TAOS COUNTY
ORDINANCE NO. 2016-6

ADOPTING ORDINANCE 2016-6 RELATING TO
ECONOMIC DEVELOPMENT PLANNING AND
REPEALING AND REPLACING ORDINANCE 2006-5.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF THE
COUNTY OF TAOS:

Section 1. Economic Development Plan.

1.1 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 counties to allow public support of economic development
(NMSA 1978, § 5-10-1 through 5-10-13). This Ordinance is adopted as part of the
County's Economic Development Plan.

Section 3. Purpose.

3.1 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 County to enter into
joint powers agreements 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
businesses for furthering or implementing economic development plans and projects.
Furthermore, local and regional governments have the authority to contribute assets to
development projects.

Section 4. Definitions as used in the Economic Development Plan Ordinance:

4.1 Economic development project means the provision of direct or indirect assistance
to a qualifying business and 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; payments for professional services contracts
necessary to implement a plan or project; the provision of direct loans or grants for
land, buildings or infrastructure; loan guarantees securing the cost of land, buildings

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or infrastructure in an amount not to exceed the revenue that may be derived from the infrastructure gross receipts tax; grants for public works infrastructure improvements essential to the location or expansion of a qualifying business; purchase of land for a publicly held industrial park; and the construction of a building for use by a qualifying business.

4.2 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.

4.3 Qualifying entity means an existing or proposed 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:

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 agricultural, mining or industry, but, other than provided in Paragraph (D) of this subsection, 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.

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 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 New Mexico;

E. A facility for the direct sales by growers of agricultural products, commonly known as farmers’ markets;

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

G. A cultural facility; and

H. A retail business.

4.4 Project participation agreement means an agreement between a qualifying entity and the County whereby the County provides assistance to an economic development project in exchange for the benefits received as set forth in this section.

4.5 Governing body means the Board of County Commissioners.

4.6 Person means an individual, corporation, association, partnership or other legal
4.7 *Regional government* means any combination of municipalities and counties that enter into a joint powers agreement to provide for economic development projects pursuant to a plan adopted by all parties to the joint powers agreement.

**Section 5. Economic Development Plan.**

5.1 Goals. The County seeks to promote a diverse and balanced economy in accordance with the goals and strategies identified in the “Taos County Economic Development Plan” adopted _____, 2017. This Economic Development Plan builds upon that strategy by authorizing assistance to qualifying entities that further those goals and strategies.

5.2 Projects. Any qualifying entity may submit an application for assistance. Those projects which are envisioned in the strategy include, but are not limited to:

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 the County of Taos;

C. Private companies seeking to build, expand or relocate facilities;

D. Private companies which provide facilities or services, which enhance the ability of the County of Taos 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 the following:

   1) Business incubators;
   2) Art incubators or coalitions (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 workforce development efforts such as apprenticeships or other job training programs;

F. Tourism oriented businesses that promote or service the natural resources and recreational opportunities of the surrounding area;

G. Qualifying entities with existing contracts or projects with the County when this Ordinance is adopted may propose a restructuring of their projects as an economic development project.

**Section 6. Public Assistance to Economic Development Projects; Restrictions on Expenditures or Pledges of Credit.**

6.1 Subject to the limitations provided herein, the Governing Body may provide assistance to projects in any manner identified in section 4.1 of this Ordinance. The County 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 County may bear the full cost or contribute a portion of the costs including the waiver of applicable fees. The County 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.

6.2 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 governing body for economic development projects pursuant to Article 9, Section 14 of the constitution of New Mexico and the Local Economic Development Act shall not exceed ten (10) percent of the annual general fund expenditures of the County in that fiscal year. The limits of this subsection shall not apply to:

6.2.1 The value of any land or building contributed to any project pursuant to a project participation agreement;

6.2.2 Revenue generated through the imposition of the municipal infrastructure gross receipts tax pursuant to the County Local Option Gross Receipts Taxes Act for 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 Governing Body;

6.2.3 The proceeds of a revenue bond issue to which municipal infrastructure gross receipts tax revenue is pledged;

6.2.4 The proceeds of a revenue bond issue to which county infrastructure gross receipts tax revenue is pledged; or

6.2.5 Funds donated by private entities to be used for defraying the cost of a project.

6.3 The County will create an economic development fund into which revenues generated from the sources identified in Section 6.2.1-6.2.5 above shall be deposited.

