

**COUNTY OF UNION, NEW MEXICO
ORDINANCE NO. 45**

AN ORDINANCE CONCERNING LOCAL ECONOMIC DEVELOPMENT IN UNION COUNTY, NEW MEXICO; ESTABLISHING THE PURPOSE OF THE ECONOMIC DEVELOPMENT ORDINANCE; PROVIDING DEFINED TERMS; ADOPTING THE UNION COUNTY ECONOMIC DEVELOPMENT PLAN; PROVIDING FOR APPLICATIONS FOR PUBLIC SUPPORT OF ECONOMIC DEVELOPMENT PROJECTS; PROVIDING APPLICATION REQUIREMENTS FOR PUBLIC SUPPORT; PROVIDING CRITERIA FOR EVALUATION OF APPLICATIONS FOR PUBLIC SUPPORT; DELEGATING AUTHORITY TO EVALUATE AND MAKE RECOMMENDATIONS CONCERNING APPLICATIONS TO CUCEDP; PROVIDING REVIEW CRITERIA; PROVIDING FOR SECURITY AND FOR ASSURANCES THAT THE ECONOMIC GOALS WILL BE MET BY APPLICANTS FOR PUBLIC SUPPORT; PROVIDING FOR A PROJECT PARTICIPATION AGREEMENT ON EACH PROJECT; PROVIDING THAT ANY APPLICATION FOR PUBLIC SUPPORT SHALL BE APPROVED BY ORDINANCE ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS; PROVIDING FOR JOINT REGIONAL PROJECTS; REPEALING ORDINANCE NO. 30 AND RESCINDING PRIOR ECONOMIC DEVELOPMENT PLANS.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF UNION COUNTY, NEW MEXICO:

Section 1. Citations to the Local Economic Development Ordinance. -- This Ordinance may be cited as the "Union County Local Economic Development Ordinance" or "the Local Economic Development Ordinance."

Section 2. Authority. -- The Local Economic Development Ordinance is enacted pursuant to the statutory authority conferred upon counties to provide direct support of economic development by the Local Economic Development Act ("LEDA"), NMSA 1978, §§ 5-10-1 *et seq.*, and Art. IX Sec. 14 of the New Mexico Constitution.

Section 3. Purpose. -- The purpose of the Economic Development Ordinance is to implement the provisions of the Local Economic Development Act, NMSA 1978, Sec. 5-10-1 *et seq.* (as amended) and the 1994 constitutional amendment to Art. IX, Sec. 14 of the Constitution of New Mexico, which permit public 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. In addition, this Ordinance is intended to permit the County to enter into one or more joint powers agreement with other local governments to plan and support regional economic development projects. *See e.g.* NMSA 1978, Sec. 5-10-2(B).

Section 4. Definitions. --

A. "Economic development project" or "project" means the project of a qualifying entity for which public support may be provided pursuant to LEDA;

B. "Qualifying entity" means a person, a corporation, a limited liability company, a partnership, a joint venture, an association, or other person that is one or combination of two or more of the following:

i. An industry for manufacturing, processing, or assembling of any agricultural or manufactured products;

ii. A commercial enterprise for storing, warehousing, distributing, or selling products of agriculture, mining or industry, 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;

iii. 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 government agencies or to a specific industry or customer, primarily engaged in the sale of goods or commodities at retail;

iv. An Indian Nation, Tribe or Pueblo or a federally chartered tribal corporation;

v. A telecommunications sales enterprise that makes the majority of its sales to persons outside of New Mexico;

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

vii. A business that is the developer of a metropolitan redevelopment project; or

viii. A retail business.

C. "Economic development project" means the project of a qualifying entity for which public support may be provided through LEDA and this Ordinance;

D. "Public support" means the provision of assistance by the State to a local or regional government or the provision of direct or indirect assistance to a qualifying entity by a local or regional government for an economic development project. "Public support":

i. includes the provision of:

a. land, buildings or other infrastructure, by purchase, lease, grant, construction, reconstruction, improvement or other acquisition or conveyance;

b. the placement of new broadband telecommunications network facilities, provided that the facilities shall not serve a public facility or location that already meets federal communications commission baseline speed standards;

c. rights-of-way infrastructure, including trenching and conduit, for the placement of new broadband telecommunications network facilities;

d. public works improvements essential to the location or expansion of a qualifying entity;

e. payments for professional services contracts necessary for local or regional governments to implement a plan or provide public support for a project;

f. direct loans or grants for land, buildings or infrastructure;

g. technical assistance to cultural facilities;

h. 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 county gross receipts tax imposed at a rate not to exceed one-eighth percent and dedicated by the ordinance imposing the increment for projects;

i. grants for public works infrastructure improvements essential to the location or expansion of a qualifying entity and grants or subsidies to cultural facilities;

j. land for a publicly held industrial park or a publicly owned cultural facility, by purchase; and

k. the construction of a building for use by a qualifying entity; but

ii. does not include the purchase, lease, grant or other acquisition or conveyance of water rights or any items not specifically listed.

