

ORDINANCE NO. 65

**ORDINANCE CREATING A LOCAL ECONOMIC DEVELOPMENT PLAN AND TO
ALLOW THE TOWN TO ENTER INTO ONE OR MORE JOINT POWERS
AGREEMENTS WITH OTHER LOCAL GOVERNMENTS TO PLAN AND SUPPORT
REGIONAL ECONOMIC DEVELOPMENT PROJECTS**

This Economic Development Plan Ordinance is enacted pursuant to the express statutory authority conferred upon local governments to allow public support of economic development (N.M. Stat. Ann. Section 5-10-1 through Section 5-10.13 (1978)).

WHEREAS, the Counsel of the Town of Hurley wishes to create and adopt an economic development plan to serve the interests of the public and the common welfare of the Town; and

WHEREAS, the Town of Hurley may be called upon to enter into one or more joint powers agreements with other local governments to plan and support regional economic development projects; and

WHEREAS, the adoption of an economic plan is a prerequisite for participating in economic development projects as permitted under Chapter 5, Article 10, Sections 1 through 13;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF HURLEY, GRANT COUNTY, NEW MEXICO, that an Economic Development Plan is hereby created as follows:

**Article I
General Information**

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 Town to enter into one or more joint powers agreements with other local governments to plan and support regional economic development projects.

Section 2. Definitions

Definitions of terms are as set forth in the Local Economic Development Act, section 5-10-3 NMSA (1978).

Section 3. Restrictions On Public Expenditures Or Pledges Of Credit

The Town of Hurley shall comply with the Restrictions On Public Expenditures Or Pledges Of

Credit as set forth in section 5-10-4 NMSA (1978) as provided in full as follows:

- A. No local or regional government shall provide public support for economic development projects as permitted pursuant to Article 9, Section 14 of the constitution of New Mexico except as provided in the Local Economic Development Act [5-10-1 to 5-10-13 NMSA 1978] or as otherwise permitted by law.
- B. The total amount of public money expended and the value of credit pledged in the fiscal year in which that money is expended by a local government for economic development projects pursuant to Article 9, Section 14 of the constitution of New Mexico and the Local Economic Development Act [5-10-1 to 5-10-13 NMSA 1978] shall not exceed five percent of the annual general fund expenditures of the local government in that fiscal year. The limits of this subsection shall not apply to:
- (1) the value of any land or building contributed to any project pursuant to a project participation agreement;
 - (2) revenue generated through the imposition of the municipal infrastructure gross receipts tax pursuant to the Municipal Local Option Gross Receipts Taxes Act [Chapter 7, Article 19D NMSA 1978] for furthering or implementing economic development plans and projects as defined in the Local Economic Development Act [5-10-1 to 5-10-13 NMSA 1978] or projects as defined in the Statewide Economic Development Finance Act [6-25-1 to 6-25-16 NMSA 1978], 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 governing body;
 - (3) revenue generated through the imposition of a county infrastructure gross receipts tax pursuant to the County Local Option Gross Receipts Taxes Act [Chapter 7, Article 20E NMSA 1978] for furthering or implementing economic development plans and projects as defined in the Local Economic Development Act [5-10-1 to 5-10-13 NMSA 1978] or projects as defined in the Statewide Economic Development Finance Act [6-25-1 to 6-25-16 NMSA 1978]; 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 governing body;
 - (4) the proceeds of a revenue bond issue to which municipal infrastructure gross receipts tax revenue is pledged;
 - (5) the proceeds of a revenue bond issue to which county infrastructure gross receipts tax revenue is pledged; or
 - (6) funds donated by private entities to be used for defraying the cost of a project.
- C. A regional or local government that generates revenue for economic development projects to which the limits of Subsection B of this section do not apply shall create an economic development fund into which such revenues shall be deposited. The economic

development fund and income from the economic development fund shall be deposited as provided by law. Money in the economic development fund may be expended only as provided in the Local Economic Development Act [~~5-10-1~~ to ~~5-10-13~~ NMSA 1978] or the Statewide Economic Development Finance Act [~~6-25-1~~ to ~~6-25-16~~ NMSA 1978].

Section 4. Economic Development Plan

- A. The Town 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 Town 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 Town at its discretion may bear the full cost or contribute a portion of the costs incurred in the application process.
- B. The Town, at its discretion, may also contribute in the payment of costs for professional services contracts such as industry impact analysis.
- C. The Town may use public funds, to the extent allowable by statute, to offset the costs of a prospective business for relocation, training, rent, or otherwise.
- D. 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 Town of Hurley will receive from the project.
- E. The costs incurred by the Town which are associated with the granting, leasing, or selling of Town property or in the contracting of other service may be part of the Town'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 Town in conducting the application review.
- F. 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 Town's part to offer any specific type or level of assistance.

