

CHAPTER 4  
ECONOMIC DEVELOPMENT PLAN

## SECTION:

- 2-4- 1: Short Title
- 2-4- 2: Authority
- 2-4- 3: Purpose
- 2-4- 4: Definitions
- 2-4- 5: Economic Development Plan
- 2-4- 6: Application For Economic Development Project
- 2-4- 7: Public Safeguards
- 2-4- 8: Project Participation Agreement
- 2-4- 9: Revenues And Accounts
- 2-4-10: Termination Of Provisions
- 2-4-11: Joint Or Regional Projects
- 2-4-12: Adoption Of Other Policies And Procedures

2-4-1: **SHORT TITLE:** This chapter may be cited as the *ECONOMIC DEVELOPMENT PLAN ORDINANCE*. (Ord. 646, 2-12-2002)

2-4-2: **AUTHORITY:** This chapter is enacted pursuant to the express statutory authority conferred upon municipalities to allow public support of economic development<sup>1</sup>. This chapter is adopted as part of the city's community economic development plan. (Ord. 646, 2-12-2002)

2-4-3: **PURPOSE:** The purpose of this chapter is to allow public support of economic development 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 this chapter 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. (Ord. 646, 2-12-2002)

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1. NMSA §§ 5-10-1 – 5-10-13, as amended.

2-4-4: **DEFINITIONS:** As used in this chapter:

**ECONOMIC  
DEVELOPMENT  
PROJECT:**

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; and payments for professional services contracts necessary for local or regional governments to implement a plan or project.

**GOVERNING BODY:**

The Artesia city council.

**PROJECT  
PARTICIPATION  
AGREEMENT:**

An agreement between a qualifying entity and the city whereby the city provides assistance to an economic development project in exchange for the benefits received as set forth in this section.

**QUALIFYING ENTITY:**

A corporation, limited liability company, partnership, joint venture, syndicate, association or other person that is one or a combination of two (2) or more of the following:

A. An industry for the manufacturing, processing or assembling of agricultural or manufactured products;

B. A commercial enterprise for storing, warehousing, distributing or selling products of agriculture, mining or industry, but, other than as provided in subsection E or F of this definition, not including any enterprise for sale of goods or commodities at retail or for 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 govern-

mental agencies or to a specific industry or customer, but, other than as provided in subsection E of this definition, not including businesses primarily engaged in the sale of goods or commodities at retail;

D. An Indian nation, tribe or pueblo or a federally chartered tribal corporation;

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

F. A facility for the direct sales by growers of agricultural products, commonly known as farmers' markets; or

G. A business that is the developer of a metropolitan redevelopment project. (Ord. 646, 2-12-2002; amd. Ord. 696, 12-14-2004)

**2-4-5: ECONOMIC DEVELOPMENT PLAN:**

- A. The governing body may assist economic development projects in any legally permissible manner including, but not limited to, provision of land, buildings and infrastructure, provided that all the requirements of this chapter are met. The city 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 city, at its discretion, may bear the full cost or contribute a portion of the costs including the waiver of applicable fees. The city, at its discretion, may also contribute to the payment of costs for professional services contracts such as industry feasibility studies and planning and design services needed to implement a project.
- B. The governing body may consider offering all forms of assistance allowed under this chapter and any other legally permissible forms of assistance; however, this does not establish any obligation on the city's part to offer any specific type or level of assistance. (Ord. 646, 2-12-2002)

2-4-6: **APPLICATION FOR ECONOMIC DEVELOPMENT PROJECT:**

- A. **Qualifications Of Applicant:** Any qualifying entity meeting the definition set forth in section 2-4-4 of this chapter, may propose an economic development project to the city. Meeting the definition of a qualifying entity does not create any obligation on the part of the city.
- B. **Submission Of Application; Information Required:** Applications from qualifying entities shall be submitted to the chamber of commerce economic development office on forms provided by the city and shall contain the following information for business applicants:
1. Identification information:
    - a. Complete name and address of entity;
    - b. Incorporation papers with bylaws;
    - c. List of board of directors and executive director with addresses; and
    - d. Resumes of all directors and officials.
  2. Evidence of financial solvency (personal statements of principals):
    - a. Financial statements (income statements and balance sheets) for the past three (3) years;
    - b. Federal tax number, New Mexico state taxation and revenue number and city business license;
    - c. Projected income statement for at least three (3) years.
  3. Evidence of organizational capacity:
    - a. Brief history of the entity;
    - b. Organizational chart of entity;
    - c. Business plans for the entity and proposed project (shall include pro forma cash flow analysis);

d. Evidence of ability to manage the project, such as, but not limited to:

- (1) List and description of previously completed projects;
- (2) Resumes of key staff involved with the project;

e. Entity shall disclose the following information (if the answer is yes, entity shall attach a written explanation):

- (1) Has the business or any of its officers ever been involved in a bankruptcy?
- (2) Has the business or any of its officers ever defaulted obligations on which payments are not current?

d. Evidence of ability to manage the project, such as, but not limited to:

- (1) List and description of previously completed projects;
- (2) Resumes of key staff involved with the project;

e. Entity shall disclose the following information (if the answer is yes, entity shall attach a written explanation):

- (1) Has the business or any of its officers ever been involved in a bankruptcy?
- (2) Has the business or any of its officers ever defaulted obligations on which payments are not current?

(3) Does the entity have any loans or other financial obligations on which payments are not current?