F. "Regional government" means any combination of municipalities and counties that enter into a joint powers agreement to provide public support for economic development projects pursuant to a plan adopted by all parties to a joint powers agreement;

G. "Retail business" means a business that is primarily engaged in the sale of goods or commodities at retail and that is located in an unincorporated area of Union County; and

H. "County" shall refer to Union County New Mexico, and its Board of County Commissioners.

Section 5. Limitation on Public Money Expended. --

The total amount of public money expended and the value of credit pledged in the fiscal

year in which that money is expended by the Board of County Commissioners for economic development projects pursuant to Art. 9, Sec. 14 of the Constitution of New Mexico and the Local Economic Development Act shall not exceed ten percent (10%) of the annual general fund expenditures of Union County in that fiscal year. The limits of this subsection shall not apply to:

A. the value of any land or building contributed to any project pursuant to a project participation agreement;

B. revenue generated through the imposition of an increment of the municipal gross receipts tax at a rate not to exceed one-fourth percent and dedicated to furthering or implementing economic development plans and projects as defined in the Local Economic Development Act or projects as defined in the Statewide Economic Development Finance Act; provided that no more than the greater of fifty thousand dollars (\$50,000) or ten percent of the revenue collected shall be used for promotion and administration of or professional services contracts related to the implementation of any such economic development plan adopted by the Board of County Commissioners;

C. revenue generated through the imposition of an increment of the county gross receipts tax at a rate not to exceed one-eighth percent and dedicated to furthering or implementing economic development plans and projects as defined in the Local Economic Development Act or projects as defined in the Statewide Economic Development Finance Act; provided that no more than the greater of fifty thousand dollars (\$50,000) or ten percent (10%) of the revenue collected shall be used for promotion and administration of or professional services contracts related to the implementation of the Economic Development Plan adopted by the Board of County Commissioners herein;

D. the proceeds of a revenue bond issue to which the county infrastructure gross receipts tax revenue is pledged;

E. the proceeds of a revenue bond issue to which the revenue from an increment of the county gross receipts tax, imposed at a rate not to exceed one-eighth percent and dedicated by the ordinance imposing the increment to provide public support for projects, is pledged; or

F. funds donated by private entities to be used for defraying the cost of a project.

Section 6. Economic Development Plan. --

A. The economic development plan contained in the County's Comprehensive Plan (Resolution No. 2020-43, Ch. 4) is adopted as the County's economic development plan.

B. The County's economic development plan shall be printed and made available to the residents of Union County and shall also be made available to the general public through the County's internet web page: <https://unionnm.us/>.

Section 7. Regional Economic Development Plans. --

A. Union County and another County, or Union County and any incorporated municipality within the County, may enter into a joint powers agreement pursuant to the Joint Powers Agreements Act (11-1-1 *et seq.*) to develop and implement a regional economic development plan, which may consist of existing local plans. The parties to such a joint powers agreement shall be deemed a regional government for the purposes of LEDA.

B. The joint powers agreement shall require that the governing body of each local government approve public support for each economic development project. The agreement may also provide for appointment of a project manager who shall be responsible for the management of projects and project funds. The agreement may provide for a regional body consisting of representatives from the governing bodies of each local government that is a party to the agreement and may determine the powers and duties of that body in implementing the regional government's plan and providing public support for project.

Section 8. Public Support of Economic Development Projects. --

A. The Board of County Commissioners of Union County may provide public support of an economic development project in any legally permissible manner described herein so long as all the requirements of this Ordinance, the Local Economic Development Act, or Art. IX Sec. 14 of the Constitution are met.

B. Nothing herein shall create an obligation on the County's part to offer any specific type of assistance to a qualified entity.