6.4 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 County's part to offer any specific type of level of assistance.

6.5 This Ordinance shall not be construed to create any right, entitlement or expectation in any person to receive assistance or funds from the County for an economic development project.
6.6 The Economic Development Plan shall be printed and made available to the residents within the local or regional government area.

Section 7. Application Requirements.

7.1 Any qualifying entity meeting the definition set forth in subsection 4.3 may propose an economic development project to the County. Meeting the definition of a qualifying entity does not create any obligation on the part of the County.

7.2 Applications from qualifying entities shall be submitted to the County Manager.

7.3 Applications shall contain the following information for applicants.

A. Identification information:
   1. Complete name and address of entity;
   2. Incorporation or other authorizing papers with by-laws;
   3. List of board of directors and executive director or other owners or officers as applicable, with business addresses; and
   4. Resumes for all directors and officers of the entity.

B. Evidence of financial solvency of the qualifying entity:
   1. Financial statement (income statement and balance sheets) for the past three (3) years;
   2. Federal tax number, New Mexico State Taxation and Revenue number and County business license; and
   3. Projected income statement for at least three (3) years.

C. Evidence of organizational capacity:
   1. Brief history of the entity; and
   2. Organizational mission of the entity.

D. Proposed Project.

   1. Description of the proposed project in such format and containing such detail as may be prescribed by the County Manager;
   2. Pro-forma cash flow analysis;
   3. A cost-benefit analysis in such format and methodology as the County Manager may prescribe, showing:
      a. The number and type of jobs to be created, both by 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 County of Taos area;
d. Total payroll expected at start-up and after one (1) year;
e. Anticipated impact on local tax base;
f. Anticipated impact on local school systems;
g. The source and rationale for any multiplier effects;
h. Show that the County will recoup the value of its donation within a period of ten (10) years.

4. The amounts and types of assistance being requested from the County;

5. The proposal for repaying any loans to be made by the County, together with identification of the types of security to be pledged; and

6. Such other information as the County Manager may request, including, but not limited to, documents evidencing property ownership for the project, site plans, infrastructure requirements, and financing commitments.

Section 8. Applicable Review Criteria.

8.1 Applications for economic development projects requesting economic assistance from the County are reviewed based on 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 community, a cost-benefit analysis of the project and any other information the County or regional government believes is necessary. Applications which meet the goals and strategies of the County's Economic Development Plan will receive priority.

8.2 All applicants for economic development projects requesting economic assistance from the County shall require the same review required of industrial revenue bond applications (NMSA 1978, § 3-32-1 through 3-32-16). 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 County of Taos area residents. Cultural impacts of projects shall also be considered.

8.3 Any qualifying entity seeking assistance shall prepare and make available a job training and career development plan for their employees.

8.4 All applicants for economic development projects requesting economic assistance from the County shall clearly demonstrate the benefits, which will accrue to the community as a result of the donation of public resources. The County has considerable flexibility in determining what is considered to be adequate benefits. Benefits, which provide components or production capabilities, which enhance a targeted industry cluster, or address critical deficiencies in regional economy, may be recognized as adequate. 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 the
8.5 All applicants for economic development projects requesting assistance from the County 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 County retains flexibility in determining what is to be considered a "substantive contribution." The benefits identified in the previous paragraphs may be accepted as adequate contributions on their own, or cash donations may be required. Assistance in providing affordable housing to its employees or the community at large may also qualify. The determination of what constitutes an acceptable contribution for a given project shall be within the discretion of the Governing Body.

Section 9. Public Safeguards.