Article II
Incentive Review Committee

Section 1. Composition

The Incentive Review Committee shall be five persons, all of whom must reside within the Town of Hurley. The persons will be qualified by training, experience, and ability to exercise sound and practical judgment on civic, social, economic and governmental affairs. Every effort will be made to evaluate each person's potential for conflicts of interests if made a member of the Committee. In addition, every effort will be made to establish a Committee which represents, as much as possible, the racial, cultural, economic and gender make-up of the Town of Hurley.

Section 2. Appointment

The Incentive Review Committee will be appointed by the Town of Hurley Council.

Section 3. Terms

Appointments to the Committee shall be for terms of two years except for the initial appointments of members. Initially, two members shall have a one year term and three members shall have a two year term. Each subsequent term of a member shall be for two years to maintain the original staggering of terms of membership. There shall be no limitation of the number of consecutive terms a member may serve on the Incentive Review Committee.

Section 4. Officers

The Committee shall elect its Chairman from among its members for a term of one year with eligibility for reelection.

Section 5. Meetings, Rules

- A. The Committee shall hold at least one regular meeting each calendar month providing that a participation agreement has been submitted for review. The presiding officer may call meetings at such times and on such dates as determined necessary. The Committee shall adopt rules for transaction of its business and shall keep a record of resolutions, transactions, findings and determinations which shall be made a public record. Three members will constitute a quorum.
- B. This is a working Committee, therefore, absences are discouraged. After three (3) unexplained absences, a board member will be presumed to have resigned, and the presiding officer will consult with the Town Council for a replacement. Any Committee member aggrieved by the determination of a presumed resignation may request a public hearing before the Town Council within ten (10) days from a receipt of a written notice that the resignation is effective. If the Town Council determines by a majority vote of the of the members present, that the aggrieved board member did have three unexplained absences, or if no public hearing is requested within the ten-day period, the resignation shall be presumed and the Town Council, with the advice of the Incentive Review Committee, shall appoint a new member to complete the term of the resigning member.

Section 6. Responsibilities

A. The Incentive Review Committee shall:

- (1) Review proposed project participation agreement applications and make recommendations to the Town Council to either accept the agreement application as submitted or as modified or, reject the agreement application as proposed.
- (2) Maintain a fair, impartial review process and evaluate the project participation agreement application on its economic merits rather than on political considerations.
- (3) Approve the application form which guides the project participation agreement.
- (4) Review staff's analysis of the impact of an agreement on the Town.
- (5) Request necessary information to perform due diligence on the project.
- (6) Recommend the contractual obligations of the Town and of the applicant.
- (7) Perform annual reviews of participation agreements during the term of the participation agreement to verify that the qualifying entity is meeting its contractual obligation.
- (8) Forward recommendations to the Town Council when failure of performance on the part of a qualifying entity warrants agreement cancellation or enactment of call-back provisions.

Article III

Project Participation Agreement

Section 1. Project Participation Agreement Process

- A. Any qualifying entity meeting the definition set forth in Article III, Section 2 may propose an economic development project to the Town. Meeting the definition of a qualifying entity does not create any obligation on the part of the Town to accept said project.
- B. Applications from qualifying entities shall be submitted to the Town Manager on a Project Participation Application Form provided by the Town.
- C. Agreement applications will require summary narration of the project and its principals, evidence of financial solvency, evidence of organizational capacity, summaries of funding sources for the project, a description of anticipated environmental impacts, a proposed agreement outlining the economic impact of the project, and the assistance requested from the Town.

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- D. The Incentive Review Committee will evaluate the application and make a recommendation of the Town Council to approve, approve with modifications, or reject the project participation agreement application.
 - E. Applicants whose agreement applications are forwarded with recommendations for approval or approval with modifications will be required to submit documentation to verify the financial information submitted in the application.
 - F. A narrative summary of Project Participation Agreement Applications presented to the Incentive Review Committee will be made available to the public two weeks prior to the Incentive Review Committee's meeting. Public comment will be allowed at the Incentive Review Committee meeting.
 - G. The Town Council will make a final determination on the approval of a proposed Project Participation Agreement Application and will adopt approved agreements by resolution in open meeting and by ordinance.

