



# LEDA POLICIES & PROCEDURES

Adopted May 19, 2022  
Clovis City Commission

**RETAIL FOR LEDA****Table of Contents**

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## **Clovis Economic Development Tax Program Overview**

The City of Clovis Economic Incentive Board (EIB) recommends to the Clovis City Commission economic development for retail projects that address the retail gap analysis adopted as needed by the Clovis City Commission. Potential recommendations include gross receipts reimbursement, investment in land, buildings, infrastructure, and other local economic development incentives. The level of incentive support is based on the identified retail gap addressed by the project, capital investment, wage rates, return on investment and the number of newly created or retained jobs. The economic development incentive programs strengthen the Clovis area economy by providing tax abatements and financial incentives to applicants that create new economic-based jobs in Clovis.

Incentives depend on the recipient's business, the eligibility of the newly created positions in that business, and the employees themselves. Eligibility requirements, which are highlighted below, are explained in more detail in the body of this manual. Reference can also be made to the Local Economic Development Act (LEDA) enabling legislation (Section 5-10-1, NMSA 1978 § and subsequent amendments) and the current City of Clovis Local Economic Development Act Ordinance.

Enforceability and interpretation of this policy and procedures manual is governed by New Mexico State Law and more specifically LEDA (5-10-1 to 5-10-13 NMSA). City of Clovis Charter, City of Clovis Economic Incentive Board Ordinance and the City of Clovis Local Economic Development Act Ordinance. Any part of this manual that is inconsistent with the laws of the State of New Mexico, or the ordinances of the City of Clovis, are invalid. In the event that any provision of this policy and procedures manual is held to be invalid, the remaining provisions shall be in full force and effect. This policy and procedures manual does not delegate any duties, obligations or authority that have been designated to the Economic Incentive Board by the Clovis City Commission. This manual standardizes policies, procedures, and checklists related to economic development incentives based upon number of jobs, wages, benefits, economic impact and capital investment.

### **Program Management and Administration**

The Economic Development Incentive Board (EIB), with the approval and ratification of the Clovis City Commission, is responsible for establishing policies, procedures, checklists and guidelines related to the economic development program management and operation. The City of Clovis has adopted this policy and procedures manual to ensure the program supports the development of the Clovis economy as intended by existing governing legislation.

The City of Clovis may enter into a contract for an agent with economic development experience to provide professional services to attract and work with eligible Retail applicants. Agent shall receive and review applications to ensure all required items are submitted in accordance with established city ordinances, checklists and policies. Agent shall submit to EIB and City Manager the application, recommendations and any supporting documentation for consideration, including but not limited to:

1. Evidence of eligibility of the project based on the level the proposed project addresses the currently adopted gap analysis
2. EIB funding incentive recommendations
3. Project contract terms and conditions (PPA, clawbacks)
4. Recommendations and suggestions regarding the project and applicant

### **Economic Incentive Board Duties and Responsibilities**

Administration of the Clovis economic development application process is the responsibility of the City of Clovis Economic Incentive Board.

EIB meets to consider proposals for funding. It is the responsibility of EIB to conduct all due diligence and recommend projects to the City Commission in accordance with city ordinances, checklists and policies. After completing all due diligence work, EIB will submit an applicant project report and recommendation with attached EIB minutes from all meetings related to the project to the Clovis City Commission. The chairperson of EIB, shall present the EIB report and recommendation(s) to the Clovis City Commission in accordance with city ordinances, checklists and policies.

If the terms and conditions or additional details substantially change the project parameters, the Chairperson, Vice Chairperson, City Manager or the Clovis City Commission shall refer the proposal back to EIB for recommendation.

If EIB determines that additional due diligence is needed regarding an application, EIB shall appoint an ad-hoc committee from its membership to perform the due diligence process and report back to EIB. If the ad-hoc committee or EIB determines that a due diligence service provider (such as the New Mexico Partnership, New Mexico Economic Development Department, New Mexico Finance Authority or similar service provider) is required, EIB or the ad-hoc committee may recommend contracting for the services to the City Commission. The ad-hoc committee shall submit a written due diligence report to EIB summarizing the committee's recommendations and findings.