9.1 All economic development projects receiving assistance from the County shall be subject to an annual performance review conducted by the County. 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 pursuant to the 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 County shall retain a security interest, which shall be specified in the Project Participation Agreement. The type of security given shall depend upon the nature of the economic development project and assistance provided by the County. Types of security may include, but are not limited to the following:

A. Letter of credit in the County's name;
B. Performance bond equal to the County's contribution;
C. A mortgage or lien on the property or equipment;
D. Pro-rated reimbursement of donation if the qualifying entity reduces its 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, leave or transfer a majority interest in the economic development project before the expiration of the Project Participation Agreement, the County 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 County may choose to deny said assignment, lease or transfer or may negotiate a new agreement with the new operator, or the County may reclaim the facility and enter into an agreement with the new qualifying entity.
9.4 Any qualifying entity seeking assistance from public resources shall commit to operate in accordance with its Project Participation Agreement for a minimum of ten (10) years from the date the Project Participation Agreement is passed by the Governing Body.

Section 10. Project Participation Agreement.

10.1 The qualifying entity shall enter into a Project Participation Agreement with the County. 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 County and the qualifying entity;

C. The specific measurable objectives upon which the Section 9.1 performance review will be based and actions to be taken upon a determination that the project performance is unsatisfactory;

D. A schedule for project development and goal attainment;

E. The Section 9.2 security being offered for the County's investment;

F. A schedule for project development and completion, including measurable goals and time limits for those goals;

G. The procedures by which a project may be terminated and the County's investment recovered;

H. The time period for which the County shall retain an interest in the project. Each Project Participation Agreement shall have a "sunset" clause after which the County shall relinquish interest in an oversight of the project.

10.2 Each Project Participation Agreement shall be subject to review and approval by the Governing Body.

10.3 Failure to Perform. If a qualifying entity fails to perform its substantive contribution, the local or regional government 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. The Project Participation Agreement for an economic
development project that uses public support provided by the State to a local or regional government shall include a recapture agreement for the State.

Section 11. Project Monies.

11.1 Local or regional government 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.

11.2 In the case of a regional government, revenues of each local government dedicated or pledged for economic development purposes shall be deposited in a special account of that local government and may be expended only by that local government as provided by the regional government's economic development plan and joint powers agreement.

11.3 The local or regional government shall provide for an annual independent audit in accordance with the Audit Act of each special fund and project account. The audit shall be submitted to the local or regional government. The audit is a public record.

Section 12. Termination.

12.1 At any time after approval of an Economic Development Plan, the Governing Body may terminate this Ordinance and the County's Economic Development Plan and any or all project participation agreements undertaken under its authority. Termination shall be by ordinance at a public hearing or in accordance with the terms of the Project Participation Agreement. If an Ordinance or a Project Participation Agreement 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, County monies remaining in the County project account shall be transferred to the County's general fund.

12.2 Any unexpended and unencumbered balances remaining in any project fund or account upon repeal of a plan and termination or dissolution of a project may be transferred to the general fund of the local government holding the fund or account. In the case of funds or accounts of a regional government, the unexpended and unencumbered balances shall be divided among the local governments as provided in the joint powers agreement.

Section 13. Joint Regional Projects.

The County 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. The joint powers agreement shall require that the
governing body of each local government approve each economic development project. 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 14. Limitations.

Nothing in this Ordinance shall be construed to affect any other requirements of the New Mexico Constitution or other laws regarding local government debt, issuance of bonds, use of tax revenues or the grant, lease or sale of land or other property.

PASSED, APPROVED AND ADOPTED, this 10th day of January 2017.

BOARD OF COUNTY COMMISSIONERS
OF TAOS COUNTY, NEW MEXICO

Tim Fambro, Commissioner

Mark Gallegos, Commissioner

Tom Blankenhorn, Commissioner

Gabriel J. Romero, Commissioner

Candyce O'Donnell, Commissioner

VOTE RECORD:

- J. Fambro: yes, no, abstain, absent
- M. Gallegos: yes, no, abstain, absent
- T. Blankenhorn: yes, no, abstain, absent
- G. J. Romero: yes, no, abstain, absent
- C. O'Donnell: yes, no, abstain, absent

TAOS COUNTY
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BY BLANCH

Attest:

Anna Martinez, Taos County Clerk

Approved as to legal form:

Susan C. Baker, Taos County Attorney