

INCORPORATED COUNTY OF LOS ALAMOS CODE ORDINANCE NO. 02-304

A CODE ORDINANCE REPEALING ORDINANCES 501 AND 543 IN THEIR ENTIRETY AND AMENDING AND RESTATING THE ECONOMIC DEVELOPMENT PLAN OF THE INCORPORATED COUNTY OF LOS ALAMOS INTO THE LOS ALAMOS COUNTY CODE OF ORDINANCES

WHEREAS, this Code 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., as amended) hereinafter referred to as “the Act”; and

WHEREAS, this Code Ordinance shall be known as the Incorporated County of Los Alamos (“County”) Economic Development Plan; and

WHEREAS, in 2005, the County adopted Ordinance No. 501, whereby the County adopted a new Economic Development Plan in accordance with the Act, and effectively repealed County Code Ordinance No. 85-251 in its entirety, which had previously established an Economic Development Plan; and

WHEREAS, in 2009, the County adopted Ordinance No. 543, which amended and restated the County Economic Development Plan in accordance with the Act, and effectively superseded County Ordinance No. 501; and

WHEREAS, County Ordinances 501 and 543 were never codified in the County’s Code of Ordinances; and

WHEREAS, the purpose of this Code Ordinance is to codify, restate, and amend the County Economic Development Plan, in accordance with the Act, 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, and allow the County to enter into joint powers agreements with other local governments to plan and support regional economic development projects.

BE IT ORDAINED BY THE GOVERNING BODY OF THE INCORPORATED COUNTY OF LOS ALAMOS, County ordinances 501 and 543 are hereby repealed in full and are now incorporated into the County Code, as follows:

Section 1. County Code Ordinance 501 is hereby repealed in its entirety.

Section 2. County Code Ordinance 543 is hereby repealed its entirety.

Section 3. The Los Alamos County Code of Ordinances is amended by adding a new Article VI, Local Economic Development Plan, in Chapter 2, Administration, consisting of sections to be numbered 2-424 through 2-440, which sections read as follows:

Article VI. Local Economic Development Plan

Section 2-424. Definitions.

A. "arts and cultural district" means a developed district of public and private uses that is created pursuant to the Arts and Cultural District Act;

B. "broadband telecommunications network facilities" means the electronics, equipment, transmission facilities, fiber-optic cables and any other item directly related to a system capable of transmission of internet protocol or other formatted data at current federal communications commission minimum speed standard, all of which will be owned and used by a provider of internet access services;

C. "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.

D. "Economic development project" or "project" means the provision of direct or indirect assistance to a qualifying business entity by County or another local or regional government and includes:

(1) the purchase, lease, grant, construction, reconstruction, improvement or other acquisition or conveyance of land, buildings or other infrastructure;

(2) rights-of-way infrastructure, including trenching and conduit, for the placement of new broadband telecommunications network facilities;

(3) public works improvements essential to the location or expansion of a qualifying business entity;

(4) payments for professional services contracts necessary for local or regional governments to implement a plan or project;

(5) the provision of direct loans or grants for land, buildings or infrastructure;

(6) technical assistance to cultural facilities;

(7) loan guarantees securing the cost of land, buildings or infrastructure in an amount not to exceed the revenue that may be derived from an increment of the:

(a) municipal gross receipts tax imposed at a rate not to exceed one-fourth percent and dedicated by County ordinance imposing the increment to a project; or

(b) county gross receipts tax imposed at a rate not to exceed one-eighth percent and dedicated by the ordinance imposing the increment to a project;

(8) grants for public works infrastructure improvements essential to the location or expansion of a qualifying entity; grants or subsidies to cultural facilities;

(9) the purchase of land for a publicly held industrial park or a publicly owned cultural facility; and

(10) the construction of a building for use by a qualifying entity; but does not include the purchase, lease, grant or other acquisition or conveyance of water rights;

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

F. "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), (6) or (9) 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, 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 as 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 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; and

(9) a retail business.

G. "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, according to the most recent federal decennial census, of:

(1) ten thousand or less; or

(2) more than ten thousand, but less than thirty-five thousand if:

(a) the economic development project is not funded or financed with state government revenues; and

(b) the business created through the project shall not directly compete with an existing business that is: 1) in the municipality; and 2) engaged in the sale of the same or similar goods or commodities at retail.

Section 2-425. Economic Development Assistance.

A. 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 County for economic development projects shall not exceed ten (10) percent of the annual general fund expenditures of 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 County for an economic development project.

Section 2-426. Application Requirements.

A. Application from qualifying entities shall be submitted to County Manager's Office in a format established by 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 2-427. Application Review Process.

A. The County Manager'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. County Manager's Office shall also determine whether the project is permitted and the applicant qualifies for economic assistance under this Ordinance, and whether the project shall provide a public benefit to the residents of County by contributing to the achievement by 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 County Manager'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, County Council's strategic goals and objectives or County's Master Plan-Downtown Los Alamos, as applicable.

C. Upon completion of the review process, County Manager's shall make a recommendation to 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 County shall require the same review. This review shall focus on economic, environmental and community impacts of the proposed project.

Section 2-428. Objectives and Priorities.

A. OBJECTIVES

The economic development objective of 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 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 shall 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 2-429. Project Participation Agreement.

Upon approval of the project by County Council, County and the 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. substantive contribution from the qualifying entity for the project;

C. contributions provided by County for the project in exchange for a substantive contribution from the qualifying entity. County 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 of the economy;

D. provisions for performance audits and the specific measurable objectives upon which performance audits shall be based;

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

F. the security provided for 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;

G. procedures by which the project can be terminated;

H. a description of the safeguards of public resources that shall be required, including specific ways 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 County;

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

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

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

Section 2-430. Public Safeguards.

A. All qualifying entities receiving assistance from County shall be subject to an annual performance audit conducted by County Manager, or 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, 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, 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 shall be satisfied by the transferee, assignee or lessee.

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

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

Section 2-431. Project Monies.

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

Section 2-432. Termination.

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 County project accounts shall be transferred to the general fund or other appropriate County fund.

Section 2-433. Joint or Regional Projects.

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 2-434. Administrative Regulations.

A. The County Manager, or 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.

Sections 2-435 – 2-440 Reserved.

Section 4. 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 5. Effective Date. This Code Ordinance shall become effective thirty (30) days after publication of notice of its adoption.

Section 6. Repealer. The following ordinances are hereby specifically repealed: 501 and 543. All other ordinances or resolutions, or parts thereof, inconsistent herewith are hereby repealed only to the extent of such inconsistency. This repealer shall not be construed to revive any ordinance or resolution, or part thereof, heretofore repealed.

PASSED AND ADOPTED this 25th day of February, 2020.

INCORPORATED COUNTY OF LOS ALAMOS

Sara C. Scott
Council Chair

ATTEST:

Naomi D. Maestas
Los Alamos County Clerk