

**Chapter 30
ECONOMIC DEVELOPMENT**

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Editor's Note: Chapter 30 was created with the passing of Ordinance 2011-407.

Chapter 30
ECONOMIC DEVELOPMENT

ARTICLE I. IN GENERAL

Sec. 30-1-1. Short Title.

This chapter and all sections within may be cited as the "Economic Development Ordinance."

Sec. 30-1-2. Authority.

The Economic Development Ordinance 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 Aztec's Economic Development Strategy.

Sec. 30-1-3. Purpose.

The purpose of the 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 provide direct or indirect assistance to qualifying businesses for furthering or implementing economic development plans and projects.

Sec. 30-1-4. Economic Development Plan.

The Economic Development Ordinance is intended to assist the City in implementing and planning for the economic development priorities identified in the City of Aztec Economic Development Strategy, as adopted by the Aztec City Commission. 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.

Sec. 30-1-5. Economic Development Advisory Board.

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

Sec. 30-1-6. 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:

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.

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.

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.

ARTICLE II. PROJECT GOALS

Sec. 30-2-1. Economic Development Goals.

The City of Aztec 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 Aztec:

1. Enhance the economic sustainability of the Aztec community by increasing the gross receipts tax base, supporting the retention and expansion of existing businesses, and encouraging the development of new businesses and entrepreneurs within the City.
2. Improve the economic viability of the Aztec community by promoting development that enhances the quality of life in Aztec and that increases the community's economic competitiveness.
3. Promote the renovation, redevelopment and beautification of existing commercial properties within the City.
4. Attract and assist businesses that are community leaders that invest in the community by engaging in positive community partnerships and contribute to enhancing Aztec's quality of life.

ARTICLE III. PROJECT APPLICATION PROCESS

Sec. 30-3-1. Application.

Any qualifying entity meeting the definition set forth in Sec. 30-6 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 Aztec. Applications from qualifying entities shall be submitted to the City of Aztec Community Development Department on forms provided by the City.

Sec. 30-3-2. 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.

Sec. 30-3-3. Review and Approval.

The City of Aztec Economic Development Advisory Board will review all economic development project applications.

Completed economic development project applications must be submitted to the Community Development Department a minimum of fourteen (14) business days prior to the regularly scheduled Economic Development Advisory Board meeting.

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

The City of Aztec 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 Economic Development Strategy and this Ordinance, shall receive priority consideration.

Following review by the Economic Development Advisory Board, the Board may recommend a project for consideration by the Aztec City Commission. The Aztec City Commission 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.

ARTICLE IV. PROJECT IMPLEMENTATION

Sec. 30-4-1. 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:

1. The economic development goals of the project;
2. The contribution of the City and the qualifying entity;
3. The specific measureable objectives which will be assessed during the annual performance review;
4. A schedule for project development and goal attainment;
5. The security being offered for the City's investment;
6. The procedures by which a project may be terminated and the City's investment recovered; and
7. 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.

Sec. 30-4-2. 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.

Sec. 30-4-3. Public Safeguards.

All economic development projects receiving assistance from the City shall be subject to an annual performance review conducted by the Economic Development Advisory Board. 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 Aztec City Commission for their consideration. The City Commission, 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:

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 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;
5. 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 Commission passes the project participation agreement.

ARTICLE V. PROJECT FUND TERMINATION

Sec. 30-5-1. Termination.

The Aztec City Commission 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.

Sec. 30-5-2. 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.