

**DRAFT**

**Raton, New Mexico Code of Ordinances**

**Ordinance No 2015-XX**

“An Ordinance repealing Ordinance 959 passed 7-28-2009, An Ordinance relating to Planning and Economic Development in its entirety” To add a business that is a qualified entity for the purposes of the local economic development act; removing the prohibition on public support of economic development projects in rural areas involving retail sales

**CHAPTER 153: PLANNING AND DEVELOPMENT**

**Section**

***General Provisions***

- 153.01 City Commission to be planning authority within the meaning of state law; planning, platting, and zoning powers

***Planning and Zoning Commission***

- 153.15 Creation; powers and duties  
153.16 Composition; qualifications; appointment; terms of office  
153.17 Attendance at meetings

***Economic Development Plan***

- 153.30 Title  
153.31 Authority  
153.32 Purpose  
153.33 Definitions  
153.34 Economic Development Plan  
153.35 Raton Economic Development Board  
153.36 Application requirements  
153.37 Applicable review criteria  
153.38 Public safeguards  
153.39 Project participation agreement  
153.40 Project monies  
153.41 Termination  
153.42 Joint Regional Projects  
153.43

***Cross-reference:***

*Building Codes and Regulations, see Chapter 151*

*Flood Control, see Chapter 152*

*Subdivision Regulations, see Chapter 154*

*Zoning Code, see Chapter 156*

**GENERAL PROVISIONS**

**§ 153.01 CITY COMMISSION TO BE PLANNING AUTHORITY WITHIN THE MEANING OF STATE LAW; PLANNING, PLATTING, AND ZONING POWERS.**

- (A) The City Commission shall be and constitute the “planning authority” of the city, as that term is

used in, and for the purposes of, NMSA Chapter 3, Art. 19 through 21.

(B) Unless otherwise provided by ordinance, the City Commission shall hold and possess the power, authority, jurisdiction, and duty to enforce and carry out the provisions of law relating to planning, platting, and zoning in the city.  
(1981 Code, §21-1)

### ***PLANNING AND ZONING COMMISSION***

#### **§ 153.15 CREATION; POWERS AND DUTIES.**

There is hereby created the Planning and Zoning Commission, also referred to in this code or in other ordinances of the city as the "Planning Commission" which shall have all the power, authority, jurisdiction, and duty which may be delegated to it by the City Commission in this code or in other ordinances of the city.  
(1981 Code, §21-2)

#### **§ 153.16 COMPOSITION; QUALIFICATIONS; APPOINTMENT; TERMS OF OFFICE.**

The Planning and Zoning Commission shall consist of 5 members who shall be owners of real estate within the city. They shall be appointed by the Mayor and shall serve for terms of 2 years. The terms of the members of the Planning and Zoning Commission shall be staggered so that no more than 3 terms shall expire in any given year. Each subsequent term of a member of the Planning and Zoning Commission shall be for 2 years or less in order to maintain the original staggering of the terms of membership. A vacancy in the membership of the Planning Commission shall be filled for the remainder of the unexpired term.  
(1981 Code, § 21-3) (Ord. 581, passed 5-13-1969; Am. Ord. 758, passed 8-25-1987)

#### **§ 153.17 ATTENDANCE AT MEETINGS.**

(A) Planning and Zoning Commission members are required to attend at least 75% of the regularly Scheduled meetings in any 12-month period.

(B) Noncompliance of this attendance will result in removal from the Commission.  
(1981 Code, §21-4) (Ord. 744. passed 2-10-1987)

## ***ECONOMIC DEVELOPMENT PLAN***

### **§ 153.30 TITLE.**

This subchapter may be cited as the "Economic Development Plan Ordinance."  
(Ord. 959, passed 7-28-2009)

### **§153.31 AUTHORITY.**

This subchapter is enacted pursuant to the statutory authority conferred upon municipalities to allow public support of economic development. This subchapter is adopted as part of the city's economic development plan.

(Ord. 959, passed 7-28-2009)

#### ***Statutory reference:***

*Public support of economic development, see NMSA §§ 5-10-1 through 5-10-13-1978*

### **§ 153.32 PURPOSE.**

(A) The purpose of the economic development plan 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 plan is to allow the city to enter into I or more joint powers agreement with other local governments to plan and support regional economic development projects.

