

CITY OF BLOOMFIELD, NEW MEXICO

ORDINANCE NO. 470

AN ORDINANCE AMENDING ORDINANCE NO. 426, DATED APRIL 13, 2009 AND ORDINANCE NO. 431, DATED MAY 26, 2009, RELATING TO ECONOMIC DEVELOPMENT PLAN PURSUANT TO THE LOCAL ECONOMIC DEVELOPMENT ACT; AUTHORIZING THE CITY TO ENTER INTO JOINT POWERS AGREEMENTS WITH LOCAL GOVERNMENTS TO APPROVE PROJECTS UNDER THE ACT.

WHEREAS, in the 1994 general election the voters of the State of New Mexico approved an amendment to Article 9, Section 14 of the State Constitution permitting municipalities to create job opportunities by providing land, buildings or infrastructure for facilities to support new or expanding businesses, provided that adequate safeguards are employed to protect public monies and resources;

WHEREAS, under the provision of the legislation to implement the constitutional amendment (the Local Economic Development Act, Sections 5-10-1 through 5-10-13 NMSA 1978) (the "Act"), no municipal assistance may be provided until the municipality has adopted by ordinance an economic development plan, which plan may be specific to a single economic development goal or strategy or may include several goals or strategies;

WHEREAS, the City desires to encourage economic development of areas within and outside the municipal limits by use of authority available under the Act;

WHEREAS, the City intends for this Ordinance to supersede and replace the prior Ordinance Nos. 426 and 431.

THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF BLOOMFIELD:

Section 1. The City shall have authority pursuant to this Ordinance and the Economic Development Plan to exercise the full powers permitted under the Act, except as specifically provided in this Ordinance. It is the intent of the City to evaluate the form and extent of aid provided to qualifying entities (as defined in the Act), the security to be provided to the City and other details of each economic development project on a case-by-case basis depending on the particular circumstances of each proposed project.

Section 2. In order to conserve the City's financial resources, the City shall attempt, to the extent reasonable and practicable, to provide aid to qualifying entities in the form of the use of land, buildings, or infrastructure already owned by the City in preference to aid consisting of expenditures for the purchase of land and the construction and installation of infrastructure.

- 2.1 Qualifying entity means an existing or proposed corporation, limited liability company, partnership, joint venture, syndicate, association or other person that is one or 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 (F) of this subsection, 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;
- 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 government agencies or to a specific industry or customer, but, other than provided in Paragraph (D) or (F) of this subsection, not including business primarily engage in the sale of goods or commodities at retail;
- D. A telecommunications sales enterprise that makes the majority of its sales to persons outside of New Mexico.
- E. A facility for the direct sales by growers of agricultural products, commonly known as farmers' markets; and
- F. A retail business, which means a business that is primarily engaged in the sale of goods or commodities at retail.

2.2 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 this section.

2.3 Governing body means the City of Bloomfield Governing Body.

Section 3. The City may require qualifying entities to submit competitive proposals for the economic development projects, or may, to the extent consistent with law, consider and approve application without a competitive proposal process. Regardless of whether or not the city solicits proposals for projects, the City shall have the right to reject any proposals as the City may determine to be in its interest.

Application Requirements.

3.1 Any qualifying entity meeting the definition set forth in subsection 2.1 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 Bloomfield.

3.2 Applications from qualifying entities shall be submitted to the city of Bloomfield on forms provided by the city.

3.3 Applications shall contain the following information for business applicants.

A. Identification information:

- 1) Complete name and address of entity;
- 2) Incorporation papers with by-laws;
- 3) List of board of directors and executive director, with addresses; and resumes of all directors and officers;
- 4) Resumes of all directors and officers.

B. Evidence of financial solvency (personal statement of principals);

- 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 city business license;
- 3) Projected income statement for at least three years.

C. Evidence of organizational capacity:

- 1) Brief history of the entity;
- 2) Organizational chart of the entity;
- 3) Business plans for the entity and proposed project (shall include pro-forma cash flow analysis);
- 4) Information on projects of a similar nature completed by the entity.

D. The entity shall also submit as a part of its application a detailed explanation as to how the project meets the requirements of the City's overall, strategic, economic development plan and the goals of the City's Comprehensive Master Plan.

E. The project participation agreement and any other pertinent information will be forwarded to the governing body for final consideration at a public meeting.

Section 4. If the city proposes to approve an economic development project application, it shall make that application and all relevance supporting documentation available for public inspection except to the extent that such disclosure would impair the qualifying entity's legitimate interest in protecting trade secrets or other confidential information. Non-confidential portions of applications shall be available for public inspection at the office of the City Clerk for at least the period from the date of publication of notice of the intent to adopt an ordinance approving the project through the date of the adoption of such ordinance.

Section 5. Public Safeguards.

- 5.1 All economic development projects receiving assistance from the City shall be subject to an annual performance review conducted by the City of Bloomfield. 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 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.
- 5.2 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:
- 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 donation if company reduces work force or leave the community before the term agreed to; and
 - E) Other security agreeable to both parties.
- 5.3 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.
- 5.4 Any qualifying entity seeking assistance from public resources shall commit to operate in accordance with its project participation agreement for a minimum of three years from the date the project is fully completed and operational.

Section 6. Project Participation Agreement.

- 6.1 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 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, 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) The specific measurable objectives upon which the performance review will be based, and actions to be taken upon a determination that project performance is unsatisfactory;
- D) A schedule for project development and goal attainment, including measurable goals and time limits for those goals;
- E) The security being offered for the City's investment. The security shall secure the qualifying entity's obligations based on terms stated in the project participation agreement with the City and shall reflect the amount of the City's support provided to the qualifying entity and the substantive contribution expected from the qualifying entity;
- 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 agreement shall have a "sunset" clause after which the City shall relinquish interest in an oversight of the project.

6.2 Each project participation agreement shall be subject to review and approval by the governing body at a public hearing.

Section 7. Termination. The Governing body may terminate this ordinance and the City's economic development plan and any or all project participation agreements

Passed, Approved, Signed and Adopted this _____ day of _____, 20__.

 Scott Eckstein, MAYOR

ATTEST:

 CITY CLERK

(SEAL)