

CITY OF RIO COMMUNITIES, NEW MEXICO

Ordinance No: 2022 - XX

**CHAPTER 10 ECONOMIC DEVELOPMENT
 LOCAL ECONOMIC DEVELOPMENT ACT (LEDA) ORDINANCE**

- WHEREAS,** the development of the local economy is vital to the wellbeing of the City of Rio Communities and its residents; and,
- WHEREAS,** local communities may need to provide land buildings infrastructure and other financial incentives to compete with other states and locales in efforts to attract and retain businesses; and,
- WHEREAS,** the New Mexico State Legislature enacted NMSA 1978, Sections 5-10-1 to 5-10-17, entitled the Local Economic Development Act, which provides to local governments the authority to use public resources for economic development purposes; and,
- WHEREAS,** this Economic Development Ordinance is enacted pursuant to that statutory authority.
- WHEREAS,** all ordinances or resolutions, specifically including City of Rio Communities Ordinance 2018-61, previously enacted pursuant to the Local Economic Development Act, are hereby repealed.

NOW THEREFORE BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF RIO COMMUNITIES, NEW MEXICO

Article 1. LOCAL ECONOMY DEVELOPMENT

- 1.1 This Ordinance may be cited as the "Local Economic Development Ordinance"

Article 2. AUTHORITY

2.1 The Local Economic Development Ordinance is enacted pursuant to the statutory authority conferred upon municipalities and counties to allow public support of economic development (NMSA 1978, Sections 5-10-1 to 5-10-17). This Ordinance is adopted as part of the City's economic development plan.

Article 3. PURPOSE

3.1 The purpose of the Local Economic Development 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 City 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, the imposition of a tax must be approved by the voters in referendum option. The City reserves the right to impose the maximum tax for eligible uses.

Article 4. DEFINITIONS AS USED IN THE LOCAL ECONOMIC DEVELOPMENT ORDINANCE

4.1 "**arts and cultural district**" means a developed district of public and private uses that is created pursuant to the Arts and Cultural District Act NMSA 1978, Sections 15-5A-1 through 15-5A-7.

4.2 "**broadband telecommunications network facilities**" mean the electronics, equipment, transmission facilities, fiber-optic cables and any other item directly related to a system capable of transmission of internet protocol or other formatted data at current federal communications commission minimum speed standard, all of which will be owned and used by a provider of internet access services.

4.3 "**cultural facility**" means a facility that is owned by the state, a city, 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.

4.4 "**economic development project**" or "**project**" means the project of a qualifying entity for which public support may be provided pursuant to the Local Economic Development Act.

4.5 "**governing body**" means the City of Rio Communities City Council.

4.6 "**new full-time economic base job**" means a job:

- (a) That is primarily performed in New Mexico;
- (b) That is held by an employee who is hired to work an average of at least thirty-two hours per week or at least forty-eight weeks per year;
- (c) That is:
 - i. Involved, directly or in a supervisory capacity, with the production of a service; provided that the majority of the revenue generated from the service is from sources outside the state; or tangible or intangible personal property for sale; or,
 - ii. Held by an employee who is employed at a regional, national or international headquarters operation or at an operation that primarily provides services for other operations of the qualifying entity that are located outside the state; and,

- (d) That is not directly involved with natural resources extraction or processing, on-site services where the customer is present for the delivery of the service, retail, construction or agriculture except for value-added processing performed on agricultural products that would then be sold for wholesale or retail consumption, an individual, corporation, association, partnership or other legal entity.

4.7 **"person"** means an individual, corporation, association, partnership or other legal entity.

4.8 **"public support"** means the provision of assistance by the state to a local or regional government or the provision of direct or indirect assistance to a qualifying entity by a local or regional government for an economic development project. "Public support":

(a) includes the provision of:

- i. land, buildings or other infrastructure, by purchase, lease, grant, construction, reconstruction, improvement or other acquisition or conveyance;
- ii. the placement of new broadband telecommunications network facilities; provided that the facilities shall not serve a public facility or location that already meets federal communications commission baseline speed standards;
- iii. rights-of-way infrastructure, including trenching and conduit, for the placement of new broadband telecommunications network facilities;
- iv. public works improvements essential to the location or expansion of a qualifying entity;
- v. payments for professional services contracts necessary for local or regional governments to implement a plan or provide public support for a project;
- vi. direct loans or grants for land, buildings or infrastructure;
- vii. technical assistance to cultural facilities;
- viii. loan guarantees securing the cost of land, buildings or infrastructure in an amount not to exceed the revenue that may be derived from an increment of the:
 - 1) municipal gross receipts tax imposed at a rate not to exceed one-fourth percent and dedicated by the ordinance imposing the increment for projects; or

