

**ORDINANCE NO. 2015-06**

**AN ORDINANCE ADOPTING A GROSS RECEIPTS INVESTMENT POLICY FOR THE PURPOSE OF EXPEDITING NECESSARY INFRASTRUCTURE DEVELOPMENT AND PROVIDING FOR REIMBURSEMENT OF INFRASTRUCTURE COSTS ASSOCIATED WITH A DEVELOPMENT PROJECT FROM GROSS RECEIPTS TAX COLLECTIONS ATTRIBUTABLE TO THE PROJECT**

**WHEREAS**, the primary source of revenue for the Town of Edgewood (“Town”) is the municipal component of the gross receipts tax on sales of goods and services within Town boundaries; and

**WHEREAS**, the Town, in order to increase its gross receipts revenues, must provide an incentive to encourage the development of new or expansion of retail businesses; and

**WHEREAS**, the Town’s inability to provide for prompt development of infrastructure improvements is a major barrier to the development of new large-scale retail and certain targeted commercial business; and

**WHEREAS**, increased gross receipt tax revenues would constitute a direct and immediate benefit for the health, safety and welfare for the citizens of the Town; and

**WHEREAS**, the Town can facilitate development of infrastructure by adoption of a Gross Receipts Investment Policy (“GRIP”) which provides for reimbursement of infrastructure costs from the collection of gross receipts taxes attributable to the project;

**NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE TOWN OF EDGEWOOD:**

**SECTION 1. TITLE.**

This ordinance shall be known as “The GRIP Ordinance.”

**SECTION 2. PURPOSE.**

This ordinance establishes standards and procedures for financing, through the refund of gross receipts taxes, the development and construction of Town infrastructure necessary to secure the location of new, large-scale retail and certain targeted commercial businesses within the Town. The Town, by written agreement, may reimburse a developer for the cost of reasonable and necessary public infrastructure related to the development of new retail and certain targeted commercial businesses or may reimburse impact fees where the reimbursement thereof is instrumental in bringing the retail or targeted commercial business to the Town.

### SECTION 3. DEFINITIONS.

- 3.1 *Administrator* means the Town Administrator or the Administrator's designee.
- 3.2 *Developer* means any person or legal entity that submits an application for GRIP funding pursuant to the provisions of this ordinance.
- 3.3 *Governing Body* means the Mayor and Town Council of the Town of Edgewood.
- 3.4 *GRIP* means the Gross Receipts Investment Policy as provided for in this ordinance.
- 3.5 *GRIP Agreement or Agreement* means an agreement entered into between the Town and a Developer providing for construction of public infrastructure improvements and reimbursement to the Developer for those improvements according to the standards, terms and conditions contained in this ordinance.
- 3.6 *GRIP funding or funds* means the funds appropriated by the Governing Body for reimbursement to a Developer of approved infrastructure costs.
- 3.7 *Gross receipts tax* means any gross receipts, sales or excise tax authorized by law and imposed by the Town, but shall not include any such tax levied by any other governmental entity.
- 3.8 *Project, large-scale* means a retail or targeted commercial development intended to provide services on a regional or larger scale, and includes, without limitation: shopping malls; regional sports and entertainment venues or complexes; large-volume destination restaurants, including nationally recognized chain outlets not yet existing within the metropolitan area and meeting criteria set forth below; destination hotel/conference centers; automobile dealerships or auto malls; regional health centers; central office or headquarters of large-scale or regional professional or technical firms such as architects, engineers, attorneys, accountants, and physicians; and other mixed-use centers consisting of multiple retail and commercial businesses operating on a single site.
- 3.9 *Project, small-scale* means a retail or targeted commercial development that does not qualify as a large-scale project but that is determined by the Governing Body to qualify under one or more established criteria and is in the public interest.
- 3.10 *Qualifying project* means any commercial development project meeting the requirements of this ordinance for approval as a large-scale or small-scale development project.
- 3.11 *Review committee* refers to the person or entity designated by the Administrator to review project applications.

