

**SANDOVAL COUNTY**  
**ORDINANCE NO. 5-18-17.10**

**AN ORDINANCE ESTABLISHING POLICIES AND PROCEDURES FOR EVALUATING  
PROPOSALS TO FINANCE PROJECTS WITH REVENUE BONDS INCLUDING  
INDUSTRIAL REVENUE BONDS**

**BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF SANDOVAL  
COUNTY:**

- **Sec. 2-68. - Short title.**

This division shall be known and may be cited as "Industrial Revenue Bond Ordinance" or "IRB Ordinance"

(Ord. No. 95-10-05.4B, § 1, 10-5-1995)

- **Sec. 2-69. - Purpose.**

The purpose of this division is to establish policies and procedures for:

- (1) Evaluating proposals to finance projects with revenue bonds, including industrial revenue bonds;
- (2) Providing the Board with information on the merits of such projects; and
- (3) Providing the procedures and authorization to issue revenue bonds secured by incentive payments, including payments in lieu of taxes.

(Ord. No. 95-10-05.4B, § 2, 10-5-1995)

- **Sec. 2-70. - Definitions.**

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Applicant* means one or more persons or entities, or their successors, assigns or agents, who propose to acquire or construct a project financed by or proposed to be financed by the proceeds of industrial revenue bonds.

*Application* shall mean the form approved by the Board which an Applicant shall submit information about the Project required under this IRB Ordinance which shall include:



1. General Description
2. Jobs Description
3. Product or Service Description
4. Relocation of Existing Employees Description
5. Financial Structure Description
6. Construction or Development Description
7. Expected Environmental Impact Description
8. Expected Economic Impact Description
9. Principals Description

*Board* means the Board of County Commissioners.

*Bond* means any bond, debenture, note, refunding or renewal bond or note, warrant or other security evidencing an obligation the proceeds of which, or a major portion thereof, are to be used in the trade or business carried on by someone other than the County and which are authorized to be issued by the County pursuant to:

- (1) The County Revenue Bond Act (NMSA 1978, §§ 4-62-1 through 4-62-10, as amended);
- (2) The County Industrial Revenue Bond Act (NMSA 1978, §§ 4-59-1 through 4-59-16, as amended);
- (3) The County Pollution Control Revenue Bond Act (NMSA 1978, §§ 4-60-1 through 4-60-15, as amended);
- (4) Municipal housing law (NMSA 1978, §§ 3-45-1 through 3-45-25, as amended); and
- (5) The Home Rule County Validation Act (NMSA 1978, §§ 4-37-10 through 4-37-13, as amended).

*Incentive payments* means any revenues received by the County from the applicant, including, but not limited to, payments in lieu of taxes, supplemental rents, grants, donations or other contributions, and guaranties.

*Inducement resolution* means a resolution of the board setting forth the good-faith intent of the Board to issue bonds upon the prior satisfaction of all applicable land use and development requirements of the County, other than the issuance of a building permit.

*Letter of Intent* means a letter of the terms and conditions under consideration for an IRB that serves as an agreement to agree between the County and the Applicant and signed by both Parties.

*Notice of intent* means a form of notice of intent to adopt an ordinance providing for the issuance of industrial revenue bonds to be published in accordance with applicable law upon approval by the board.

*Project* means any land and building or other improvements thereon, the acquisition by or for a New Mexico corporation of the assets or stock of an existing business or corporation located outside the state to be relocated within a county

**Sec. 2-71. - Review and analysis of proposed project.**

The applicant shall make a request to issue bonds for a project by filing with the Sandoval County Business Development Department an Application and if requested by the County Manager an inducement resolution or notice of intent, seven copies of the project application and the fees and deposit required by the County. The County shall review all bond projects to determine that proposed project plans are complete. Within 10 days of receiving the project plan, the County Manager, or designee, may:

- (1) Appoint the County employees, advisors, attorneys or other personnel deemed appropriate to prepare an economic, environmental, and/or fiscal analysis of the proposed project; and if applicable,
- (2) Issue a request for proposal (RFP) from independent consultants to prepare an economic and fiscal analysis of the proposed project. This analysis shall evaluate the proposed project according to the revenue bond project criteria promulgated by the County.

(Ord. No. 95-10-05.4B, § 4, 10-5-1995)

**Sec. 2-72. - Board consideration of project plans.**

(a) Upon receipt of the completed analysis, the County Manager shall submit to the board for discussion during the next regularly scheduled meeting of the board:

- (1) The project plan;
- (2) The completed analysis; and
- (3) The County Manager's recommendation to approve, conditionally approve, or reject the proposed plan.

In order to permit public comments on the proposed plan, the board shall defer final action on the plan until the next regularly scheduled meeting after receiving and discussing the project plan, the analysis, and the County Manager's recommendation.

(b) Any person wishing to comment on the proposed plan or the County Manager's recommendations may do so by submitting written comments to the board with a copy to the County Manager at least eight days before the regular meeting during which the board is scheduled to take final action on the proposed plan.

(c) The manager's recommendation and the board's final action to approve, conditionally approve, or to disapprove a project plan and inducement resolution or notice of intent shall take into consideration the County's development plans and policies and the promotion of the health, safety, security and general welfare of the citizens of the County and the state.