- 2) city gross receipts tax imposed at a rate not to exceed one-eighth percent and dedicated by the ordinance imposing the increment for projects;
 - ix. grants for public works infrastructure improvements essential to the location or expansion of a qualifying entity and grants or subsidies to cultural facilities;
 - x. land for a publicly held industrial park or a publicly owned cultural facility, by purchase; and
 - xi. the construction of a building for use by a qualifying entity; but
- (b) does not include the purchase, lease, grant or other acquisition or conveyance of water rights;

4.9 "**qualifying entity**" means 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:

- (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 Paragraph (e), (f) or (i) 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;
- (c) a business, including a restaurant or lodging establishment, 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 (e) or (i) of this subsection, 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;
- (g) a business that is the developer of a metropolitan redevelopment project;
- (h) a cultural facility; and
- (i) a retail business.

4.10 "**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.

4.11 "**retail business**" means a business that is primarily engaged in the sale of goods or commodities at retail and that is located in the unincorporated area of the city.

Article 5. RESTRICTIONS ON PUBLIC EXPENDITURES OR PLEDGES OF CREDIT

5.1 The City shall not provide public support for economic development projects as permitted pursuant to Article 9, Section 14 of the constitution of New Mexico except as provided in the Local Economic Development Act or as otherwise permitted by law.

5.2 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 City 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 percent of the annual general fund expenditures of the local government in that fiscal year. The limits of this subsection shall not apply to:

- (a) the value of any land or building contributed to any project pursuant to a project participation agreement.
- (b) revenue generated through the imposition of the municipal infrastructure gross receipts tax at a rate not to exceed one-fourth percent and dedicated to furthering or implementing economic development plans and projects as defined by 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 to promotion and administration of or professional services contracts related to the implementation of any such economic development plan adopted by the governing body.
- (c) revenue generated through the imposition of a city infrastructure gross receipts tax at a rate not to exceed one-eighth percent and dedicated to 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 to promotion and administration of or professional services contracts related to the implementation of any such economic development plan adopted by the governing body.
- (d) the proceeds of a revenue bond issue to which municipal infrastructure gross receipts tax revenue is pledged.
- (e) the proceeds of a revenue bond issue to which city infrastructure gross receipts tax revenue is pledged; or,

(f) funds donated by private entities to be used for defraying the cost of a project.

5.3 The City shall create an economic development fund into which revenues generated for economic development projects to which the limits of Subsection 5.2 do not apply shall be deposited. The economic development fund and income from the economic development fund shall be deposited as provided by law. Money in the economic development fund may be expended only as provided in the Local Economic Development Act or the Statewide Economic Development Finance Act.

5.4 In order to expend money from an economic development fund for arts and cultural district purposes, cultural facilities or retail businesses, the governing body of a city that has imposed a municipal or city local option infrastructure gross receipts tax 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, by referendum of the majority of the voters voting on the question approving the ordinance imposing the municipal or city infrastructure gross receipts tax before July 1, 2013 shall be required to adopt a resolution. The resolution shall call for an election to approve arts and cultural districts as a qualifying purpose and cultural facilities or retail businesses as a qualifying entity before any revenue generated by the municipal or city local option gross receipts tax 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, can be expended from the economic development fund for arts and cultural district purposes, cultural facilities or retail businesses.

5.5 The governing body shall adopt a resolution calling for an election within seventy-five days of the date the ordinance is adopted on the question of approving arts and cultural districts as a qualifying purpose and cultural facilities or retail businesses as a qualifying entity eligible to utilize revenue generated by the Municipal Local Option Gross Receipts and Compensating Taxes Act or the City Local Option Gross Receipts and Compensating Taxes Act for furthering or implementing economic development plans and providing public support for and projects as defined in the Local Economic Development Act or projects as defined in the Statewide Economic Development Finance Act.

5.6 The question shall be submitted to the voters of the municipality or city as a separate question at a regular municipal or city election or at a special election called for that purpose by the governing body. A special municipal election shall be called, conducted and canvassed as provided in substantially the same manner as provided by law for general elections.