### **SECTION 3. AUTHORIZATION OF REIMBURSEMENT OF INFRASTRUCTURE COSTS.**

The Town is hereby authorized to reimburse an applicant for the cost of infrastructure improvements for a qualifying project according to the provisions specified herein.

### **SECTION 4. QUALIFYING PROJECT.**

- 4.1 A large-scale project may qualify for GRIP funding by demonstrating one or more of the following factors:
  - 4.1.1 The retail or professional service will generate or draw regional customers or customers who reside beyond the municipal boundaries of the Town;
  - 4.1.2 The business is a food service or restaurant with a seating capacity of not less than 150 persons;
  - 4.1.3 The business is a hotel, motel or other lodging establishment of not less than 60 rooms;
  - 4.1.4 The business will provide employment for at least 30 full-time equivalent employees;
  - 4.1.5 The business represents a substantial expansion of an existing business operation within the Town, at least doubling existing square footage or increasing retail space by 50,000 square feet, whichever is less
- 4.2 A project that does not qualify as a large-scale project may be approved by the Governing Body as a small-scale project by demonstrating one or more of the following factors:
  - 4.2.1 Creation of new full-time equivalent jobs in such numbers that the Governing Body find to be a significant net increase in employment within the Town;
  - 4.2.2 Establishing retail or service establishments not previously found within the Town or that do not adversely impact any such pre-existing establishments within the Town and that the Governing Body finds to be either a necessary or desirable business serving the residents of the Town;
  - 4.2.3 Expansion of an existing business that the Governing Body finds to be either a necessary or desirable business serving the residents of the Town.

### **SECTION 5. AUTHORIZED PUBLIC INFRASTRUCTURE IMPROVEMENTS.**

GRIP agreements may be used for financing the following public infrastructure improvements:

- 5.1 The acquisition, construction, rehabilitation, construction of additions or making of any improvements to Town-owned parking lots;
- 5.2 The acquisition, extension, enlargement, repair, or other improvement of or maintenance of storm sewers and other drainage improvements, sanitary sewers, sewage treatment plants or other water utility infrastructure, including but not limited to the acquisition of rights of way and water and water rights, or any combination of the foregoing;
- 5.3 The purchase, acquisition, or rehabilitation of fire-fighting equipment or any combination of the foregoing;
- 5.4 The reconstruction, extension, resurfacing, maintenance, repair or other improvement of existing alleys, streets, roads, or any combination of the foregoing, or for the construction or acquisition of new alleys, streets, roads, or any combination thereof, inclusive of any acquisition of any right of way and public transportation transfer facilities;
- 5.5 The purchase, acquisition or clearing of any land, or purchase or acquisition and beautification of land for open space;
- 5.6 The acquisition, construction, equipping, furnishing, making additions to, renovating, rehabilitating, beautifying, or otherwise improving public parks, public recreational facilities, civic, conference, or convention centers, sports stadiums or arenas, or any combination thereof;
- 5.7 The refund of impact fees which provides a specific and direct incentive for location of the retail or commercial business in the Town.
- 5.8 The acquisition or construction of any other related public infrastructure that enhances and encourages the location of the new or expanded retail or commercial business within the Town.

#### **SECTION 6. SPECIAL FUND CREATED.**

- 6.1 **Creation of Fund.** A special fund shall be created for reimbursement of the infrastructure costs. The Town shall appropriate money to the fund in such amounts as necessary to reimburse the applicant for the cost of the infrastructure improvements.
- 6.2 **Source of Revenue.** The appropriation to the fund shall be based upon the Town's share of gross receipts taxes attributable to direct sales from the

completed project. Appropriations shall be made annually as part of the approved budget process based upon projected tax revenues for the business as agreed to by the Town and the applicant, and in such amounts and according to such schedules as are agreed to by the parties for reimbursement of the infrastructure costs. The total appropriation for a given year shall not exceed 50% of the projected tax revenue, net of deduction of any amounts pledged to any other special purpose or fund.