4. Funding sources for project:

a. Equity investment of qualifying entity:

b. Assistance being requested of the city (e.g., specific parcel of land, applicable fees, etc.), with estimate of value; and,

c. Funding sources other than the city with letters of commitment or intent to fund;

5. Identification of the terms, conditions, location, scope and requirements to the economic development project.

6. Information sufficient for the GAEDC to make its determination whether the applicant is a qualifying entity.

7. Any other information required of the applicant by the GAEDC or the governing body.

C. Application Review Process:

1. The GAEDC board of directors shall determine whether the entity and the proposed project qualify under this section.

2. The GAEDC board of directors shall then coordinate with the qualifying entity to develop a project participation agreement as set forth in section 2-4-8 of this chapter.

3. The GAEDC board of directors shall consider the economic development project and the project participation agreement in accordance with the criteria set forth in subsection D of this section. The GAEDC board of directors shall recommend to the governing body that the proposal be adopted, conditionally adopted or not adopted.

4. The recommendation will be forwarded with the project participation agreement, minutes of the GAEDC meeting and any other pertinent information to the governing body for final consideration at a public hearing.

D. Application Review Criteria:

1. Applications for economic development projects requesting economic assistance from the city which meet the policies and objectives of the city's economic development plan shall receive priority. Examples 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 Artesia;

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

d. Private companies which provide facilities or services which enhance the ability of Artesia 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 coalitions (e.g., a performing arts coalition seeking to construct 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 contracts or projects with the city when this plan is adopted may propose a restructuring of their project as an economic development project.

2. All applications for economic development projects requesting economic assistance from the city shall submit a cost benefit analysis. Preparing the cost benefit analysis shall be the responsibility of the applicant. The city retains the right to specify a format and methodology for the cost benefit analysis. The GAEDC board of directors 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 city will recoup the value of its donation within a period of ten (10) years. The analysis shall address the following:

a. The number and types of jobs to be created, both temporary construction jobs and permanent jobs (by New Mexico department of labor job category);

b. Pay scales 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 Artesia area;

d. Total payroll expected at start up and after one year;

e. Anticipated impact of project on local tax base; and

f. Anticipated impact on local school system. (Ord. 646, 2-12-2002)

3. All applications for economic development projects requesting economic assistance from the city shall require the same review required of industrial revenue bond applications. This review shall focus on environmental and community impacts of the proposed project. 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 Artesia area residents. Cultural impacts of projects shall also be considered. (Ord. 646, 2-12-2002; amd. 2002 Code)

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

5. All applications for economic development projects requesting economic assistance from the city shall clearly demonstrate the benefits, which will accrue to the community as a result of the

donation of public resources. The city has considerable flexibility in determining what is considered as adequate benefits. Benefits such as providing components or production capabilities which enhance a targeted industry cluster or addressing critical deficiencies in the regional economy may be recognized. The benefits claims of any proposal will receive careful scrutiny. However, it is the intent of this chapter to be flexible in the evaluation of these benefits, and to recognize the qualitative as well as quantitative impact of a proposal.

6. All applicants for economic development projects requesting economic assistance from the city 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 things or service of value for the expansion or improvement of the economy. The city retains flexibility in defining the "substantive contribution". The benefits identified in the previous subsections may be accepted as adequate contributions on their own, or a cash donation 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. (Ord. 646, 2-12-2002)

2-4-7: **PUBLIC SAFEGUARDS:**

- A. Annual Performance Review: All economic development projects receiving assistance from the city shall be subject to an annual performance review conducted by the GAEDC. This review shall evaluate whether the project is attaining the goals and objectives set forth in the project participation agreement. The governing body at a public hearing may terminate assistance to the economic development project by passage of an ordinance which terminates the agreement and specifies the disposition of all assets and obligations of the project as set forth in subsection 11.11.13 SFCC 1987.
- B. Security: The city 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 city. Types of security may include, but are not limited to:
  1. Letter of credit in the city's name;
  2. Performance bond equal to the city's contribution;

3. A mortgage or lien on property or equipment;
  4. Prorated reimbursement of donation if company reduces work force or leaves the community before the term agreed to; and
  5. Other security agreeable to both parties.
- C. **Transfer Of Agreement:** 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 city 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 city may choose to deny said assignment, lease or transfer or may negotiate a new agreement with the new operator, or the city may reclaim the facility and enter into an agreement with a new qualifying entity.
- D. **Public Assistance; Project Commitment:** 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 ordinance adopting the project participation agreement is passed by the governing body. (Ord. 646, 2-12-2002)

2-4-8:           **PROJECT PARTICIPATION AGREEMENT:**

- A. The qualifying entity shall prepare with the city a project participation agreement. This agreement is the formal document which states the contributions and obligation of all parties in the economic development project. The agreement must clearly state the following items:
1. The economic development goals of the project;
  2. The contributions of the city and the qualifying entity;
  3. The specific measurable objectives upon which the performance review will be read;
  4. A schedule for project development and goal attainment;
  5. The security being offered for the city's investment;

6. The procedures by which a project may be terminated and the city's investment recovered; and,

7. The time period for which the city shall retain an interest in the project. Each project participation agreement shall have a "sunset" clause after which the city shall relinquish interest in and oversight of the project.

- B. Each project participation agreement shall be adopted as an ordinance and adopted by the governing body at a public hearing. (Ord. 646, 2-12-2002)

2-4-9:       **REVENUES AND ACCOUNTS:** All project monies shall be kept in separate accounts by the entity and the city, with such accounts clearly identified. These accounts shall be subject to an annual independent audit. (Ord. 646, 2-12-2002)

2-4-10:       **TERMINATION OF PROVISIONS:** The governing body may terminate this chapter and the city's community 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, any city monies remaining in city project accounts shall be transferred to the city's general fund. (Ord. 646, 2-12-2002)

2-4-11:       **JOINT OR REGIONAL PROJECTS:** The city 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 chapter. (Ord. 646, 2-12-2002)