Section 9. Applications for Public Support. --

1. After this Ordinance becomes effective, a qualifying entity interested in public support may submit an application for public support of a qualifying entity's proposed economic development project.

2. The application shall be on a form provided by the County and require the applicant to provide such information or supporting documentation as it deems necessary.

Section 10. Application Requirements. --

1. The Application for public support shall be made on a form provided by the County, and shall contain the following information:

- a. Identification information:
 - i. The complete name and address of entity;
 - ii. The business formation papers (such as articles of incorporation) with relevant by-laws; and
 - iii. A list of the members of the board of directors and executive director,

addresses, and copies of resumes of all directors and officers.

- b. Evidence of financial solvency:
 - i. A copy of a financial statements (income statement and balance sheets) for the past three years;
 - ii. Federal tax number, New Mexico State Taxation and Revenue number and a copy of the county business license; and
 - iii. A statement of projected income for at least three years.
- c. Evidence of organizational capacity:
 - i. A brief history of the entity;
 - ii. A copy of the organizational chart of the entity; and
 - iii. A copy of the business plan for the entity and the proposed economic development project (including a pro-forma cash flow analysis); and
- d. A copy of a proposed Project Participation Agreement;

2. The application and supporting documentation shall be forwarded to CUCEDP and the Board of County Commissioners for final consideration at a public meeting.

Section 11. Clayton Union County Economic Development Partnership (CUCEDP). --

1. The Clayton Union County Economic Development Partnership (CUCEDP) shall be delegated responsibility to receive applications for public support, evaluate the applications against this Ordinance and the requirements of LEDA, and make recommendations concerning applications to the Board of County Commissioners.

2. The CUCEDP may make its own application for public support pursuant to this Ordinance, but if it does so, it shall not have the responsibilities described in the previous subsection and the Board of County Commissioners (or its designee) will receive, evaluate and act on such application without the participation of CUCEDP.

3. The CUCEDP shall include a member of the Board of County Commissioners on its Board of Directors. The Chair of the Board of County Commissioners shall make the appointment with the advice and consent of the Board of County Commissioners.

Section 12. Review Criteria. --

1. An application for public support shall be evaluated according to the provisions of the economic development plan, the financial and management stability of the qualifying entity, the demonstrated commitment of the qualifying entity to the County, a cost-benefit analysis of the project (see Section 13), and any other information the County believes is necessary for a full review of the economic development project application.

2. Any approved application for public support shall be approved by ordinance.

3. An application for public support proposing any of the following are desirable and may receive a favorable recommendation:

A. Projects involving manufacturing;

B. Projects involving development of intellectual property such as computer software;

C. Projects which enhance the exporting capacity of companies and or that provide goods and services to the County that currently have to be imported into Union County;

D. Private companies seeking to build, expand, or relocate facilities within the County;

E. Private companies which provide facilities or services which enhance the ability of existing Union County businesses to operate;

F. Organizations which assist business start-ups or bring small companies together to increase their competitive abilities and create jobs;

G. Examples include, but are not limited to:

i. Business incubators;

ii. Art incubators or coalition (e.g. a performing arts coalition seeking construction rehearsal or performance facilities);

iii. Public markets for farmers, gardeners, crafts, etc.; or

iv. Organizations which foster economic development by promoting work force development efforts such as apprenticeships or other job training programs.

Section 13. Cost/Benefit Analysis. --

Each application for public support of an economic development project shall submit a cost benefit analysis along with the application. The cost-benefit analysis shall address all of the following:

A. The number and type of jobs to be created, whether temporary or permanent;

B. The pay scale of jobs to be created;

C. A determination of which jobs are expected to be filled locally and which will be filled by persons not resident in Union County;

- D. The total payroll expected at start-up and after one year;
- E. The source and rationale for any multiplier effects;
- F. The anticipated impact on local tax base; and
- G. The anticipated impact on local school systems.

Section 14. Annual Review. --

Each economic development project receiving public support shall be subject to an annual performance review conducted by the CUCEDP and/or the County. This review shall evaluate whether the project is attaining the goals and objectives set forth in the project participation agreement, the economic development plan, and LEDA. This review shall be presented to the Board of County Commissioners for review and consideration.

Section 15. Termination of the Economic Development Plan or Public Support. --

1. At any time after approval of an economic development plan, the Board of County Commissioners may enact an ordinance terminating the plan and dissolving or terminating any public support for economic development projects based thereon. An ordinance repealing an economic development plan shall not be effective unless the ordinance provides for satisfying existing contracts and the rights of the parties arising from the contracts.