6.3 **Funds Encumbered.** The funds appropriated shall be encumbered for the specified purpose, and may not be used for any other purpose unless released by agreement of the Town and Developer. All appropriations and GRIP agreements shall be subject to the following provisions:

6.3.1 All appropriations to the fund shall be directly attributable to gross receipts taxes collected from the project, and as such shall be considered a special fund not subject to the limitations of the Bateman Act, NMSA 1978, § 6-6-11.

6.3.2 The Town shall exempt the collected tax revenues from any subsequent dedication of gross receipts tax revenues, specifically identifying the amount and term of such revenues in all ordinances, loan agreements, intercept agreements, and other documents relevant to the dedication.

6.4 **No Debt Created.** Nothing herein or in any GRIP agreement shall be considered as creating a debt of the Town contrary to the provisions of N.M. CONST. Art. 9, § 11.

6.5 **Reimbursements Authorized.**

6.5.1 The Town shall make reimbursements to the applicant from the special fund according to such terms as are included in the agreement, provided, that such payments shall not exceed the actual cost expended for the development of the public infrastructure.

6.5.2 The special fund is the sole and only source pledged or otherwise available for repayment of the GRIP project, and the applicant shall have no recourse against the Town for reimbursement except from the fund.

## **SECTION 7. APPLICATION AND REVIEW REQUIREMENTS**

7.1 **Administrator to Establish Procedures.** The Administrator shall designate a department of the Town, an ad hoc commission, or an outside consultant (collectively referred to as "Review Committee") to review GRIP applications, and shall establish such procedures as deemed necessary for said review.

7.2 **Application.** An applicant may submit a GRIP application to the Administrator for review. The application shall be on such forms or in such format as the Administrator may designate, and shall contain the following information:

7.2.1 A description of the proposed project, specifying the qualifying criteria for either a large-scale or small-scale project;

7.2.2 A development proposal for the project, including preliminary site plans, subdivision plans, or other documents that adequately explain the project and identify the necessary development approvals such as site plan approval, subdivision approval and zoning approval, together with a projected time line for the project;

7.2.3 Pro forma projections, supported by an independent economic analysis, of total annual gross receipts and gross receipts tax revenues, together with time lines for the projections;

7.2.4 Infrastructure proposal, including:

7.2.4.1 Type of infrastructure proposed;

7.2.4.2 Projected needs of the project or impact of the project on the identified infrastructure, such as increased traffic volume, water requirements, or wastewater use;

7.2.4.3 Quantifiable measurements for the proposed infrastructure, such as size and capacity;

7.2.4.4 Relationship of the proposed infrastructure to the Town's comprehensive plan;

7.2.4.5 Estimated costs for construction of the proposed infrastructure, certified by a New Mexico registered engineer;

7.2.4.6 A plan and schedule for construction of the proposed infrastructure; and

7.2.4.7 Such other information as the Administrator may request.

### 7.3 **Processing Application.**

7.3.1 The Administrator shall determine whether the application is complete and may request further information from the applicant prior to processing. Upon the Administrator's determination of completion, the Administrator

shall refer the application to the Review Committee for review according to the procedures adopted by the Administrator.

7.3.2 The Review Committee shall review the application and may request such additional information from the applicant or from the Administrator as it deems necessary. Upon completion of its review, the committee shall return the application to the Administrator with its comments and recommendations.

7.3.3 The Review Committee shall be considered an agent of the Administrator and shall not be subject to the provisions of the New Mexico Open Meetings Act or the Town of Edgewood Open Meetings Resolution.

**7.4 Review and Approval by Governing Body.** The Administrator shall present the application and the report of the Review Committee to the Governing Body, which shall conduct a public hearing on the application according to its procedures for public hearings regarding proposed ordinances. The Governing Body may receive or request such information or input from the applicant, the public and interested agencies as it deems appropriate. At the conclusion, the Governing Body may approve or disapprove the application or refer it to the Administrator or the Review Committee for further review. The decision of the Governing Body shall be final, and shall not be subject to appeal or review by writ of certiorari.

