

**ORDINANCE 1612, AMENDING CHAPTER 2, SECTION 15 OF THE CITY OF
ALAMOGORDO CODE OF ORDINANCES**

WHEREAS, the City of Alamogordo, New Mexico and its commissioners recognize that the City's water supply is of utmost important to the citizens of Alamogordo;

WHEREAS, the City Commission wishes to clarify the requirements for the GRIP program;

WHEREAS, the City Commission wishes to be able to fiscally plan the needs of the GRIP program during budget;

BE IT ORDAINED by the City Commission of the City of Alamogordo, New Mexico that Chapter 2-15 of the *Code of Ordinances* be amended as follows:

ARTICLE 2-15. - GROSS RECEIPTS INVESTMENT PROGRAM ("GRIP")

2-15-010. - Title.

This article shall be entitled the "Gross Receipts Investment Program" ("GRIP"), and shall hereafter be referred to and known under such title. This article is established pursuant to the authority granted to a home rule municipality by Article X, Section 6 of the New Mexico Constitution and the Municipal Charter Act, NMSA 1978, §§ 3-15-1 to 3-15-16 (1971, as amended).

(Ord. No. 1379, § 1, 10-12-10)

2-15-020. - Purpose.

There is hereby established a gross receipts investment program within the city intended to attract new businesses, including retail, or commercial activities or to encourage the expansion of an existing business, including retail, or commercial activity whose gross receipts are subject to the imposition of gross receipts tax, thereby creating new job opportunities for the citizens of the city while promoting the economic growth and welfare of the city, and to improve the city through new construction or the rehabilitation of existing commercial or industrial property, thereby encouraging the revitalization of the city while enhancing the area by increasing land values and providing an overall aesthetic improvement. To accomplish this purpose, the city, by written agreement, may reimburse certain gross receipts taxes directly attributable to construction activities associated with the construction or expansion of a business or commercial activity and the purchase of tangible personal property that will become an ingredient or component part of such a construction project, where the reimbursement thereof is instrumental in bringing the business or commercial activity to the city or retaining its presence within the city.

(Ord. No. 1379, § 2, 10-12-10)

2-15-030. - Definitions.

As used in the gross receipts investment program:

Applicant means a landowner or developer, as hereinafter defined, who has filed an application for reimbursement pursuant to the GRIP.

Building means any structure on a lot, having a roof supported by columns or walls and designed and/or intended for the shelter, housing or enclosure of an eligible entity.

Business owner means a sole proprietor, corporation, partnership, limited liability company, or some other legal entity that owns or owns and manages either a place of business or other establishment that is engaged in selling goods directly to the consumer, where such goods are generally available for immediate purchase and removal from the premises by the purchaser, and whose receipts are all or partially subject to gross receipts tax, or a commercial activity whose services are all or partially subject to gross receipts tax, and who has a proprietary interest in land.

Contractor means any person who accepts orders or contracts from the owner of property or the property owner's duly authorized agent to assume authority or control, or to supervise, manage, or direct the work of others, or who is delegated authority by the owner to do so, whether at a fixed price or on a cost-plus basis, for doing any work.

Developer means any landowner, agent of such landowner, business owner, or tenant with the permission of such landowner, who makes or causes to be made a Development.

Development means any of the following activities on real property located within the corporate boundaries of the city:

- (1) The new construction of a facility for use by an establishment or place of business primarily engaged in selling goods directly to the consumer, where such goods are generally available for immediate purchase and removal from the premises by the purchaser, and whose receipts are partially subject to gross receipts tax, or a commercial activity whose services are partially subject to gross receipts tax; or
- (2) The substantial expansion of an existing facility being used by an establishment or place of business primarily engaged in selling goods directly to the consumer, where such goods are generally available for immediate purchase and removal from the premises by the purchaser, and whose receipts are partially subject to gross receipts tax, or a commercial activity whose services are partially subject to gross receipts tax. For purposes of this program, it shall not be necessary to meet any specified level or percentage of receipts that are subject to gross receipts tax. An establishment, place of business or a commercial activity need only show that a portion of its receipts are subject to gross receipts tax.

Eligible entity means an establishment or place of business primarily engaged in selling goods directly to the consumer, where such goods are generally available for immediate purchase and removal from the premises by the purchaser, and whose receipts are partially subject to gross receipts tax, or a commercial activity whose services are partially subject to gross receipts tax. An entity is not required to meet any specified percentage of taxable receipts in order to be considered an eligible entity. Instead, the entity only needs to show that a portion of its receipts are subject to gross receipts tax.

Eligible project means a development that meets the requirements of section 2-15-040.

Facility means a building or structure that allows or makes possible a person to engage in some type of business or commercial activity.

Landowner means the legal or beneficial owner or owners of land including the holder of an option or contract to purchase (whether or not such option or contract is subject to any condition), a lessee if authorized under the lease to exercise the rights of the landowner, or other person having a proprietary interest in land.

Local employment means those laborers or skilled craftsmen who are residents of the County of Otero, New Mexico.

Local option gross receipts tax means a tax authorized to be imposed by a county or municipality upon the taxpayer's gross receipts and required to be collected by the department at the same time and in the same manner as the gross receipts tax.

Local subcontractors means only those located or having a principal office in Otero County.

Local vendors and suppliers means only those vendors or suppliers who are located or have a principal office in Otero County.

Structure means anything constructed or erected on the ground or attached to the ground.

(Ord. No. 1379, § 3, 10-12-10)

2-15-040. - Eligibility.

