

**HARDING COUNTY, NEW MEXICO
ORDINANCE NO.**

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

Section 1. ECONOMIC DEVELOPMENT PLAN

- 1.1 Short Title.
This Ordinance may be cited as the “Economic Development Plan Ordinance.”

Section 2. Authority.

- 2.1 The Economic Development Plan Ordinance is enacted pursuant to the statutory authority conferred upon municipalities to allow public support of economic development (N.M. Stat. Ann. Section 5-10-1 through Section 5-10-13-1978-). This Ordinance is adopted as part of the County’s economic development plan.

Section 3. Purpose.

- 3.1 The purpose of the 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; however, the imposition of a tax must be approved by the voters in referendum.

Eligible uses: Municipalities may impose municipal 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. Counties similarly may direct the proceeds of county infrastructure gross receipts tax. Counties may impose up to .1255% in two .0625 increments.

Section 4. Definitions as used in the Economic Development Plan Ordinance:

4.1 ***Economic development project*** means the provision of direct or indirect land, buildings or other infrastructure; public works improvements essential to the location assistance to a qualifying business and include the purchase, lease, grant, or construction, reconstruction, improvement or other acquisition or conveyance of expansion of a qualifying business; and payments for professional services contracts necessary for local or regional governments to implement a plan or project.

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;

4.2 ***Qualifying entity*** means an 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:

- A. An industry for manufacturing, processing, or assembling of any agricultural or manufactured products;
- B. A commercial enterprise for storing, warehousing, distributing, or selling products of agriculture, mining or industry, but other than provided in Paragraph (D) 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;

- 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 makes the majority of its sales to persons outside of New Mexico.
- 4.3 ***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.
- 4.4 ***Governing body*** means the County Commission of Harding.
- 4.5 ***Arts and Cultural District*** 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;
- 4.6 ***HCECDC Revolving Loan Fund*** means funds provided by the HCECDC to be used for the financing or development of a small or emerging business. Eligible uses are: Assistance (providing assistance for marketing studies, feasibility studies, business plans, training etc.) to small and emerging businesses; purchasing machinery and equipment to lease to small and emerging business; creating a revolving loan fund (providing partial funding, collateral required, as a loan to a small and emerging business for the purchase of equipment, working capital, or real estate); or construct a building for a business incubator for small and emerging businesses.
- A. **Economic Development Projects 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; grants 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.

Section 5. Economic Development Plan.

- 5.1 The County Administrative Assistant, after approval of the governing body may assist Economic Development Projects in any legally permissible manner including but not limited to provisions of land, buildings and infrastructure provided that all the requirements of this ordinance 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 service 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 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.

Section 6. Harding County Economic & Community Development Corporation.

- 6.1 The governing body assigns the HCECDC Board of Directors the following responsibilities with regard to the economic development plan for the County of Harding:
 - A. Reviewing and making recommendations to the governing body on applications for assistance for economic development projects and
 - B. Reviewing and making recommendations to the governing body on applications for industrial revenue bonds (IRB'S).

- 6.2 The HCECDC shall at all times provide for a Board of Directors position for the County of Harding, the Commission shall appoint a member of the Board of Directors with the advice and consent of the County Commission.
- 6.3 The governing body assigns the HCECDC Board of Directors the responsibility for administering the Revolving Loan Fund (RLF).
 - A. Reviewing and making recommendations to the governing body on loan applications.
 - B. Loans must be for the establishment of new business, the expansion of existing business, creation of employment opportunities, saving existing jobs, or community development projects.
 - C. Interest income and fees may be used for administrative costs, technical assistance to borrower or debt retirement.
 - D. All collections that are not used for the above authorized expenses from the operation of the RLF must be made available for relending to eligible applicants.
 - E. All loans must be adequately secured.
 - F. An annual audit is required.

Section 7. Application Requirements.

- 7.1 Any qualifying entity meeting the definition set forth in subsection 4.2 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 of Harding.
- 7.2 Applications from qualifying entities shall be submitted to the County of Harding on forms provided by the county.
- 7.3 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 resumes of all directors and officers.
 - 4) Resumes of all directors and officers.

B. Evidence of financial solvency (personal statement of principals);

- 1) Financial statement (income statement 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 the entity;
- 3) Business plans for the entity and proposed project (shall include a 3 year pro-forma cash flow analysis);

D. The project participation agreement and any other pertinent information will be forwarded to the governing body for final consideration at a public meeting.

E. The project participation agreement and any other pertinent information will be forwarded to the governing body for final consideration at a public meeting.

Revolving Loan Fund Application requirements:

- 1) Individual Financial Statements of Principals, Guarantors/Co-signors-less than 90 days old.
- 2) Income Tax Returns for past three years of applicants, guarantors Form 1040 and schedule C.
- 3) Applicant Business Financial Statements, most recent and past three fiscal years. Balance Sheets, Income Statements and Cash Flow Statements.
- 4) Financial Projections-monthly year 1, annually years 2 and 3.
 - Pro-Forma Cash Flow Statements
 - Income and Expense Projections
 - Balance Sheets
- 5) Resume' or professional background information on principals.
- 6) Corporate or Partnership Information:
 - Articles of Incorporation or Partnership Agreement.
 - Corporation Resolution/Authorization to Borrow and to Pledge Collateral.
 - Certificate of Incorporation.
- 7) Real Estate Information:
 - Value Estimation or Appraisal
 - Plans and Specifications.