5.7 If a majority of the voters voting on the question approves the ordinance adding arts and cultural districts and cultural facilities or retail businesses as an approved use of the local option municipal or city economic development infrastructure gross receipts tax fund, the ordinance shall become effective on July 1 or January 1, whichever date occurs first after the expiration of three months from the date of the adopted ordinance. The ordinance shall include the effective date.

Article 6. ECONOMIC DEVELOPMENT PLAN

6.1 The City shall adopt an economic development plan or a comprehensive plan that includes an economic development component. An economic development plan or comprehensive plan may include an analysis of the role of arts and cultural activities in economic development. The plan may be specific to a single economic development goal or strategy or may include several goals or strategies, including any goals or strategies relating to economic development through arts and cultural activities. Any plan or plan amendment shall be adopted by ordinance.

6.2 The economic development plan or the ordinance adopting the plan may:

- (a) Describe the City of Rio Communities' economic development and community goals, including any economic development goals with an arts and cultural component, and assign priority to and strategies for achieving those goals.
- (b) Describe the types of qualifying entities and economic activities that will qualify for public support.
- (c) Describe the criteria to be used to determine eligibility for public support and a qualifying entity to participate in an economic development project.
- (d) Describe the way a qualifying entity may submit an application for public support pursuant including the type of information required from the qualifying entity sufficient to ensure its solvency and ability to perform its contractual obligations, its commitment to remain in the community and its commitment to the stated economic development goals of the City.
- (e) Describe the process the City will use to verify the information submitted on an application for public support.
- (f) If an economic development project is determined to be unsuccessful or if a qualifying entity seeks to leave the area, describe the methods the City will use to terminate its public support and recoup its investment.
- (g) Identify revenue sources, including those of the City, that will be used to provide public support for economic development projects.
- (h) Identify other resources the City is prepared to offer qualifying entities, including specific land or buildings it is willing to lease, sell or grant a qualifying entity; community infrastructure it is willing to build, extend or expand, including roads, water, sewers or other utilities; and professional services contracts necessary to provide these resources.
- (i) Detail the minimum benefit the City requires from a qualifying entity, including the number and types of jobs to be created; the proposed payroll; repayment of loans, if any; purchase by the qualifying entity of City provided land, buildings or

infrastructure; the public to private investment ratio; and direct local tax base expansion.

- (j) Describe the safeguards of public resources that will be ensured, including specific ways the City can recover any costs, land buildings or other thing of value if a qualifying entity ceases operation, relocates, or otherwise defaults or reneges on its contractual or implied obligations to the City.

6.3 The economic development plan shall be printed and made available to the residents within the City.

Article 7. PROJECT EVALUATION

7.1 The City via the City Manager or his or her designee shall review each application for public support and any public support shall be approved by ordinance.

7.2 The City's evaluation of an application shall be 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, as cost benefit analysis of the project and any other information the City believes is necessary for a full review of the economic development project application.

7.3 The City may negotiate with a qualifying entity on the type or amount of public support to be provided or on the scope of the economic development project.

Article 8. PROJECT PARTICIPATION AGREEMENT

8.1 Upon opting to provide public support for an economic development project, the City and the qualifying entity shall enter into a project participation agreement.

8.2 The City 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.

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

8.4 The project participation 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 City 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's 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 a determination that project performance is unsatisfactory.

Article 9. PROJECT REVENUES

9.1 City revenues dedicated or pledged for public support for 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.

9.2 The City 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 City and is a public record.

Article 10. PLAN AND PROJECT TERMINATION

10.1 At any time after approval of an economic development plan, the governing body may enact an ordinance terminating the economic development plan and dissolving or terminating any or all public support for economic development projects. An ordinance repealing an economic development plan shall not be effective unless the ordinance provides for satisfying existing contracts and the rights of the parties arising from those contracts.

10.2 Any unexpended and unencumbered balances remaining in any project fund or account upon repeal of a plan and termination of public support for or dissolution of a project may be transferred to the general fund of the City.

PASSED, APPROVED AND ADOPTED THIS XX DAY OF XX BY THE GOVERNING BODY OF THE CITY OF RIO COMMUNITIES, NEW MEXICO.

City of Rio Communities Governing Body

Joshua Ramsell, Mayor

Lawrence R. Gordon, Councilor

Margaret R. Gutjahr, Mayor Pro-Tem

Author Apodaca, Councilor

Jimie Winters, Councilor

ATTESTED:

Elizabeth F, Adair, Municipal Clerk

DRAFT