#### ***(B) Local economic development act.***

(1) 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.

(2) *Eligible uses.* Municipalities may impose municipal infrastructure gross receipts tax and dedicate the revenue for economic development projects. A total of 0.25% tax (in 4 increments of 0.0625%) may be imposed.

(Ord. 959, passed 7-28-2009)

### **§ 153.33 DEFINITIONS.**

For purposes of this subchapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

***ARTS AND CULTURAL DISTRICT*** means a developed district of public and private uses that is created pursuant to the Arts and Cultural District Act.

***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 laboratories and live-work housing facilities.

***ECONOMIC DEVELOPMENT PROJECT*** or "project" means the provision of direct or indirect assistance to a qualifying entity by the governing body 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 the governing body 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;

***ECONOMIC DEVELOPMENT PROJECT or PROJECT.***

(1) ~~The provision of direct or indirect land, buildings or other infrastructure; public works improvements essential to the location; assistance to a qualifying business and include the purchase, lease, grant, or construction, reconstruction, improvement or other acquisition or conveyance of expansion of a qualifying business; and payments for professional services contracts necessary for local or regional governments to implement a plan or project.~~

(2) ~~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 or 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.~~

***GOVERNING BODY.*** The City Commission of the City of Raton.

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

***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.

***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.

***3<sup>rd</sup> PARTY*** means the State Economic Development Department or a local bank shall serve as a 3<sup>rd</sup> party administrator for the due diligence process and make a recommendation to governing body as to the financial feasibility of the requested project.

***NON-DISCLOSURE CONTRACT*** means a legal contract between at least two parties that outlines confidential material, knowledge, or information that the parties wish to share with one another for certain purposes, but wish to restrict access to by third parties. It is a contract through which the parties agree not to disclose information covered by the agreement. A NDC creates a confidential relationship between the parties to protect any type of confidential and proprietary information or trade secrets. As such, an NDA protects nonpublic business information.

**PERSON** means an individual, corporation, association, partnership or other legal entity;

**QUALIFYING ENTITY.** An existing or proposed corporation, limited liability company, partnership, joint venture, syndicate, association or other person that is 1 or combination of 2 or more of the following:

- (1) An industry for manufacturing, processing, or assembling of any mining, agricultural, or manufactured products;
  - (2) A commercial enterprise for storing, warehousing, distributing, or selling products of agriculture, mining or industry, but other than provided in Paragraph (5), (6) or (9) of this subsection, ~~division (4) below~~, not including any enterprise for sale of goods or commodities at retail or for the 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 government agencies or to a specific industry or customer, but, other than provided in Paragraph (5) or (9) of this subsection ~~division (4) below~~, not including business 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 of New Mexico;  
~~An industry supporting transportation and recreation;~~
  - (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;**
  - (8) **a cultural facility; and**
  - (9) **a retail business;**
- (Ord. 959, passed 7-28-2009)

#### **§ 153.34 ECONOMIC DEVELOPMENT INCENTIVES.**

(A) The City Manager, 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 subchapter 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.

(B) The governing body may consider offering all forms of assistance allowed under this subchapter 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. 959, passed 7-28-2009)

#### **§ 153.35 RATON ECONOMIC DEVELOPMENT BOARD.**

(A) The governing body assigns the Raton Economic Development Board (REDB) the following responsibilities with regard to the economic development plan for the City of Raton:

- (1) Reviewing and making recommendations to the governing body on applications for assistance for economic development projects; and

- (2) Reviewing and making recommendations to the governing body on applications for industrial revenue bonds (IRBs).
- (B) The REDB shall consist of the following: Raton Public Service, Raton Water Works, City Clerk, Planning Director, and Manager.  
(Ord. 959, passed 7-28-2009)