- Construction Cost Estimates and Source thereof.
- Development Budget
- Cash Sources and Uses Statement
- Legal Description and/or Warranty Deed.
- Address of Property
- Survey
- Title Search/Insurance from a reputable area title company
- Permanent Financing Commitment, if Applicable.
- Subcontractor Listing.
- Builders' Risk/Hazard Insurance.
- Balance Outstanding on First Mortgage and Name of Mortgage Holder.
- Project Timetable, including construction period, marketing, sales, and/or rent up period.

8) Miscellaneous Information:

- Evidence of Life Insurance
- Valuation or Appraisal of Collateral.
- Aging and Listing of Accounts Receivable.
- Evidence of Insurance on Collateral.
- Other – project specific- as required by loan committee.

Section 8. Applicable Review Criteria.

8.1 Applications for economic development projects requesting economic assistance from the county, which meet the policies and objectives of the county's 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 Harding County;
- C) Private companies seeking to build, expand or relocate facilities;
- D) Private companies which provide facilities or services which enhance the ability of Harding County businesses to operate;

- E) Organizations, which 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 incubators or coalition (e.g. a performing arts coalition seeking construction 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 contract or projects with the county when this plan is adopted may propose a restructuring of their projects as an economic development project.

Section 8.2 All applications for economic development projects requesting economic assistance from the county shall submit a cost benefit analysis. Preparing a 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 HCECDC shall review and approve the methodology used. 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 type of jobs to be created, retained, both temporary construction jobs and permanent jobs (by New Mexico Department of Labor job category);
- B) Pay scale 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 Harding County area;
- D) Total payroll expected at start-up and after one year;
- E) Anticipated impact on local tax base; and,
- F) Anticipated impact on local school systems.

Section 8.3 All applicants for economic development projects requesting economic assistance from the county shall require the same review required of industrial revenue bond applications. This review shall focus on environmental and community impacts of proposed projects. 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 Harding County 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 applicants 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 providing components or production capabilities, which enhance a targeted industry cluster, or addressing critical deficiencies in regional economy, may be recognized. The benefits claimed of any proposal will receive careful scrutiny. However, it is the intent of this ordinance 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 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 contributions”. The benefits identified in the previous paragraphs may be accepted as adequate contributions on their own, or as cash donations 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.
- 8.7 Revolving Loan Fund Application review Criteria**
Applications for loans from the HCECDC revolving loan fund 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. 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 the HCECDC. 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 provisions set forth in the agreement, which terminates the agreement and specifies the disposition of all assets and obligations of the project.

9.2 The County shall retain a security interest, which shall be specific in the project participation agreement. The type security given shall depend upon the nature of 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) A mortgage or lien on the property or equipment;
- D) Pro-rated 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 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 assignment, lease or transfer or may negotiate a new agreement with the new operator, or the town may reclaim the facility and enter into an agreement with the 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 ordinance is adopted and the governing body passes the project participation agreement.

9.5 Safeguards for Revolving Loan Fund –

- The HCECDC will provide fidelity bond coverage for all persons who have access to revolving loan funds.
- The Small Business Development Center (SBDC) at Mesalands Community College will serve as a strategic partner with HCECDC in service to the effective operation of the RLF in Harding County providing the following services:
 - Provision of technical assistance to HCECDC RLF clients with respect to business plans, application

- packages and other documents related to securing small business financing;
- Direct counseling with and feedback to HCECDC RLF clients related to strengthening business operations and/or meeting financial obligations;
- On-call mentoring and coaching for HCECDC RLF clients related to solving business problems and increasing opportunities for success;
- Providing linkages as needed and appropriate between HCECDC RLF clients and such specialist resources as may be available to provide advice and guidance with respect to the particular content of the business;
- Occasional field visits to client businesses as needed to obtain first-hand understanding and impressions of HCECDC RLF client business operations;
- Specific recommendations to HCECDC RLF administrators on ways of improving performance, and success clients, notwithstanding that under no circumstances will the SBDC's serve a regulatory function or make administrative decisions with respect to any client or to the program as a whole;
- Provision of advice to HCECDC RLF administrators on implementation and modification of the RLF Workplan.

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 contribution and obligation of all parties in the economic development project. The agreement must state the following items:
- A) The economic development goals of the project;
 - B) The contribution 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. Each project agreement shall have a "sunset" clause after

which the county shall relinquish interest in and oversight of the project.

10.2 Each project participation agreement shall be subject to review and approval by the governing body at a public hearing.

Section 11. Project Monies. All project monies shall be kept in a separate account by the entity and the county, with such account clearly identified. These accounts shall be subject to an annual independent audit.

Section 12. Termination. The Governing body may terminate this ordinance and the county’s 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 the county project accounts shall be transferred to the county’s general fund.

Section 13. Joint Regional Projects. The county may engage in economic development projects involving one or more other government entities for projects, which 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 ordinance.

Section 14. Revolving Loan Fund Termination
Reporting to the HCECDC (quarterly reports) Each funded project will be reported on quarterly.

ADOPTED BY THE GOVERNING BODY OF THE COUNTY OF HARDING ON THE _____ DAY OF _____, 2009.

Robert L. Casados, Chairman

Jerry Porterfield, Vice Chairman

Michael E. Lewis, Member

ATTEST: _____
Maria J. Atencio, County Clerk