The duties and responsibilities of EIB shall be to:

- A. Advise the city commission on matters relating to economic development issues and other specific economic development tasks referred to EIB by the City Commission;
- B. Make recommendations on the expenditure of proceeds from the city economic development gross receipts tax and other incentives;
- C. Coordinate with other local and regional agencies to maximize economic development opportunities;
- D. Develop activities and procedures to maximize economic development opportunities;
- E. Coordinate and work with individuals, organizations, and institutions in the pursuit of economic development projects;

- F. Advise on the implementation of the Local Economic Development Act and other programs and activities;
- G. Obtain information, analyze applicant's financial data and report to the Clovis City Commission concerning:
  - a. Any industrial, economic, commercial or business project requesting or applying for financial assistance from the city, whether same be for industrial revenue bond financing, the Local Economic Development Act, the Development Incentive Act, or other available sources of financial assistance. Recommendations of EIB are advisory only and are not binding on the city commission. Unless otherwise specified by ordinance or state law governing the procedures for evaluation, the procedures set forth in the City of Clovis economic development ordinances control.
  - b. Any retail project that meets the criteria of current City of Clovis adopted gap analysis that applies for gross receipts reimbursement or other available incentives.
- H. Coordinate local, state, and federal programs, activities, and funding sources for economic development projects.
- I. Adopt policies and procedures for carrying out the duties and responsibilities of EIB, which may include the delegation of duties and responsibilities to an agent. Any policies and procedures adopted in accordance with this section shall be subject to the approval and ratification of the City Commission and shall be the duties and responsibilities of the Economic Incentive Board as stated in the economic development ordinances.

### **Order of Precedence**

Order of Precedence related to this EIB policy and procedures manual and any inconsistencies in this document shall be determined by giving precedence in the following order.

New Mexico State Law, and more specifically the Local Economic Development Act (5-10-1 to 5-10-13 NMSA 1978)  
City of Clovis Charter  
City of Clovis Economic Incentive Board (EIB) Ordinance  
City of Clovis Ordinance Pertaining to Economic Development and Adopting the Economic Development Plan  
EIB Policies and Procedures Manual

### **EIB and City Commission Guideline and Policy Rights**

The Clovis City Commission and the Economic Incentive Board reserves the right to review each EIB application based on individual application circumstances. EIB can recommend to the Clovis City Commission that a portion or all of the guidelines be waived. The Clovis City

Commission can waive a portion of or all of the guidelines if by majority vote of the City Commission it is deemed in the best interest of the City of Clovis. Each application is processed individually and the recommendations of the EIB are subject to the final approval of the Clovis City Commission.

### **Amendments & Repeal**

These guidelines are effective from the date adopted by the Clovis City Commission. Recommendations for amendment or repeal may be submitted by the EIB to the Clovis City Commission for consideration.

## **Economic Development Incentive Eligibility Guidelines**

### **Case-by-Case Basis**

This policy and procedures manual is a guideline for prospective economic development projects and is not a contract or obligation to recommend any economic development incentives or services.

This policy and procedures manual allows for the individualized design of a total incentive package and is intended to allow maximum flexibility in addressing the unique aspects of each applicant's proposed project, while enabling the City of Clovis and the agent to better respond to the changing needs of the community.

The City on a case-by-case basis may grant economic development incentives based on criteria contained in the ordinance establishing the Local Economic Development Tax plan, the Economic Incentive Board ordinance, this Policies and Procedures manual, the successful completion of the application requirements, and approval of an economic development project participation agreement recommended by EIB and approved by the Clovis City Commission.

### **Expectations for Performance**

If an applicant seeks financial assistance from the City to start up or expand its operations for Retail, it must:

- a. Invest in the community through capital investment;
- b. Make a long-term commitment to the community; and
- c. Expect consequences for breaching its agreement.

### **Submitting an Application**

An applicant shall submit an application for economic development assistance to agent at least two weeks prior to the EIB meeting to be considered for funding. Earlier submission is preferred to allow agent, EIB members, city staff and the City Commission adequate time to review the materials and request clarification or additional information if needed. The application is an important document, not only in establishing the company's eligibility for EIB funding, but also in demonstrating its viability as a business and the relationship of the newly created jobs

to applicant's expansion.

Copies of the proposal for funding and supporting information, with the exception of any proprietary or confidential information, shall be submitted by agent to all EIB members, the City Manager and the City Commission at least seven days before the EIB meeting.

### **Determining Appropriate Levels of Investment**

Incentives will be provided that will make a positive difference in the likelihood of success of a project and/or the city's competitive advantage in securing the project, both of which include the expansion or retention of existing businesses. Incentive levels shall be determined in relation to the extent the proposed project addresses the retail gap as identified in the current retail gap analysis as adopted by the Clovis City Commission.

