

Chapter 16

ECONOMIC DEVELOPMENT

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ARTICLE I. IN GENERAL**Secs. 16-1—16-19. Reserved.****ARTICLE II. ECONOMIC DEVELOPMENT PLAN*****DIVISION 1. GENERALLY****Sec. 16-20. Definitions.**

The definitions of terms are as set forth in NMSA 1978, § 5-10-3.

(Ord. No. 966, art. I, § 2, 12-12-1996; Ord. No. 1015, § 22-52, 2-23-1999)

Sec. 16-21. Purpose.

(a) The purpose of this article is to allow public support of economic development projects to foster, promote and enhance the addition of base jobs to the region while continuing to protect against the unauthorized use of public money and other public resources.

(b) The purpose of the article is to also allow the city to enter into one or more joint powers agreements with other local governments to plan and support regional economic development projects that add base jobs to the economy.

(Ord. No. 966, art. I, § 1, 12-12-1996; Ord. No. 1015, § 22-51, 2-23-1999)

Sec. 16-22. Level of assistance; costs to town.

(a) The town may assist qualifying entities in any legally permissible manner including, but not limited to, the provision of land, buildings and infrastructure provided that all the requirements of this article are met. The town may provide land, existing buildings or existing infrastructure it already owns, it may build, purchase or lease the facilities

*State law reference—Local Economic Development Act, NMSA 1978, § 5-10-1—5-10-13.

needed for an economic development project, or it may build or contract to have built new infrastructure. The town, at its discretion, may bear the full cost or contribute a portion of the costs incurred in the application process.

(b) The town, at its discretion, may also contribute to the payment of costs for professional services contracts such as industry impact analysis.

(c) For any given project the dollar value of the public incentive excluding the value of the land and buildings which are provided by the town and which were previously owned by the town will not exceed five percent of the budgeted general revenue fund for the fiscal period in which the application is made.

(d) The project participation agreement will show that the value of incentives provided to a project are in reasonable proportion to the projected economic gain the town will receive from the project.

(e) The costs incurred by the town which are associated with the granting, leasing, or selling of town property or in the contracting of other services may be part of the town's contribution to the economic development project or may be assessed to the project. Any fees associated with the application and with the process will be based on the direct costs acquired by the town in conducting the application review.

(f) The town council may consider offering all forms of assistance allowed under this article 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.

(Ord. No. 966, art. I, § 3, 12-12-1996; Ord. No. 1015, § 22-53, 2-23-1999)

Secs. 16-23—16-41. Reserved.

DIVISION 2. INCENTIVE REVIEW
COMMITTEE

Sec. 16-42. Composition; qualifications.

The incentive review committee shall be composed of five members who shall be residents of the town. Four of the persons shall represent the four city districts, and there shall be one additional member-at-large. The persons will be qualified by training, experience, and ability to exercise sound and practical judgment on civic, social, economic and governmental affairs. Every effort will be made to represent as much as feasible, the racial, cultural, economic and gender makeup of the town.

(Ord. No. 966, art. II, § 2, 12-12-1996; Ord. No. 1015, § 22-65, 2-23-1999; Ord. No. 1183, 9-13-2011)

Sec. 16-43. Appointments by mayor.

The incentive review committee will be appointed by the mayor and confirmed by the council.

(Ord. No. 966, art. II, § 3, 12-12-1996; Ord. No. 1015, § 22-66, 2-23-1999)

Sec. 16-44. Terms.

Appointments to the committee shall be for terms of two years except for the initial appointments of members. Three members shall be appointed at large and have a one-year term. Four members shall be appointed by districts and have a two-year term. Each subsequent term of a member shall be for two years to maintain the original staggering of terms of membership. There shall be no limitation of the number of consecutive terms a member may serve on the incentive review committee.

(Ord. No. 966, art. II, § 4, 12-12-1996; Ord. No. 1015, § 22-67, 2-23-1999)

Sec. 16-45. Election of chairperson.

The committee shall elect its chairperson from among its members for a term of one year with eligibility for reelection.

(Ord. No. 966, art. II, § 5, 12-12-1996; Ord. No. 1015, § 22-68, 2-23-1999)

Sec. 16-46. Meetings; removal; hearing; quorum.

