

City of Rio Communities, New Mexico

Ordinance No: 2018-61

CHAPTER 10 ECONOMIC DEVELOPMENT

PART A LOCAL ECONOMIC DEVELOPMENT ACT (LEDA)

ARTICLE 1 IN GENERAL

- 10-A-1-1 SHORT TITLE
- 10-A-1-2 AUTHORITY
- 10-A-1-3 PURPOSE
- 10-A-1-4 ECONOMIC DEVELOPMENT PLAN
- 10-A-1-5 ECONOMIC DEVELOPMENT ADVISORY BOARD
- 10-A-1-6 DEFINITIONS

ARTICLE 2 PROJECT GOALS

- 10-A-2-1 ECONOMIC DEVELOPMENT GOALS

ARTICLE 3 PROJECT APPLICATION PROCESS

- 10-A-3-1 APPLICATION
- 10-A-3-2 COST BENEFIT ANALYSIS
- 10-A-3-3 REVIEW AND APPROVAL

ARTICLE 4 PROJECT IMPLEMENTATION

- 10-A-4-1 PROJECT PARTICIPATION AGREEMENT
- 10-A-4-2 PROJECT MONIES
- 10-A-4-3 PUBLIC SAFEGUARDS

ARTICLE 5 PROJECT FUND TERMINATION

- 10-A-5-1 TERMINATION
- 10-A-5-2 SEVERABILITY

CHAPTER 10 ECONOMIC DEVELOPMENT

PART A LOCAL ECONOMIC DEVELOPMENT ACT (LEDA)

10-A-1 IN GENERAL

10-A-1-1 Short Title

This chapter and part, and all articles sections within may be referenced or cited as the city's Local Economic Development Act or simply LEDA.

10-A--1-2 Authority

The Local Economic Development Act is enacted pursuant to the statutory authority conferred upon municipalities to allow public support of economic development projects, per NMSA 1978, Section 5, Article 10, identified as the State of New Mexico Local Economic Development Act. This Ordinance is adopted as part of the City of Rio Communities Economic Development Plan.

10-A-1-3 Purpose

The purpose of the Local Economic Development Act is to allow public support of economic projects that 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 City to provide direct or indirect assistance to qualifying businesses for furthering or implementing economic development strategy, plans and/or projects.

10-A-1-4 Economic Development Plan

The Local Economic Development Act is intended to assist the City in implementing and planning its economic development and priorities as identified in the City of Rio Communities Economic Development Plan, as adopted by the Rio Communities City Council. This Ordinance is intended as an instrument to facilitate the City's provision of assistance to 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 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 service contracts such as industry feasibility studies and planning and design services needed to implement a project.

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 type or level of assistance.

10-A-1-5 Economic Development Commission

The Economic Development Commission shall oversee the review of all Economic Development Project Applications and shall provide the Rio Communities City Council with recommendations on funding and assistance for these applications, as well as recommendations on Project Participation Agreements with Qualifying Entities.

10-A-1-6 Definitions

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

a. Economic Development Project

The provision of direct or indirect assistance to a qualifying entity by a local or regional government 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 entity; payments for professional services contracts necessary for local or regional governments to implement a plan or project; 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 or 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 a publicly owned cultural facility; and the construction of a building for use by a qualifying entity.

b. 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 Chapter.

c. Qualifying Entity

A 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:

- 1) An industry for the manufacturing, processing or assembling of agricultural or manufactured products;
- 2) A commercial enterprise for storing, warehousing, distributing or selling products of agriculture, mining or industry, but, other than as provided in Paragraph (5) or (6) of this subsection, 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;
- 3) 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 as provided in Paragraph (5) of this subsection, not including businesses primarily engaged in the sale of goods or commodities at retail;
 - 4) An Indian nation, tribe or pueblo or a federally chartered tribal corporation;
 - 5) A telecommunications sales enterprise that makes the majority of its sales to persons outside New Mexico;
 - 6) A facility for the direct sales by growers of agricultural products, commonly known as farmers' markets;
 - 7) A business that is the developer of a metropolitan redevelopment project; or
 - 8) A cultural facility.

10-A-2 PROJECT GOALS

10-A-2-1 Economic Development Goals

The City of Rio Communities has identified the following economic development goals for the City that are intended to guide economic development planning efforts and participation in economic development projects throughout the City, as well as those regional projects that may benefit economic development within Rio Communities:

- a. Enhance the economic sustainability of the Rio Communities community by increasing the gross receipts tax base, supporting the retention and expansion of existing non-retail businesses, and encouraging the development of new non-retail businesses and entrepreneurs within the City.
- b. Improve the economic viability of the Rio Communities community by promoting development that enhances the quality of life in Rio Communities and that increases the community's economic competitiveness.
- c. Promote the renovation, redevelopment and beautification of existing commercial properties within the City.
- d. Attract and assist businesses that are community leaders that invest in the community by engaging in positive community partnerships and contribute to enhancing Rio Communities quality of life.