2. Any unexpended and unencumbered balances remaining in any project fund or account upon repeal of a plan and termination of public support for or dissolution of a project may be transferred to the general funds of the County.

3. In the case of funds or account of a regional government, the unexpended and unencumbered balances shall be divided amount the participating local government as specified in the joint powers agreement.

4. Termination of a project participation agreement for any reason shall be at a public meeting.

Section 16. -- Project Participation Agreement.

A. If the Board of County Commissioners provides public support for an economic development project without the participation of the State or a regional government, the qualifying entity shall enter into a project participation agreement with the County as set forth in this Section.

B. The project participation agreement shall use a form provided by the County and shall require a substantive contribution from the qualifying entity for each instance of public support for a proposed economic development project. The project participation agreement shall provide

that public support for an economic development project shall be in exchange for a substantive contribution from the qualifying entity. 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 of the economy.

C. The project participation agreement shall specify that the qualifying entity shall provide security to the Board of County Commissioners. The security shall secure the qualifying entity's obligations based on terms stated in the project participation agreement and shall reflect the amount of public support provided to the qualifying entity and the substantive contribution expected from the qualifying entity. The security may be in the form of a lien, mortgage or other indenture and the pledge of the qualifying entity's financial or other material participation and cooperation to guarantee that qualifying entity's performance pursuant to the project participation agreement. It may also be in the form of a letter of credit, a performance bond equal to the County's contribution to the project, a mortgage or lien on the property or equipment, a pro-rated reimbursement of the public support if company reduces its workforce or leaves the community before the term agreed to, or other security agreeable to both parties.

D. If a qualifying entity fails to perform its substantive contribution, the Board of County Commissioners shall enforce the project participation agreement to recover that portion of the public support for which the qualifying entity failed to provide a substantive contribution. The recovery shall be proportional to the failed performance of the substantive contribution and shall take into account all previous substantive contributions for the economic development project performed by the qualifying entity, based on the terms stated in the project participation agreement.

E. The project participation agreement shall set out a schedule for project development and completion, including measurable time limits for those goals.

F. The project participation agreement shall include provisions for an annual performance review and actions to be taken upon a determination that project performance is unsatisfactory.

Section 17. Project Funds. --

A. All project monies dedicated or pledged for public support for economic development projects shall be deposited in a separate account. Separate subaccounts shall be established for each separate project. Money in the special account shall be expended only for economic development project purposes, which may include the payment of necessary professional services contract costs.

B. An annual independent audit in accordance with the Audit Act of each special fund and project account shall be accomplished. The audit shall be submitted to the County or regional government and shall be a public record.

Section 18. Assignment. --

A qualifying entity with an approved project participation agreement shall not assign, sell, lease or transfer an interest in an economic development project receiving public support without the express written agreement of the Board of County Commissioners. The Board of County Commissioners 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 project participation agreement will be satisfied by the transferee, assignee or lessee. At its discretion, the Board of County Commissioners may choose to deny said assignment, condition the assignment on deposit of adequate security, or negotiate a new agreement with the new qualifying entity.

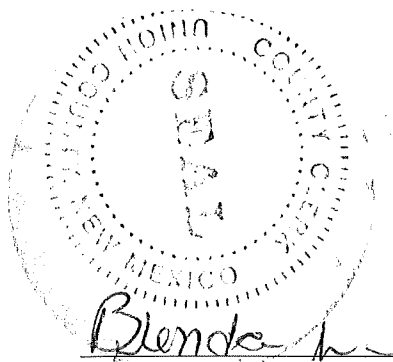
Section 19. -- Joint Regional Projects. --

Union County may engage in economic development projects involving one or more government entities. In such instances, the relevant governing bodies shall adopt a joint powers agreement pursuant to NMSA 1978, Section 11-1-1 *et seq.*

Section 20. Repeal. --

Union County Ordinance No. 30 shall be and hereby is repealed. All economic development plans dated prior to the plan adopted in Union County Resolution No. 2020-43, shall be and hereby are rescinded and repealed.

**ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS OF UNION COUNTY
ON THE 13TH DAY OF SEPTEMBER, 2022.**



Blenda M. Steen
County Clerk

Justin Bennett
Justin Bennett, Chair

Clay Kiesling
Clay Kiesling, Member

Member