### **Incentive Level Evaluation Criteria**

Based on the minimum project eligibility requirements stated in the City of Clovis ordinance establishing the Local Economic Development plan, and the EIB ordinance, the following criteria shall be considered to determine the level of incentives that may be available to the applicant. The following factors along with other project parameters will be used to determine the viability, extent and size of the economic development incentive package. After such eligibility has been determined, the application incentive package will be evaluated upon the following factors:

#### **Investment**

- Type and value of proposed private and/or public improvements
- Amount of any local taxes or revenues including, but not limited to, gross receipts tax, advalorem tax, utilities and fees to be generated directly to the community
- Financial capacity of the applicant to undertake, complete and sustain the proposed project
- Costs, if any, to be incurred by the community to provide facilities, or services directly resulting from the improvements

#### **Other Factors Considered**

- Likelihood of a development incentive being a determining factor in the decision to locate or expand operations
- Other unanticipated factors deemed relevant by EIB at its discretion
- Financial strength is also a consideration in funding decisions. The applicant should be

#### **Community Impact**

- Appropriate type of activity for retail
- Impact on the opportunities of existing businesses
- Impact on the opportunities of attracting additional business or residents to the community
- Market conditions and growth potential for the business activity
- Productive life of proposed improvements
- Environmental impact of the applicant's project.

## **Company Eligibility**

### **Capital Investment Requirement**

EIB incentives are based upon criteria that include capital investment in the project, its location, positive impact upon on the community, including beautification.

### **Applicant Eligibility Qualifications and Requirements**

Applicants who meet the current retail gap analysis as adopted by the Clovis City Commission are eligible to apply for funding assistance.

Applicants are required to submit three years of financial statements as part of the application process. Year-to-date financials may also be requested. Start-up applicants may submit a business plan, evidence of signed contracts, and/or pro forma financial statements which would substantiate their business expansion. Newly created corporations, limited liability companies shall submit parent company financials.

PLEASE NOTE - Developers of projects for retail shall not be eligible for consideration for incentives under this program.

## **EIB Project Procedural Overview**

1. Application for Economic Development Project Assistance and all supporting documents as required must be submitted to the agent no less than two weeks before the EIB meeting to consider the application and potential economic development incentives.
2. Contract start date is the date the City Commission approves the Project Participation Agreement. Final authorization to fund the project will be upon adoption of the required city ordinance as described in NMSA5-10-1 through 5-10-13.
3. Draft project participation agreement will be prepared and delivered by email or other means to the EIB, Clovis City Commission and the applicant for review, comment and updates after the EIB approves the project. After changes are completed, the updated version will be sent out to the same parties again for final review.
4. Each approved project is subject to compliance reviews throughout the term of the contract. The compliance review includes program and fiscal surveys. If the City of Clovis or its agent determines that additional independent program and fiscal surveys are required to ensure compliance with the agreements, the cost associated with the independent surveys and audits shall be paid by the economic development incentive recipient.
5. The economic development incentive recipient may be required to arrange for an annual and/or final audit by an independent certified public accounting firm. If the City of Clovis or its agent determines that additional independent audits are required to ensure compliance with the agreements, all costs associated with the independent audits shall be



paid by the economic development recipient.

6. Yearly audits of economic development incentive recipients' requirements will be conducted, as set forth in this document.
7. Recipients that fail to comply with the project participation agreement, all established operating requirements, closeout procedures and follow-up studies are not eligible to apply for future participation in EIB programs.

### **Retail Gap Impact Analysis**

A Retail Gap Impact Analysis will be conducted on all eligible retail development projects who apply for assistance. Applicant may be required to pay for the economic retail gap impact analysis depending on the complexity of the project.

### **Economic Incentive Board Meetings**

A representative of the applicant's firm may be at the EIB meeting to present the retail project request. Depending on the nature of the project, the applicant may wish to have their architect, fiscal officer, lawyer, or leasing agent present. The EIB will complete their review of applications in accordance with the duties and responsibilities as outlined earlier in this document.