### **§ 153.36 APPLICATION REQUIREMENTS.**

- (A) Any qualifying entity meeting the definition set forth in § 153.33 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 Raton.
- (B) Applications from qualifying entities shall be submitted to the City of Raton on the **LEDA Application form provided by the City.**
- (C) Applications shall contain the following information for business applicants.
  - (1) Identification information:
    - (a) Complete name and address of entity;
    - (b) Incorporation papers with by-laws;
    - (c) List of board of directors and executive director, with addresses; and
    - (d) Resumes of all directors and officers.
  - (2) Evidence of financial solvency (personal statement of principals);
    - (a) Financial statement (income statement and balance sheets) for the past 3 years;
    - (b) Federal tax number, New Mexico state taxation and revenue number and county business license; and
    - (c) Projected income statement for at least 3 years.
  - (3) Evidence of organizational capacity:
    - (a) Brief history of the entity;
    - (b) Organizational chart of the entity; and
    - (c) Business plans for the entity and proposed project (shall include pro-forma cash flow analysis).
  - (4) The project participation agreement and any other pertinent information will be forwarded to the governing body for final consideration at a public meeting.  
(Ord. 959, passed 7-28-2009)

### **§ 153.37 APPLICABLE REVIEW CRITERIA.**

- (A) 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:
  - (1) Manufacturing firms (including intellectual property such as computer software);
  - (2) Projects, which enhance the exporting capacity of companies and/or provide goods and services, which currently have to be imported into Raton;
  - (3) Private companies seeking to build, expand or relocate facilities;
  - (4) Private companies which provide facilities or services which enhance the ability of Raton businesses to operate;
  - (5) 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:

- (a) Business incubators;
  - (b) Art incubators or coalition (e.g. a performing arts coalition seeking construction rehearsal or performance facilities);
  - (c) Public markets for farmers, gardeners, crafts, etc.; and
  - (d) Organizations which foster economic development by promoting work force development efforts such as apprenticeships or other job training programs;
- (6) 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
- (7) Qualifying entities with existing contract or projects with the city when this plan is adopted may propose a restructuring of their projects as an economic development project.
- (B) 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 REDC 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 10 years. The analysis shall address the following:

- (1) The number and type of jobs to be created, both temporary construction jobs and permanent jobs (by New Mexico Department of Labor job category);
- (2) Pay scale of jobs;
- (3) 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 Raton area;
- (4) Total payroll expected at start-up and after 1 year;
- (5) Anticipated impact on local tax base; and
- (5) Anticipated impact on local school systems.

(C) 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 Raton area residents. Cultural impacts of projects shall also be considered.

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

(E) 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 regional economy, may be recognized. The benefits claimed of any proposal will receive careful scrutiny. However, it is the intent of this subchapter to be flexible in the evaluation of these benefits, and to recognize the qualitative as well as quantitative impact of a proposal.

(F) All applicants for economic development projects requesting assistance from the county 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 thing or service 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 divisions may be

accepted as adequate contributions on their own, or as 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.

(Ord. 959, passed 7-28-2009)

#### **§ 153.38 PUBLIC SAFEGUARDS.**

(A) All economic development projects receiving assistance from the city shall be subject to an annual performance review conducted by the REDC. 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 governing body for its 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.

(B) The city shall retain a security interest, which shall be specific in the project participation agreement. The type security given shall depend upon the nature of 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 the property or equipment;
- (4) Pro-rated 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.

(6)  
(C) 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 the new qualifying entity.

(D) Any qualifying entity seeking assistance from public resources shall commit to operate in accordance with its project participation agreement for a minimum of 10 years from the date the ordinance is adopted and the governing body passes the project participation agreement.

(Ord. 959, passed 7-28-2009)

#### **§ 153.39 PROJECT PARTICIPATION AGREEMENT DUTIES AND REQUIREMENTS.**

- A. The governing body and the qualifying entity shall enter into a project participation agreement.
- B. 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.

C. 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.

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

E. The project participation agreement at a minimum shall set out:

- 1) The contributions to be made by each party to the participation agreement;
- 2) 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's financial or material participation and cooperation to guarantee the qualifying entity's performance pursuant to the project participation agreement;
- 3) A schedule for project development and completion, including measurable goals and time limits for those goals; and
- 4) Provisions for performance review and actions to be taken upon a determination that project performance is unsatisfactory."

(Ord. 959, passed 7-28-2009)

#### **§ 153.40 PROJECT MONIES.**

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

(Ord. 959, passed 7-28-2009)

#### **§153.41 TERMINATION.**

The governing body may terminate this subchapter 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 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.

(Ord. 959, passed 7-28-2009)

**§ 153.42 JOINT REGIONAL PROJECTS.**

The city may engage in economic development projects involving 1 or more other government entities for projects which encompass more than 1 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 subchapter.

(Ord. 959, passed 7-28-2009)