The committee shall hold at least one regular meeting each calendar month providing that a participation agreement has been submitted for review. The presiding officer may call meetings at such times and on such dates as determined necessary. The committee shall adopt rules for the transaction of its business and keep a record of its resolutions, transactions, findings and determinations, which shall be a public record. This is a working committee; therefore, absences are discouraged. After three unexplained absences, a board member will be presumed to have resigned, and the presiding officer will consult with the mayor for a replacement. Any committee member aggrieved by the determination of a presumed resignation may request, within ten days from a receipt of written notice that the resignation is effective, a public hearing before the council. If the council determines by a majority vote of the councilors present at the hearing, that the aggrieved board member did have three unexplained absences, or if no public hearing is requested within the ten-day period, the resignation shall be presumed and the mayor, with the council's advice and consent, shall appoint a new member to complete the term of the resigning member. Three members will constitute a quorum.

(Ord. No. 966, art. II, § 6, 12-12-1996; Ord. No. 1015, § 22-69, 2-23-1999; Ord. No. 1183, 9-13-2011)

Sec. 16-47. Duties and powers.

The incentive review committee shall have the following duties and powers:

- (1) Review proposed project participation agreements and make recommendations to the town council to accept the agreement as proposed, to accept the agreement with recommended changes, or to reject the agreement;
- (2) Maintain a fair, impartial review process and evaluate the project participation agreement on its economic merits rather than on political considerations;
- (3) Approve the application form that guides the project participation agreement;
- (4) Review the staff's analysis of the impact of an agreement on the town;
- (5) Request the necessary information to perform due diligence on the project;
- (6) Recommend the contractual obligations of the town and of the applicant;
- (7) Perform annual reviews of participation agreements during the term of the participation agreement to verify that the qualifying entity is meeting its contractual obligations; and
- (8) Forward recommendations to the town council when the failure of performance on the part of a qualifying entity warrants agreement cancellation or enactment of callback provisions.

(Ord. No. 966, art. II, § 1, 12-12-1996; Ord. No. 1015, § 22-64, 2-23-1999)

Secs. 16-48—16-66. Reserved.**DIVISION 3. PROJECT PARTICIPATION AGREEMENT****Sec. 16-67. Process.**

(a) Any qualifying entity meeting the definition set forth in section 16-20 may propose an economic development project to the town. Meeting the definition of a qualifying entity does not create any obligation on the town's part.

(b) Applications from qualifying entities shall be submitted to the planning department on a project participation agreement application form provided by the town.

(c) Applications will require:

- (1) Summary narration of the project and its principals;
- (2) Evidence of financial solvency;
- (3) Evidence of organizational capacity;
- (4) Summaries of the funding sources for the project;
- (5) A description of the anticipated environmental impacts;
- (6) A proposed agreement outlining the economic impact of the project; and
- (7) The assistance requested from the town.

(d) The incentive review committee will evaluate the application and make a recommendation to the town council to approve, approve with modifications, or reject the project participation agreement.

(e) Applicants whose agreements are forwarded with recommendations for approval or approval with modifications will be required to submit documentation to verify the financial information submitted in the application.

(f) A narrative summary of project participation agreements presented to the incentive review committee will be made available

to the public two weeks prior to the incentive review committee's meeting. Public comment will be allowed at the incentive review committee meeting.

(g) The town council will make a final determination on the approval of a proposed participation agreement and will adopt approved agreements by ordinance. (Ord. No. 966, art. III, § 1, 12-12-1996; Ord. No. 1015, § 22-80, 2-23-1999)

Sec. 16-68. Review criteria.

(a) Proposed project participation agreements from qualifying entities must meet the town's adopted policies and objectives for economic development.

(b) The incentive review committee will review proposed projects to determine if they:

- (1) Hire citizens of the town and county;
- (2) Offer job opportunities that will develop higher level job skills that pay above minimum wage;
- (3) Offer job opportunities that diversify the types of employment in the region;
- (4) Offer health insurance, retirement programs, and other employee benefits such as child care assistance;
- (5) Offer existing business in the town an opportunity to expand;
- (6) Offer the town's citizens an opportunity to start a business.

(c) The incentive review committee may not approve an applicant whose project poses a threat to the environment.