10-A-3 PROJECT APPLICATION PROCESS

10-A-3-1 Application

Any qualifying entity meeting the definition set forth in Sec. 10-1-6 may propose and submit 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 Rio Communities. Applications from qualifying entities shall be submitted to the City of Rio Communities Economic Development Commission on forms provided by the City Manager.

10-A-3-2 Cost Benefit Analysis

All applications for economic development projects requesting economic or in-kind 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 cost benefit analysis shall show that the City will recoup the value of its contribution within a period of ten (10) years.

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 contribution of public resources. The City has considerable flexibility in determining what is considered a community benefit. Benefits such as providing production capabilities which enhance a targeted industry cluster or addressing critical deficiencies in the regional economy may be recognized. Other benefits, such as providing childcare or fitness facilities for their employees or involvement in a local community organization, may also be considered a community benefit. 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 impacts of the economic development project.

10-A-3-3 Review and Approval

The City of Rio Communities Economic Development Commission will review all economic development project applications.

Completed economic development project applications must be submitted to the Economic Development Commission within a minimum of fourteen (14) business days before any regularly scheduled Economic Development Commission meeting.

Failure to submit a completed application may result in an economic development project application being removed from the review process.

The City of Rio Communities may request additional information from the applicant and/or may request an interview with the applicant prior to finalizing their review of the economic development project application.

Economic development project applications requesting economic assistance from the City, which meet the economic development goals and objectives of the City's Local Economic Development Act (this Ordinance), shall receive priority consideration.

Following review by the Economic Development Commission, the Board may recommend a project for consideration by the Rio Communities City Council. The Rio Communities City Council may choose to approve the project for assistance from the City by enacting an Ordinance approving the project and the project participation agreement, as determined by the City.

10-A-4 PROJECT IMPLEMENTATION

10-A-4-1 Project Participation Agreement

The qualifying entity shall prepare with the City a project participation agreement. This agreement is the formal document which states the contribution and obligation of all parties involved 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 City and the qualifying entity;
- c. The specific measurable objectives which will be assessed during the annual performance review;
- d. A schedule for project development and goal attainment;
- e. The security being offered for the City's investment;
- f. The procedures by which a project may be terminated, and the City's investment recovered; and
- g. 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.
- h. Detail projected employment and payroll of the project. For additions to existing business, detail the increase in employment and payroll for the new project and for the existing business.
- i. List projected positions and salaries for each new employee generated by the LEDA project.

10-A-4-2 Project Monies

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

10-A-4-3 Public Safeguards

All economic development projects receiving assistance from the City shall be subject to an annual performance review conducted by the Economic Development Commission or a city designate. This review shall evaluate the project participation agreement and whether the project is attaining the goals and objectives set forth in the project participation agreement. This review shall be presented to the Rio Communities City Council for their consideration. The City Council, at a public hearing, may terminate assistance to the economic development project by provisions set forth in the project participation agreement, which terminates the agreement and specifies the disposition of all assets and obligations of the project.

The City shall retain a security interest, which shall be specific in the project participation agreement. The type of security given shall depend upon the nature of the economic development project and the assistance provided by the City. Types of security may include, but are not limited to:

- a. Letter of credit in the 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 the City's contribution if the qualifying entity fails to create the number of jobs specified, reduces workforce, or leaves the community before the term agreed to;
- e. Other security agreeable to both parties.

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.

Any qualifying entity seeking assistance from public resources shall commit to operate in accordance with its project participation agreement for a minimum of five (5) years from the date the Ordinance is adopted, and the City Council passes the project participation agreement.

10-A-5 PROJECT FUND TERMINATION

10-A-5-1 Termination

The Rio Communities City Council may terminate this Ordinance and any and all project participation agreements undertaken under its authority. Termination shall be by Ordinance at a public hearing in accordance with the terms of the project participation agreement(s). 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 the City project accounts shall be transferred to the City's general fund.

10-A--5-2 Severability

If any section, paragraph, sentence, clause or word or phrase of this Ordinance is for any reason held to be invalid or unenforceable, by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this Ordinance.

PASSED, APPROVED AND ADOPTED THIS 28TH DAY OF FEBRUARY 2018 BY THE GOVERNING BODY OF THE CITY OF RIO COMMUNITIES, NEW MEXICO.

City of Rio Communities Governing Body

Mark Gwinn
Mayor

Margaret (Peggy) Gutjahr,
Councilor Mayor pro-tem

William Brown,
Councilor

Arturo R. Sais,
Councilor

Thomas Scoggins,
Councilor

ATTEST:

Elizabeth (Lisa) Adair,
Municipal Clerk