In order for a development to qualify for reimbursement under the GRIP, it must:

- (1) Demonstrate that the development involves the building of a structure, or the expansion or rehabilitation of an existing structure, for use by an eligible entity with a value in excess of fifty thousand dollars (\$50,000.00);
- (2) The contractor must have, or establish, and maintain a physical presence in the city sufficient to subject the development to local option gross receipts tax; and
- (3) The contractor must give preference and priority to local manufacturers, suppliers, vendors, contractors and labor, except where not reasonably possible to do so without significant added expense, substantial inconvenience, or sacrifice in operating efficiency. For purposes of determining eligibility, the value of the project shall be equal to the valuation assigned to a project by the construction industries division of the state regulation and licensing department pursuant to 14.5.5.10 NMAC for purposes of establishing a building permit fee.
- (4) Submit the application prior to either breaking ground, or the beginning of a remodel of an eligible project.

(Ord. No. 1379, § 4, 10-12-10; Ord. No. [1561](#), § 1, 1-30-18)

2-15-050. - Application procedure.

- (a) All GRIP reimbursement requests shall be made in writing on a form prescribed by the city. The applicant must show that the reimbursement is a deciding factor in the decision to

establish or expand the eligible entity in the city. All applications must be received prior to the project either breaking ground or the start of the remodel to be eligible for reimbursement.

- (b) Prior to entering into a GRIP agreement, the city commission shall receive and consider a recommendation from the city manager, or designee, said recommendation being based on the factors listed in section 2-15-060.
- (c) If the GRIP application is approved, the commission shall approve the agreement with the developer providing for the GRIP reimbursement payments by resolution.

(Ord. No. 1379, § 5, 10-12-10; Ord. No. [1561](#), § 2, 1-30-18; Ord. No. [1571](#), § 1, 7-17-18)

2-15-060. - Factors considered by city commission when considering reimbursement requests.

The following non-exclusive factors may be considered in determining whether to enter into a reimbursement agreement with an applicant, and if so, the percentage of value to be abated:

- (1) The extent to which local labor, local subcontractors and local vendors and suppliers will be used in the project;
- (2) The amount of local gross receipt taxes to be generated by the project;
- (3) The amount the property tax base valuation that will be increased as a result of the project;
- (4) The potential economic impact the project will provide to the local community;
- (5) The costs to be incurred by the city to provide facilities or services necessary to complete the project;

Each application for tax reimbursement shall be reviewed on its merits utilizing the factors provided above. After such review, a reimbursement request may be denied entirely or may be granted to the extent deemed appropriate after evaluation.

(Ord. No. 1379, § 6, 10-12-10)

2-15-070. - GRIP agreement.

Upon a finding that the development qualifies as a eligible project under the GRIP and is in the public interest, the city and the applicant shall enter into an agreement wherein the city will pay to the applicant up to one hundred (100) percent of the city's share of total gross receipts taxes directly attributable to the eligible project, less any amount dedicated to other special purposes, received by the city during the term of the agreement. The GRIP agreement shall include at least the following terms:

- (1) The applicant must report and pay gross receipts taxes on all receipts associated with the development that are subject to the gross receipts tax;
- (2) The applicant shall agree that its only recourse for payment of the GRIP reimbursement payments are those invoices submitted by the applicant which prove gross receipts taxes have been paid to the State of New Mexico for payment to the city

and that the city has no other liability of whatever kind, whether in law or equity, to the applicant;

- (3) A provision requiring the applicant, on at least a quarterly basis, and at applicant's cost, to allow the full examination by city or its designated representative(s) of all documents necessary for city to assure that best efforts have been used by applicant to utilize local labor, subcontractors, vendors and suppliers. The city will also require that such contracts contain provisions binding the engineering/construction firms utilized as general contractors on the project to the terms of the GRIP agreement; and
- (4) The applicant shall agree to an acceptable means by which the city can administer compliance with the agreement, including any necessary audits of the applicant's books, accounts and financial transactions associated with the development.

(Ord. No. 1379, § 7, 10-12-10; Ord. No. [1571](#), § 2, 7-17-18)

2-15-080. - Payment.

All invoices associated with the project shall be submitted to the city finance department, who will evaluate the invoices and create a calculation form to be delivered to the applicant for review. Funds determined to be due to applicant shall be paid as follows:

- (1) For projects in which the expected reimbursement is anticipated to be in excess of ten thousand dollars (\$10,000.00) and less than one hundred thousand dollars (\$100,000.00), following approval of the GRIP agreement, applicant shall submit invoices paid in full on a monthly or quarterly basis, along with an invoice from applicant. The city shall have thirty (30) days to present a calculation to applicant for review. Following approval of the calculation, by both parties, the city shall have ten (10) business days to pay each submission.
- (2) For projects in which the expected reimbursement is anticipated to be less than ten thousand dollars (\$10,000.00) the applicant may either submit on a monthly or quarterly basis as above, or submit all invoices at the completion of the project. The timeline shall be the same as in 2-15-080(1).
- (3) For projects in which the expected reimbursement is anticipated to be in excess of one hundred thousand dollars (\$100,000.00), following approval of the GRIP application, the city manager and city attorney shall work with the applicant to come up with payment terms that are agreeable to both parties. Such agreement will still be passed by commission, and shall specify the time period to submit invoices, along with how and when payment is to be made to the applicant by the city.

(Ord. No. [1571](#), § 3, 7-17-18; Ord. No. [1595](#), 7-12-19)

Editor's note— Ord. No. [1571](#), § 3, adopted July 17, 2018, in effect, repealed § 2-15-080 and enacted a new § 2-15-080 as set out herein. Former § 2-15-080 pertained to special fund and derived from Ord. No. 1379, adopted October 12, 2010.

2-15-090. - Sunset clause.

The gross receipts investment program shall expire October 31, 2025.

(Ord. No. 1379, § 9, 10-12-10; Ord. No. [1505](#), 12-11-15; Ord. No. [1595](#), 7-12-19)