, which will create jobs and promote an industry. Examples include, but are not limited to:
 - 1) Business incubators;
 - 2) Art incubator or coalitions (e.g. a performing arts coalition seeking to construct rehearsal or performance facilities);
 - 3) Public markets for farmers, gardeners, crafts, etc.; and,
 - 4) Organizations which foster economic development by promoting work force development efforts such as apprenticeships or other job training programs.
 - F. Projects in industry clusters listed above are particularly encouraged, but others are eligible to apply as well. The intention is to retain flexibility in the use of incentives; and
 - G. Qualifying entities with existing contracts or projects with the County when this plan is adopted may propose a restructuring of their project as an economic development project.
- 8.2 All applications for economic development projects requesting economic assistance from the County shall submit a cost-benefit analysis. Preparing the cost-benefit analysis shall be the responsibility of the applicant. The County retains the right to specify a format and methodology for the cost-benefit analysis. The source and rationale for any multiplier

effects shall be identified. The cost-benefit analysis shall show that the County will recoup the value of its donation within a period of ten years. The analysis shall address the following:

- A. The number and types of jobs to be created, both temporary construction jobs and permanent jobs (by New Mexico Department of Labor job category);
- B. Pay scales of jobs;
- C. Determination of which jobs are expected to be filled locally and which will be filled by transfers from other facilities or recruited from outside the Tucumcari area;
- D. Total payroll expected at start-up and after one year;
- E. Anticipated impact of project on local tax base; and
- F. Anticipated impact on local school system.

- 8.3 All applications for economic development projects requesting economic assistance from the County shall require the same review required of industrial revenue bond applications as set forth in Resolution No. 1995-83 as may be amended from time to time. This review shall focus on environmental and community impacts of the proposed project. Special attention shall be given to job training and career advancement programs and policies. Projects shall demonstrate a strong commitment to providing career opportunities for Tucumcari area residents. Cultural impacts of projects shall also be considered.
- 8.4 Any qualifying entity seeking assistance shall prepare and make available a job training and career development plan for their employees.
- 8.5 All applications for economic development projects requesting economic assistance from the County shall clearly demonstrate the benefits, which will accrue to the community as a result of the donation of public resources. The County has considerable flexibility in determining what is considered as adequate benefits. Benefits such as providing components or production capabilities, which enhance a targeted industry cluster, or addressing critical deficiencies in the regional economy may be recognized. The benefits claimed of any proposal will receive careful scrutiny. However, it is the intent of this section to be flexible in the evaluation of these benefits, and to recognize the qualitative as well as quantitative impact of a proposal.
- 8.6 All applicants for economic development projects requesting economic assistance from the County shall clearly demonstrate how the qualifying entity is making a substantive contribution. 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 or improvement of the economy. The County retains flexibility in defining the "substantive contribution." The benefits identified in the previous paragraphs may be accepted as adequate contributions on their own, or a cash donation may be required. Assistance in providing affordable housing to its employees or the community at large may also qualify. Determination of what constitutes an acceptable contribution for a given project shall be at the discretion of the governing body.

Section 9. Public Safeguards.

- 9.1 All economic development projects receiving assistance from the County shall be subject to an annual performance review conducted by or on behalf of the county. 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 governing body for their consideration. The governing body at a public hearing may terminate assistance to the economic development project by passage of an ordinance, which terminates the agreement and specifies the dispositions of all assets and obligations of the project.
- 9.2 The County shall retain a security interest, which shall be specified in the project participation agreement. The type of security given shall depend upon the nature of the economic development project and assistance provided by the County. Types of security may include, but are not limited to:
- A. Letter of credit in the County's name;
 - B. Performance bond equal to the County's contribution;
 - C. Mortgage or lien on property or equipment;
 - D. Prorated reimbursement of donation if company reduces work force or leaves the community before the term agreed to; and
 - E. Other security agreeable to both parties.
- 9.3 Should a qualifying entity move, sell, lease or transfer a majority interest in the economic development project before the expiration of 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 assignment, lease or transfer or may negotiate a new agreement with the new operator, or the County may reclaim the facility and enter into an agreement with a new qualifying entity.
- 9.4 Any qualifying entity seeking assistance from public resources shall commit to operate in accordance with its project participation agreement for a minimum of ten years from the date the governing body passes the ordinance adopting the project participation agreement.

Section 10. Project Participation Agreement.

- 10.1 The qualifying entity shall prepare with the County a project participation agreement. This agreement is the formal document, which states the contributions and obligation of all parties in the economic development project. The agreement must clearly state the following items:
- A. The economic development goals of the project;
 - B. The contributions of the County and the qualifying entity;
 - C. The specific measurable objectives upon which the performance review will be read;
 - D. A schedule for project development and goal attainment;
 - E. The security being offered for the County's investment;

F. The procedures by which a project may be terminated, and the County's investment recovered; and

G. The time period for which the county shall retain an interest in the project.

10.2 Each project agreement shall have a "sunset" clause after which the county shall relinquish interest in and oversight of the project.

10.3 Each project participation agreement shall be adopted as an ordinance and adopted by the governing body at a public hearing.

Section 11. Project Monies.

All project monies shall be kept in separate account by the entity and the county, with such accounts clearly identified. These accounts shall be subject to an annual independent audit.

Section 12. Termination.

The governing body may terminate this section and the county's community economic development plan and any or all project participation agreements undertaken under its authority. Termination shall be by ordinance at a public hearing or in accordance with the terms of the project participation agreement. If an ordinance or a project participation agreement 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 county monies remaining in county project accounts shall be transferred to the county's general 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. In such instances, the relevant governing bodies shall adopt a joint powers agreement. 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 section.

Section 14. Policies and Procedures.


The economic development plan and such other forms policies and procedures as are deemed necessary by the county in order to implement this section are hereby adopted as a part of the county's economic development plan and are incorporated by reference.


Section 15. Invalidity.

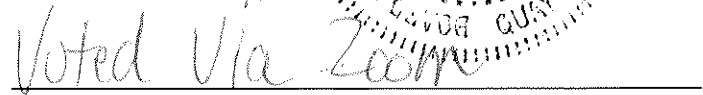
The provisions of this section are severable and the invalidity of any part of the ordinance codified in this section shall not affect the validity of the rest of the section.

ADOPTED BY THE GOVERNING BODY OF QUAY COUNTY THIS 12th DAY OF
SEPTEMBER 2022.

BOARD OF QUAY COUNTY COMMISSIONERS


Franklin McCasland, Chairman


Jerri Rush, Member


Robert Lopez, Member

ATTEST:


Ellen L. White, County Clerk