## **SECTION 8. AGREEMENT FOR CONSTRUCTION AND REIMBURSEMENT.**

**8.1 Agreement Required.** Upon approval of the application by the Governing Body, the Administrator shall present a proposed agreement providing for construction of the improvements and reimbursement to the applicant of the construction costs.

**8.2 Terms and Provisions of Agreement.** The agreement shall contain provisions specifying obligations and responsibilities of the parties as follows:

8.2.1 A project time line that includes both the project itself and the infrastructure improvements. The time line shall specify all applications and approvals required, and shall identify the party responsible for obtaining said approvals.

8.2.2 The applicant shall be responsible for payment of all necessary and required fees, including impact fees, for all permits, licenses, inspections, approvals and authorizations necessary for the construction of the project.

8.2.3 The applicant shall be responsible for construction of and payment for the approved infrastructure improvements, and shall pay all costs of acquisition of real property that the Town may acquire by condemnation or otherwise.

- 8.3.4 The applicant shall adhere to all statutory and ordinance requirements, including, but not limited to, labor, employment and procurement laws which would otherwise apply if the Town were undertaking the construction of the infrastructure.
  - 8.3.5 The agreement shall specify such construction standards, inspections, insurance requirements, indemnification provisions and other provisions as the Administrator deems appropriate.
  - 8.3.6 Upon completion and acceptance by the Town of the improvements, the applicant shall dedicate the improvements and real property to the Town by such document or conveyance as the Town may specify.
  - 8.3.7 The agreement shall provide for reimbursement solely from the special fund created by revenues collected from the gross receipts taxes attributable to the project, and shall further provide that the Town has no other liability of whatever kind, whether in law or equity, to the developer.
  - 8.3.8 The applicant shall provide a financial guarantee in such form as is acceptable to the Town for 100% of the cost of completion of the improvements.
  - 8.3.9 The applicant shall provide for an acceptable method of reporting applicable retail sales or gross operating receipts to the Town in order to administer compliance with the agreement and shall agree to an annual audit by the Town.
  - 8.3.10 The agreement shall specify the costs to be reimbursed, the performance measures to be applied to said reimbursements, and the conditions applicable to the reimbursements.
- 8.3 **Reimbursement Conditioned on Acceptance.** No reimbursement shall be made until the improvement to which it is applicable has been accepted by the Town according to the standards and procedures by which the Town accepts subdivision infrastructure improvements.
- 8.4 **Governing Body Approval.** Upon preliminary approval of the Administrator and the developer, the agreement shall be submitted to the Governing Body for approval. No agreement shall be effective until approved by the Governing Body.
- 8.5 **Additional Development Approval.** Approval by the Governing Body of a GRIP agreement shall not constitute approval of the underlying development project and shall not be construed as committing the Town to approval of the underlying development project. The developer shall be required to submit such applications and obtain such approvals for the underlying development project as may be



required by town ordinance and state law. The GRIP agreement may be made conditional upon said approvals.

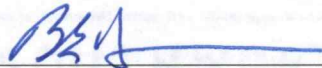
**SECTION 9. SEVERABILITY CLAUSE.**

If any section, paragraph, clause or provision of this ordinance, or any section, paragraph, clause, or provision of any regulation promulgated hereunder or of any agreement entered into pursuant to the provisions of this ordinance is held to be invalid, unlawful, or unenforceable, the invalidity, illegality, or unenforceability of such section, paragraph, clause or provision shall not affect the validity of the remaining portions of this ordinance or the regulation or agreement so challenged.

**SECTION 10. EFFECTIVE DATE.**

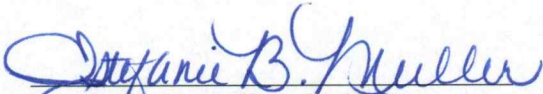
This Ordinance shall be in effect five days after its publication, as provided by state law.

**PASSED, APPROVED AND ADOPTED this 19<sup>th</sup> day of August, 2015.**



Brad E. Hill, Mayor

**ATTEST:**



Estefanie B. Muller, CMC  
Clerk Treasurer