

ORDINANCE NO. 167

AN ORDINANCE CREATING A LOCAL ECONOMIC DEVELOPMENT PLAN TO ALLOW PUBLIC SUPPORT OF ECONOMIC DEVELOPMENT PROJECTS TO FOSTER, PROMOTE AND ENHANCE LOCAL ECONOMIC DEVELOPMENT EFFORTS WHICH CREATE BASE JOBS IN THE ECONOMY, AND TO ALLOW THE VILLAGE OF SANTA CLARA TO ENTER INTO ONE OR MORE JOINT POWERS AGREEMENTS WITH OTHER LOCAL GOVERNMENTS TO PLAN AND SUPPORT REGIONAL ECONOMIC DEVELOPMENT PROJECTS. The Economic Development Plan Ordinance is enacted pursuant to the express statutory authority conferred upon municipalities to allow public support of economic development (N.M. Stat. Ann. Section 510-1 through Section 5-10-13 (1978)).

Whereas, the Village of Santa Clara is part of Economic Development Plan for District 5 of the Southwest Council of Governments; and,

Whereas, the Council of the Village of Santa Clara wishes to assist with the creation of base jobs in the economic region of Grant County and is willing to provide public support to enhance the creation of base jobs; and,

Whereas, the Village is willing to enter into one or more joint powers agreements with other local governments to plan and support regional economic development projects;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF SANTA CLARA, GRANT COUNTY, NEW MEXICO THAT:

Article I

SECTION 1. Purpose.

The purpose of the Economic Plan Ordinance is to allow public support of economic development projects to foster, promote and enhance the addition of base jobs to the region 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 city to enter into one or more joint powers agreements with other local governments to plan and support regional economic development projects which add base jobs to the economy.

Section 2. Definitions.

Economic development project means a qualifying entity which creates base jobs in the economy and the provision of direct or indirect assistance by the Village of Santa Clara. This assistance 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.

Qualifying entity means a business which creates base jobs in the economic region and which meets the objective of the Village's comprehensive plan for economic development. The following are examples of businesses which create base jobs:

- A. An industry for the manufacturing, processing, or assembling of any agricultural or manufactured products
- B. Commercial enterprises for storing, warehousing, distributing or selling products of agriculture, mining or industry, but not including distribution to the public of electricity, gas, water or telephone or other services commonly classified as public utilities, except as provided by paragraph E of the definitions.
- 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 governmental agencies or to a specific industry or customer, but, other than as provided in paragraph (E) of these definitions, not including businesses primarily engaged in the sale of goods or commodities at retail.
- D. A business in which all or part of the activities of the business involves the supplying of services to a market outside the region.
- E. A telecommunications sales enterprise that makes the majority of its sales to persons outside the region.
- F. Tourist related businesses and services in which over fifty percent of the business sales are from outside of Grant County.

*Base employer/base jobs* means those employers who create jobs by selling goods or services to a market outside the region and those employers whose and services are sold to customers who earn their money outside the region, for example, tourists. A business will qualify as "base" if more than 50% of its sales are derived from outside Grant County.

*Project participation agreement* means an agreement between a qualifying entity and the Village of Santa Clara whereby the town provides assistance to an economic development project in exchange for the economic benefits the entity offers to the regional economy. The agreement will describe the obligations of the qualifying entity, the term of the commitment of obligations, and the resources provided by the Village. The agreement will also include any penalties or forfeiture agreements should the qualifying entity fail to meet its commitment.

*Cost benefit analysis* means the description of the economic impact of a qualifying business on the regional economy. This description will include the costs that the public sector will assume in providing services to the business and to the employees of the business as well as the economic gains received from local purchases, payroll, taxes, and other factors.

### Section 3. Economic Development Plan

The Village may assist qualifying entities in any legally permissible manner including but not limited to provision of land, buildings and infrastructure provided that all the requirements of this ordinance are met. The Village may provide land, existing buildings or existing infrastructure it already owns, or it may build, purchase or lease the facilities needed for an economic development project, or it may build or contract to have built new infrastructure. The Village at its discretion may bear the full cost or contribute a portion of the costs incurred in the application process. The Village, at its discretion,

may also contribute to the payment of costs for professional services contracts such as industry impact analysis.

For any given project the dollar value of the public incentive, excluding the value of land and/or buildings which are provided by the municipality and which were previously owned by the Village, will not exceed 5% of the budgeted general revenue fund for the fiscal period in which the application is made.

The project participation agreement will show that the value of incentives provided to a project are in reasonable proportion to the projected economic gain the Village of Santa Clara will receive from the project.

The costs incurred by the Village which are associated with the granting, leasing, or selling of Village property or in the contracting of other services may be part of the Village's contribution to the economic development project or may be assessed to the project. Any fees associated with the application and with the process will be based on direct costs acquired by the Village in conducting the application review.

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 Village's part to offer any specific type or level of assistance.

## Article II

### Section 4. Responsibilities.

The Board of Trustees will:

- A. review proposed project participation agreements and accept the agreement as proposed, or accept the agreement with recommended changes, or reject the agreement.
- B. maintain a fair, impartial review process and evaluate the project participation agreement on its economic merits.
- C. approve the application form which guides the project participation agreement.
- D. request necessary information to conduct due diligence on the project.
- F. approve the contractual obligations of the Village and of the applicant.
- G. perform annual reviews of participation agreements during the term of the participation agreement to verify that the qualifying entity is meeting its contractual obligations.
- H. determine when failure of performance on the part of a qualifying entity warrants cancellation of the agreement or enacting call-back provisions.

