

CITY OF ELEPHANT BUTTE

ORDINANCE NO. 166

**AN ORDINANCE RELATING TO ECONOMIC DEVELOPMENT PLANNING;
REMOVING THE PROHIBITION ON PUBLIC SUPPORT OF ECONOMIC DEVELOPMENT PROJECTS
IN RURAL AREAS INVOLVING RETAIL SALES**

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF ELEPHNAT BUTTE:

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 municipalities to allow public support of economic development (NM Stat. Ann. Section 5-10-1 through Section 5-10-13-1978). This Ordinance is adopted as part of the city'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 unauthorized use of public money or 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.

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, voters in referendum must approve the imposition of tax.

Eligible uses: Municipalities may impose municipal infrastructure gross receipts tax and dedicate the revenue of economic development projects. 0.025% tax (in four increments of 0.0625%) may be imposed.

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

- 4.1 *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 libraries and live- work housing facilities.
- 4.2 *Economic development project* means the provision of direct loans or grants for land, buildings or infrastructure; technical assistance to cultural facilities; loan guarantees securing the cost of land, buildings or infrastructure in an amount not to exceed the revenue that may be derived from the municipal infrastructure gross receipts tax and the county infrastructure gross receipts tax; grants for public works infrastructure improvements essential to the location or expansion of a qualifying entity; grants or subsidies to cultural facilities; purchase of land for a publicly held industrial park or publicly owned cultural facility; and the construction of a building for use by a qualifying entity.;
- 4.3 *Qualifying entity* means an existing or proposed corporation, limited liability company, joint venture, syndicate, association or other person that is one or the 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, E or H of this subsection, not including any enterprise for sale of goods or commodities at retail or for the distribution 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, other than provided in Paragraph D, E or H of this subsection, not including business primarily engaging in the sale of goods or commodities in 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 city whereby the city provides assistance to an economic development project in exchange for the benefits received as set forth in the section.

4.5 *Retail business* means a business that is primarily engaged in the sale of goods or commodities at retail and that is located in a municipality with a population of ten thousand or less.

4.6 *Governing body* means the City of Elephant Butte.

Section 5. Economic Development Plan

5.1 The Mayor, 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 city may provide land, buildings or infrastructure it already owns, or 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 service contracts such as 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 city's part to offer any specific level of assistance.

Section 6. Mayor/City Manager

6.1 The governing body assigns the mayor/city manager the following responsibilities with regard to the economic development plan for the City of Elephant Butte:

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

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 city. Meeting the definition of a qualifying entity does not create any obligation on the part of the City of Elephant Butte.
- 7.2 Applications from qualifying entities shall be submitted to the City of Elephant Butte on forms provided by the city.
- 7.3 Applications shall contain the following information for business applicants:
 - A. Identification information:
 - 1) Complete name and address of entity,
 - 2) Incorporate papers with by-laws,
 - 3) List of board of directors and executive director with addresses and
 - 4) Resumes of all directors and officers.
 - A. Evidence of financial solvency (personal statement of principles);
 - 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.
 - B. Evidence of organizational capacity;
 - 1) Brief history of the entity;
 - 2) Organizational chart of the entity;
 - 3) Business plan for the entity and proposed project (shall include pro-forma cash flow analysis).
 - C. The project participation agreement and any other pertinent information will be forwarded to the governing body for final consideration at the public meeting.

Section 8. Application Review Criteria

- 8.1 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. Housing developments;

- B. Assisted living facilities and /or nursing homes;
- C. Professional offices;
- D. Retail businesses;
 - 1) Restaurants,
 - 2) Cafes,
 - 3) Coffee shops,
 - 4) Laundromats,
 - 5) Pharmacies,
 - 6) Hardware stores,
 - 7) Grocery stores,
- E. Lake-bases businesses;
- F. Light industrial;
- G. "Green" or sustainable industries.

8.2 All applications for economic development projects requesting economic assistance from the city shall submit a cost benefit analysis. Preparing a 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 source and rational 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 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 of the city;
- 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.

8.3 All applicants 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 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 Elephant Butte 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 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 claimed of any proposal will receive careful scrutiny; however, it is the intent of the ordinance to be flexible in the evaluation of these benefits and to recognize the qualitative as well as the quantitative impact of a proposal.

8.6 All applicants for economic development projects requesting 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 services of value for the expansion or improvement of the economy. The city retains flexibility in defining the "substantive contributions". 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. Determination of what constitutes an acceptable contribution for a given project shall be at the discretion of the governing body.

Section 9. Public Safeguards

9.1 All economic development projects receiving assistance from the city shall be subject to an annual performance review conducted by the city manager. This review shall evaluate whether the projects 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 city shall retain a security interest, which shall be specified in the project participation agreement. The type of security 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:

- A. Letter of credit in city's name;
- B. Performance bond equal to the city's contribution;
- C. A mortgage or lien on the property or equipment;

- D. Pro-rated reimbursement of donation if company reduces workforce or leaves the community before the term agreed to and
- E. Other security agreeable to both parties.

9.3 Should a qualified 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 agreement, 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.

9.4 Any qualifying entity seeking assistance from public resources shall commit to operate on 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 Duties and Requirements

10.1 The governing body and the qualifying entity shall enter into a project participation agreement.

10.2 The governing body shall require a substantive contribution from the qualifying entity for each economic development project. Public support provided for an economic development project shall be in exchange for a substantive contribution from the qualifying entity. 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 of the economy.

10.3 The qualifying entity shall provide security to the governing body for an economic development project. The security shall secure the qualifying entity's obligation based on terms stated in the project participation agreement with the governing body and shall reflect the amount of public support provided to the qualifying entity and the substantive contribution expected from the qualifying entity.

10.4 If a qualifying entity fails to perform its substantive contribution, the governing body 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 contributions for the economic development project performed by the qualifying entity, based on the terms stated in the project participation agreement. The projects participation agreement for an economic development project that uses public support provided by the governing body shall include a recapture agreement.

10.5 The project agreement at a minimum shall set out:

- A. the contributions to be made by each party to the participation agreement;
- B. the security provided to the governing body that provides public support for an economic development project by the qualifying entity in the form of a lien, mortgage, or other indenture and the pledge of the qualifying business' financial or material participation and cooperation to guarantee the qualifying entity's performance pursuant to the project participation agreement.
- C. a schedule for project development and completion, including measurable goals and time limits for those goals and
- D. provisions for performance review and actions to be taken upon determination that project performance is unsatisfactory.

Section 11. Project Monies

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

Section 12. Termination

The governing body may terminate this ordinance and the city'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 project participation agreement is terminated, all contract provisions of the project agreement regarding termination shall be satisfied. Upon termination of the ordinance or any project participation agreement, any city monies remaining the city project accounts shall be transferred to the city's general fund.

Section 13. Joint Regional Projects

The city 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 CITY OF ELEPHANT BUTTE

ON THE 19th DAY OF July, 2007.



Karen Rieth

City Clerk, Karen Rieth

Eunice Kent

Mayor, Eunice Kent