Section 2. Review Criteria

- A. Project Participation Agreement Applications from qualifying entities must meet the adopted policies of the Town and the Town's objectives for economic development.
- B. The Town's evaluation of an application shall be based on the provisions of this ordinance, the financial and management stability of the qualifying entity, the demonstrated commitment of the qualifying entity to the community, a cost-benefit analysis of the project and any other information the Town believes is necessary for a full review of the Project Participation Agreement Application. Additionally, The Incentive Review Committee will review proposed projects to determine if they:
 - (1) employ citizens of the Town;
 - (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 employee benefits such as child care assistance;
 - (5) offer existing business in Town an opportunity to expand;
 - (6) offer Town citizens an opportunity to start a business;
- C. The Incentive Review Committee may not approve an applicant whose project poses a threat to the environment.

D. The preparation of the cost-benefit analysis referred to above, shall be the responsibility of the applicant. The Town retains its right to specify a format and methodology for the cost-benefit analysis. The Incentive Review Committee shall review and approve the methodology for the cost-benefit analysis. The source and rationale for any multiplier effects shall be identified. Multiplier formulas may include counts for indirect jobs and for induced impact of payroll created through indirect jobs. 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 and, both direct and indirect jobs.
- (2) Pay scales for jobs.
- (3) Businesses offering jobs to be filled by residents of the Town versus those which are expected to be filled by transfers from the company or by those recruited from outside the Town.
- (4) Total payroll expected at business start-up and after one year.
- (5) Anticipated impact of the project on the local tax base to include both gross receipts taxes and property taxes.
- (6) Anticipated impact on the local school system.
- (7) Anticipated impact on water and sewer capacity.
- (8) Anticipated impact on roads and other services such as fire, police, and health services.
- (9) Anticipated impact on the general quality of life in the community.
- (10) Any additional factors established by policy.

E. All applicants for economic development projects which request assistance from the Town shall clearly demonstrate the benefits which shall accrue to the community as a result of the contribution of public resources. The Town shall require a substantive contribution from the qualifying entity for each economic development project. The contribution shall be of value and may be paid in money, in-kind services, jobs, expanded tax base, property, or other things or services of value that expand or improve the economy. The Town has considerable flexibility in determining what is considered a substantive contribution and 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 the quantitative impacts of a proposal.

F. If a Project Participation Agreement Application is accepted the Town and the qualifying entity shall enter into a Project Participation Agreement.

Section 3. 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 Incentive Review Committee for its consideration. The Town Council at a public hearing may terminate assistance to the economic development project by passage of a resolution which terminates the agreement and specifies the dispositions of all assets and obligations for the project as set forth in Section 4.
- B.** The Town may choose to retain ownership in a project.
- C.** The Town may choose to provide an incentive which is unsecured if the Incentive Review Committee and the Town deem that 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 Town 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 Town.
- 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 Town 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 Town may choose to deny said agreement assignment or transfer and / or may negotiate a new agreement with the new operator or, the Town may reclaim all of the economic development project property and enter into an agreement with a new qualifying entity. The new qualifying entity shall be required to submit a Proposed Project Participation Agreement Application and proceed in accordance with this Article.
- 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 4. Project Monies

- A.** The Town revenues dedicated or pledged for funding or financing of economic development projects shall be deposited in a separate account. Separate accounts 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. These accounts shall be subject to an annual independent audit.

- B. All monies allocated to a project shall be kept in a separate account by the qualifying entity with said account(s) clearly identified. This / these accounts shall be subject to an annual independent audit.

Section 5. Termination

- A. The Town may terminate this ordinance and the Town's economic development plan and any or all project participation agreements undertaken under its authority. The termination of this plan or any projects 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.
- B. Upon termination of the ordinance or any project participation agreement, any monies remaining in the Town project accounts shall be transferred to the Town's general fund.

Section 6. Joint Regional Projects

The Town 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 7. Policies and Procedures

The Town's policies and procedures, as are deemed necessary by the Town in order to implement this ordinance, are hereby adopted as a part of the Town's Economic Development Plan and are incorporated by reference.

Section 8. Severability

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

PASSED, ADOPTED AND APPROVED by vote of the Council of the Town of Hurley, Grant County, New Mexico, this 20th day of October, 2003.

TOWN COUNCIL
HURLEY, NEW MEXICO



DAVID D. DIAZ, MAYOR

Mano V. Martinez
MANUEL V. MARTINEZ, COUNCILOR

Ray C. Baca
RAY C. BACA, COUNCILOR

Gilbert G. Montoya
GILBERT G. MONTOYA, COUNCILOR

Timothy Larson
TIMOTHY LARSON, COUNCILOR

ATTEST:

Gail Gibbs
GAIL GIBBS
TOWN CLERK

Approved as to form:

Cynthia J. Patterson
CYNTHIA J. PATTERSON
TOWN ATTORNEY