

**TOWN OF CLAYTON, NEW MEXICO
ORDINANCE NO. 632**

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

Section 1. ECONOMIC DEVELOPMENT PLAN

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 town's economic development plan.

Section 3. Purpose.

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 town 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.

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

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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.

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 an 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.

Project participation agreement means an agreement between a qualifying entity and the Town whereby the Town 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 Town Council of Clayton.

Section 5. Economic Development Plan.

The Town Manager 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 town 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 town at its discretion may bear the full cost or contribute a portion of the costs including the waiver of applicable fees. The town, 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 town's part to offer any specific type or level of assistance.

Section 6. Union County Community Development Corporation.

The governing body assigns the UCCDC Board of Directors the following responsibilities with regard to the economic development plan for the town of Clayton:

- A. Reviewing and making recommendations to the governing
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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).

The UCCDC shall at all times provide for a Board of Directors position for the town of Clayton, the town Mayor shall appoint a member of the Board of Directors with the advice and consent of the town Council.

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 town. Meeting the definition of a qualifying entity does not create any obligation on the part of the town of Clayton.
- 7.2 Applications from qualifying entities shall be submitted to the town of Clayton on forms provided by the town.
- 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, 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 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.

Section 8. Applicable Review Criteria.

- 8.1 Applications for economic development projects requesting economic assistance from the town, which meet the policies and objectives of the town's economic development plan, shall receive priority.
Examples Include, but are not limited to:

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- 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 Clayton;
- C) Private companies seeking to build, expand or relocate facilities;
- D) Private companies which provide facilities or services which enhance the ability of Clayton 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 town 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 town shall submit a cost benefit analysis. Preparing a cost benefit analysis shall be the responsibility of the applicant. The town retains the right to specify a format and methodology for the cost-benefit analysis. The UCCDC 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 town 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, 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 Clayton 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 town 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 Clayton 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

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assistance from the town shall clearly demonstrate the benefits, which will accrue to the community as a result of the donation of public resources. The Town 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 Town 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 town 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.

Section 9. Public Safeguards.

All economic development projects receiving assistance from the town shall be subject to an annual performance review conducted by the UCCDC and/or the Town. 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 town 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 town. Types of security may include, but are not limited to:

- A) Letter of credit in the town's name;
- B) Performance bond equal to the town'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 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 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.

Any qualifying entity seeking assistance from public resources shall

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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.

Section 10. Project Participation Agreement.

The qualifying entity shall prepare with the town 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 town 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 town's investment;
- F) The procedures by which a project may be terminated and the town'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 town, with such account clearly identified. These accounts shall be subject to an annual independent audit.

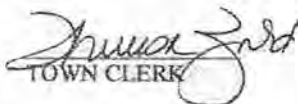
Section 12. Termination. The Governing body may terminate this ordinance or the town's economic development plan or any or all project participation agreements undertaken under its authority. Termination of this Ordinance shall be by ordinance at a public hearing. Termination of a project participation agreement shall be at a public meeting. If an ordinance or a project participation agreement is terminated, all contract provisions of the project participation agreement obligating the qualifying entity including those regarding termination shall be satisfied. Upon termination of the ordinance any Town monies remaining in the town project accounts shall be transferred to the town's general fund.

Section 13. Joint Regional Projects. The town 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.

ADOPTED BY THE GOVERNING BODY OF THE TOWN OF CLAYTON ON THE
 17th DAY OF July, 2003.


 MAYOR

ATTEST:


 TOWN CLERK