(d) The participation agreement shall contain a cost-benefit analysis. It shall be the applicant's responsibility to prepare the cost-benefit analysis. The town retains its right to specify a format and methodology for the cost-benefit analysis. The incentive review committee shall review and approve the methodology for the cost-benefit analysis. The

source and rationale for any multiplier effects shall be identified. Multiplier formulas may include counts for indirect jobs and for induced impact of payroll created through indirect jobs. The cost-benefit analysis shall address the following:

- (1) The number and types of jobs to be created, both temporary construction jobs and permanent jobs, both direct and indirect jobs;
- (2) The pay scales for jobs;
- (3) The residents of the county and which jobs are to be filled by transfers from the company or by those recruited from outside the county;
- (4) The total payroll expected at business startup and after one year;
- (5) The anticipated impact of the project on the local tax base, both gross receipts taxes and property taxes;
- (6) The anticipated impact on the local school system;
- (7) The anticipated impact on the water and sewer capacity;
- (8) The anticipated impact on roads and other municipal services such as fire, police, and health services;
- (9) The anticipated impact on the general quality of life of the community; and
- (10) Any additional factors established by policy.

(e) All applications for economic development projects which request assistance from the town shall clearly demonstrate the benefits, which accrue to the community as a result of the contribution of public resources. The town has considerable flexibility in determining what is considered an adequate return for the public investment or public contribution. It is the intent of this article to

be flexible in the evaluation of these benefits, and to recognize the qualitative as well as quantitative impacts of a proposal.

- (1) Benefits derived from a project may be in dollars, in-kind services, jobs, expanded tax base, or other services that expand or improve the economy.
- (2) A project will be evaluated on the level of risk that is assumed by the town in the event that the project fails to meet its objectives.

(Ord. No. 966, art. III, § 2, 12-12-1996; Ord. No. 1015, § 22-81, 2-23-1999)

Sec. 16-69. Public safeguards to protect town investment.

(a) All economic development projects receiving assistance from the town shall be subject to an annual performance review for the duration of the contract. 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 incentive review committee for its consideration. The town council at a public hearing may terminate assistance to the economic development project by the passage of an ordinance terminating the agreement and specifying the dispositions of all assets and obligations for the project as set forth in section 16-71.

(b) The town may choose to retain ownership in a project.

(c) The town may choose to provide an incentive which is unsecured if the incentive review committee and the town council deem the project's level of risk to succeed is such that relying on good faith performance is appropriate security for the assistance contributed.

(d) The town may include provisions in a project participation agreement that provide for the forgiveness of obligations if the eco-

nomics development project performs in good faith but is unable to meet its contractual obligations to the town.

(e) 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:

- (1) Deny said assignment, lease or transfer;
- (2) Negotiate a new agreement with the new operator; or
- (3) Reclaim the property and enter into an agreement with a new qualifying entity.

(f) Any qualifying entity seeking assistance from public resources shall commit to operate in accordance with its project participation agreement for the specified time period in the contract.

(Ord. No. 966, art. III, § 3, 12-12-1996; Ord. No. 1015, § 22-82, 2-23-1999)

Sec. 16-70. Monies to be kept in separate accounts and audited annually.

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

(Ord. No. 966, art. III, § 4, 12-12-1996; Ord. No. 1015, § 22-83, 2-23-1999)

Sec. 16-71. Termination.

(a) The town may terminate this article and the town's community economic development plan and any or all project participation agreements undertaken under its authority. The termination of this economic development plan or any project shall be by ordinance at a public hearing or in accordance with the terms of the project participation agreement.

(b) If either this article or the economic development plan is terminated, all contract provisions of the project participation agreement, regarding termination shall be satisfied. Upon termination of this article or any project participation agreement, any town moneys remaining in town project accounts shall be transferred to the town's general fund.

(Ord. No. 966, art. III, § 5, 12-12-1996; Ord. No. 1015, § 22-84, 2-23-1999)

Sec. 16-72. Joint or regional projects (joint powers agreements).

The town may engage in economic development projects involving one or more other governmental entities for projects that 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. The criteria established under a joint powers agreement shall be consistent with the provisions of this article. (Ord. No. 966, art. III, § 6, 12-12-1996; Ord. No. 1015, § 22-85, 2-23-1999)

Sec. 16-73. Policies and procedures adopted.

The community economic development plan and such other forms, policies and procedures as are deemed necessary by the town in order to implement this article are hereby

adopted as a part of the town's economic development plan and are incorporated by reference.

(Ord. No. 966, art. III, § 7, 12-12-1996; Ord. No. 1015, § 22-86, 2-23-1999)