**Article III**  
**Project Participation Agreement**

**Section 10. Project Participation Agreement Process**

- A. Any qualifying entity meeting the definition set forth in section 2 may propose an economic development project to the Village. A project's meeting the definition of a qualifying entity does not create any obligation on the part of the Village.
- B. Applications from qualifying entities shall be submitted to the Board provided by the Village. of Trustees on a project participation agreement application form
- C. Applications will require a business plan with summary narrative of the project, resumes of its principals, evidence of financial solvency, evidence of organizational capacity, summaries of funding sources for the project, descriptions of sales and markets of the project, and an economic impact statement on the project, and an explanation of the assistance requested from the Village.
- D. The Board of Trustees will evaluate the application and will approve the request, or approve the request with modifications, or reject the request.
- E. A narrative summary of project participation agreement presented to the Board of Trustees will be made available to the public two weeks prior to the Board of Trustees meeting at which the application will be considered. Public comment will be allowed at the Board of Trustees meeting or at a special public meeting called for the purpose of soliciting public opinion on the proposed agreement.
- F. The Board of Trustees has the final determination on the approval of a proposed participation agreement and will adopt approved agreements by ordinance.

**Section 11. Review Criteria**

- A. Proposed project participation agreements from qualifying entities must meet the adopted policies of the Village and the Village's objectives for economic development.
- B. Incentive review committee will use the following criteria to favor proposed projects which:
  - (1) hire citizens of Grant County
  - (2) offer job opportunities that will develop higher level job skills that pay above minimum wage
  - (3) offer job opportunities that diversify the types of employment in the region.
  - (4) offer health insurance, retirement programs, and other
  - (5) offer existing business in Santa Clara an opportunity to expand
  - (6) offer Village of Santa Clara citizens an opportunity to start a business.
- C. The Board of Trustees may not approve an applicant whose establishment degrades the environment.
- D. The participation agreement shall contain a cost-benefit analysis. Preparing the cost-benefit analysis shall be the responsibility of the applicant. The Village retains its right to specify a format and methodology for the cost-benefit analysis. The Board of Trustees shall review and approve the methodology for the cost-benefit analysis. The source and rationale for any multiplier

effects shall be identified. The cost-benefit analysis shall address the following:

- (1) The number and types of jobs to be created, both temporary construction jobs and permanent jobs, both direct and indirect jobs.
- (2) pay scales for jobs
- (3) determination of which jobs are expected to be filled by residents of Grant County and which are expected to be filled by transfers from the company or by those recruited from outside Grant County.
- (4) total payroll expected at business start-up and after one year
- (5) anticipated impact of project on local tax base, both gross receipts taxes and property taxes.
- (6) anticipated impact on local school system
- (7) anticipated impact on water and sewer capacity
- (8) anticipated impact on roads and other municipal services such as fire, police, and health services
- (9) anticipated impact on the general quality of life of the community

E. All applications for economic development projects which request assistance from the Village shall clearly demonstrate the benefits which accrue to the community as a result of the donation of public resources. The Village has considerable flexibility in determining what is considered an adequate return for the public investment or public contribution. 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 impacts of a proposal. Benefits derived from a project may be dollars, in-kind services, jobs, expanded tax base, or other service that expands or improves the economy.

## Section 12. Public Safeguards

- A. All economic development projects receiving assistance from the town shall be subject to an annual performance review for the duration of the contract. 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 for its consideration. The Board of Trustees 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 for the project as set forth in section 14.
- B. The Village may choose to retain ownership in a project.
- C. The Village may choose to provide an incentive which is unsecured if the incentive review committee and the Board of Trustees deem the level of risk of the project to succeed is such that relying on good faith performance is appropriate security for the assistance contributed.
- D. The Village may include provisions in a project participation agreement that provide for forgiveness of obligations if the economic development project performs in good faith but is unable to meet its contractual obligations to the Village.
- E. 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 Village 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 Village may choose to deny said assignment, lease or transfer or may negotiate a new agreement with the new operator or the Village may reclaim the property and enter into an agreement with a new qualifying entity.

F. Any qualifying entity seeking assistance from public resources shall commit to operate in accordance with its project participation agreement for the specified time period in the contract.

Section 13. Project Monies.

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

Section 14. Termination.

The Village may terminate this ordinance and the Village's community economic development plan and any or all project participation agreements undertaken under its authority. Termination of this plan or any project shall be by ordinance at a public hearing or in accordance with the terms of the project participation agreement. If either 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 Village monies remaining in Village project accounts shall be transferred to the Village's general fund.

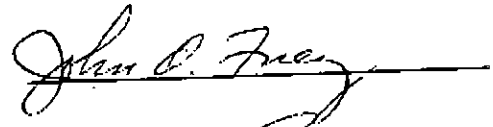
Section 15. Joint or Regional Projects.

The Village may engage in economic development projects involving one or more other governmental entities for projects which encompass more than one municipality or county. In such instances, a joint powers agreement shall be adopted by the relevant governing bodies. 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 17. Severability.

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

PASSED, APPROVED AND ADOPTED THIS 5<sup>th</sup> DAY OF March, 1999.



Mayor John O. Frey

Attest:   
Village Administrator