### **City Commission Meetings**

Projects are usually transmitted to the City Commission for introduction at the first City Commission meeting following the EIB meeting approval. EIB Chairperson or agent will briefly summarize the project, impact analysis and proposed project terms at the Commission meeting. EIB will submit a summary report with a recommendation to the City Commission, even if the EIB recommendation is negative (unless the applicant withdraws the request). The applicant should have a representative present at the meeting to introduce the request. A presentation from the applicant is expected, but is not always required. The applicant and others qualified to answer questions should be present at all City Commission meetings.

### **Performance & Clawbacks**

Retail projects shall be located within the City of Clovis, address the currently adopted Gap Analysis, reduce leakage, and provide substantial economic benefit to the area, as further described and in accordance with the EIB Policy and Procedures Manual.

The City of Clovis typically has requirements for performance agreements, sometimes referred to as "clawbacks" to be included in the documents related to facility closure.

### **City Attorney Review**

All resolutions and ordinances, financing agreements, closing documents, and other documents relating to the City and to the bonds and the issuance thereof shall be submitted to the City Attorney, or another attorney or attorneys designated by the City Attorney, in sufficient time for review by

such attorney(s) prior to the City Commission taking any required action.

### **Fees**

The Applicant shall pay an Application Fee imposed pursuant to the project participation agreement. The applicant shall pay the City of Clovis General Fund a one-time non-refundable administration fee of \$1,000.00. In addition to the fee set forth in this section, the applicant shall pay all attorney's fees and any additional expenses associated with the "due diligence" process, and the fees and expenses of the attorneys reviewing the documents.

### **Compliance & Performance Monitoring**

It is the responsibility of the applicant to comply with the terms and conditions of the Local Economic Development Act "Project Participation Agreement". The applicant is required to submit a summary report and supporting documentation on or before the due date on an annual basis. If the City of Clovis or its agent determines that additional independent monitoring or audits are required to ensure compliance with the terms of the project participation agreement, all costs associated with the independent audits shall be paid by the applicant. EIB is responsible for reviewing the reports and monitoring compliance with the terms of the project participation agreement. EIB will forward the report with its suggested recommendations to the Clovis City Commission on an annual basis. Actions to claim claw backs will be reported at that time. Applicants are required to submit reports annually to the City of Clovis or the designated agent.

### **RETAIL PROJECT CRITERIA**

The overriding criterion for all Retail projects eligible under the currently adopted retail gap analysis of the City of Clovis is the public benefit of the project through enhancement of quality of life, the prevention of leakage of City of Clovis Gross Receipts Tax, and job opportunities for the citizens of the City of Clovis. The criteria below is intended to assist the Clovis City Commission and Economic Incentive Board in determining the project benefit to the City of Clovis related to the retail project. All applications are subject to review and approval by the Economic Incentive Board, and the Clovis City Commission in accordance with City Ordinances and established policies and procedures. The potential incentives available for consideration by the City of Clovis as determined by the value of the project, not to exceed 50% for the purchase, lease, grant, construction, reconstruction, improvements or other acquisition or conveyance of lands, buildings or other infrastructure may include:

1. Reimbursement of up to 2 ½% of the taxable gross receipts generated by the sales receipts from the retail project as evidenced by proof of payment to the State of New Mexico. The maximum term of the incentive shall not exceed ten (10) years.
2. Other eligible incentives as may be recommended by agent, EIB, and approved by the Clovis City Commission.

## Retail Initial Qualifying Test

## Pass / Fail CRITERIA

		<b>PASS/FAIL</b>
1	Project addresses the retail gap analysis as adopted by the Clovis City Commission.	
2	Retail that meets statutory requirements	
3	Satisfactory initial demonstration of sufficient capital, ability to service debt, or evidence of an acceptable financing commitment	
4	Applicant has no outstanding substantive federal, state or local tax issues.	
5	Proposed project complies with all federal, state, and local environmental laws, regulations and rules.	
	<b>RESULT</b>	

## Retail Scored Evaluation

A number of criteria were developed to rate the relative value of the Project. Some criteria are more heavily weighted than others according to their perceived importance and/or fit with generally accepted goals for economic development incentives. Scoring will be on a total points basis, with a maximum number of points available for each category. However, there will be discretionary points for unanticipated factors. Proposed project shall meet a threshold of a minimum of 50 points for consideration.

1	Company is a good corporate citizen promoting economic development, donations and volunteerism with a citizenship policy/plan in place	10	
2	Company locally owned or operated	10	
3	Business is within a desired economic cluster defined in the LEDA Plan. Percentage to which applicant's project addresses the Retail Gap Analysis as adopted by the Clovis City Commission		
	<b>Tier 1 - \$0-\$4 million</b>		
	Points for percentage of retail gap addressed within the category		
	25%	10	
	50%	11	
	75%	12	
	100%	13	
	<b>Tier 2 - \$5-\$8 million</b>		
	25%	14	
	50%	15	
	75%	16	
	100%	17	
	<b>Tier 3 - \$9 million -\$12 million</b>		
	25%	18	
	50%	19	
	75%	20	
	100%	21	
	<b>Tier 4 - \$10 million +</b>		
	25%	22	
	50%	23	
	75%	24	
	100%	25	
4	Project does not require significant new infrastructure support, or if necessary, presents an acceptable cost sharing arrangement	10	

5	Company will use local products and/or services from within Clovis as part of the day-to-day operation of the facility	5	
6	Project uses local contractors or sub-contractors and creates local construction jobs	15	
7	Applicant has a good record of completing similar projects and keeping commitments	15	
8	If the applicant has received the previous governmental incentives either here or in other communities, the applicant performed and complied as agreed	15	
9	Company is locating on a preferred site such as within the Metropolitan Redevelopment Area (MRA), is an infill project, or will be rehabilitating an existing building which will contribute to redevelopment of the area they will be locating to	10	
10	Other factors that merit or need consideration and may not be anticipated at this time	15	
	TOTAL SCORE		

All terms and conditions are subject to review, modification, and final approval by the Clovis City Commission. The mayor is designated to represent the City of Clovis during project site visits and recruitment opportunities. The scoring evaluation is not an obligation or commitment by the City of Clovis. Each incentive request will be considered on a case-by-case basis based upon the scoring criteria above, the addressing of the currently adopted retail gap analysis by the applicant.

### **Auditing Requirements**

It shall be the responsibility of the recipient to comply with the formal audit guidelines and to submit the required annual summary report and other documentation on or before the due date as described in the project participation agreement. Failure by the recipient to submit the required documentation shall constitute a default.

Agent is designated by the City of Clovis to receive the required annual information and present a written report and recommendation for approval/disapproval of the report. The City Manager shall review the report and recommend approval/disapproval of the report to the City Commission. The City shall forward an electronic copy of the report to the EIB for informational purposes. Audit requirements include:

1. Annual contract obligation which shall begin on the first day of January of the year following the time the recipient begins operation and end on December 31<sup>st</sup>. In the event of a grace period the contract start date shall begin the first day of the January following the grace period.
2. The recipient shall submit an affidavit stating whether or not the company is in compliance with the Project Participation Agreement and EIB Guidelines. The affidavit shall state whether the recipient has met the requirements stipulated in the contract, including, any

requirement specified in the agreement. If the company has not met the obligation, an explanation shall be included in the affidavit. Agent shall process the individual project report and forward the individual project summary report and a recommendation of approval or disapproval of the report and any comments regarding the project report to the City Manager by April 30 of each year. The City Manager shall review the individual project reports and provide a recommendation to the Clovis City Commission along with the individual summary report for each project by May 31st of each year for commission approval.

3. Certified copy of the Gross Receipts Tax Return from the State of New Mexico for which reimbursement of City of Clovis Gross Receipts is requested, if applicable. Gross Receipts Tax Return shall demonstrate gross receipts tax related to the reimbursement period requested under the project participation agreement.

## **CONTACTS**

Contact information for EIB application compliance forms:

### **EIB Retail Program**

Agent – Clovis Economic Development Corporation  
P.O. Box 930  
Clovis, NM 88102-0930  
(575) 763-6600  
(575) 763-0395 fax

The physical address for all EIB Applications and compliance forms to be used for Federal Express or special handling packages is:

### **EIB Retail Application**

Agent - Clovis Economic Development Corporation  
105 East Grand  
Clovis, NM 88101  
(575) 763-6600  
(575) 763-0395 fax

### **The City of Clovis EIB Administrative Staff Contact is:**

City Manager  
City of Clovis  
321 N. Connelly Street  
PO Box 760  
Clovis, NM 88102-0760  
575-769-7828  
575-763-9227 fax

The physical address for EIB Administrative Staff to be used for Federal Express or special handling packages is:

City Manager  
City of Clovis  
321 Connelly, Clovis NM 88101  
Clovis, NM 88102-0760  
575-769-7828  
575-763-9227 fax