(Ord. No. 95-10-05.4B, § 5, 10-5-1995)

**Sec. 2-73. - Zoning compliance.**

After adoption of the inducement resolution or notice of intent by the board and prior to the board adopting an ordinance authorizing the issuance of the bonds, the applicant shall submit any required site development or landscape plans to the building/planning/zoning department. As evidence of compliance with all zoning requirements, the applicant must provide at any time prior to the issuance of the bonds, a certificate of zoning compliance signed by the building/planning/zoning director or his designee.

(Ord. No. 95-10-05.4B, § 6, 10-5-1995)

**Sec. 2-74. - County attorneys.**

(a) The County's bond counsel shall prepare or direct the preparation of all appropriate resolutions, ordinances, trust indentures or other necessary documents relating to the bonds and the issuance thereof.

(b) All resolutions, notices of intent, and ordinances, financing agreements, closing documents and other documents relating to the County and relating to the bonds and issuance thereof shall be submitted to the County attorney and the County's bond counsel, in sufficient time for review by such attorneys prior to the board taking any required action on such documents or execution of the documents by County officials, as applicable.

(Ord. No. 95-10-05.4B, § 7, 10-5-1995)

**Sec. 2-75. - Rules.**

The County Manager may establish such rules, not inconsistent with any County ordinance or this division, as the County Manager may deem necessary to carry out the requirements of this division.

(Ord. No. 95-10-05.4B, § 8, 10-5-1995)

**Sec. 2-76. - Status of bonds.**

The principal and interest of the bonds approved by the board shall be payable solely out of the revenue derived from the project for which the bonds are issued, from applicable tax revenues, from any guarantee agreement or agreements, insurance, surety or a credit enhancement upon which the guarantor or obligor is other than the County. The bonds shall never constitute a debt or indebtedness of the County within the meaning of any provision or limitation of the New Mexico Constitution, statutes of the state or any County ordinance, and such bonds shall not constitute nor give rise to a pecuniary liability of the County or a charge against its general credit or taxing powers.(Ord. No. 95-10-05.4B, § 9, 10-5-1995)

**Sec. 2-77. - Fees and deposit.**

(a) In addition to any other fees imposed pursuant to ordinance or resolution, the applicant shall pay the County:

(1) A non-refundable application fee of \$2,500.00; and

(2) In addition to the application fee set forth above, the applicant shall pay expenses outlined in the Letter of Intent.

(Ord. No. 95-10-05.4B, § 10, 10-5-1995)

**Sec. 2-78. - Sunset date; date of issue.**

(a) The authorizing ordinance shall set a final date for issuance of the proposed bonds. Bonds to be issued pursuant to the County Revenue Bond Act (NMSA 1978, §§ 4-62-1 through 4-62-10, as amended) shall not have a final issuance date more than two years from the date of the adoption of the ordinance authorizing the issuance of the bonds. The "sunset date" may be extended by the adoption of a new or amended authorizing ordinance if the applicant presents a revised project schedule with supporting evidence acceptable to the board that the extension is justified for good cause and necessary for project completion.

(b) The authorizing ordinance shall state the year or years in which the bonds will be issued, and the bonds shall not be issued in a year other than that stated in the authorizing ordinance except upon approval by the board.

(Ord. No. 95-10-05.4B, § 11, 10-5-1995)

**Sec. 2-79. - Short title.**

This division shall be known and may be cited as "Incentive Payments Revenue Bond Ordinance"

**Sec. 2-80. - Authorization to pledge incentive payments.**

(a) In addition to any other law authorizing the County to issue revenue bonds, the County may issue revenue bonds pursuant to the powers granted to counties in NMSA 1978, § 4-37-1, as amended, to provide for the safety, preserve the health, promote the prosperity and improve the morals, order, comfort and convenience of the County and its inhabitants.

(b) Incentive payment revenue bonds may be issued by the County for the exercise of any essential governmental function.

(c) The County may pledge irrevocably any or all of the revenues from incentive payments for payment of principal, premium, if any, and interest due in connection with, and other expenses related to incentive payment revenue bonds. These bonds may be referred to as "Sandoval County, New Mexico, Incentive Payment Revenue Bonds."

(d) Incentive payment revenue bonds:

- (1) May have interest, appreciated principal value or any part thereof, payable at intervals or at maturity as may be determined by the board in the ordinance;
- (2) May be subject to prior redemption at the County's option at such time and upon such terms and conditions with or without the payment of premium as may be provided by ordinance;
- (3) May mature at any time not exceeding the latest date of receipt of revenues from incentive payments;
- (4) May be serial in form and maturity or may consist of one bond payable at one time or in installments or may be in such other form as may be determined by the board;
- (5) Shall be sold for cash at, above or below par and at a price that results in a net effective interest rate that does not exceed the maximum permitted by the Public Securities Act (NMSA 1978, §§ 6-14-1 to 6-14-3, as amended); and
- (6) May be sold at public or negotiated sale.

(e) At a regular or special meeting called for the purpose of issuing incentive payment revenue bonds, the board may adopt an ordinance that:

- (1) Declares the necessity for issuing incentive payment revenue bonds;
- (2) Authorizes the issuance of incentive payment revenue bonds by an affirmative vote of a majority of all the members of the board; and
- (3) Designates the incentive payments pledged.

Any revenue in excess of the amount necessary to meet all annual principal and interest payments and other requirements incident to repayment of the incentive payment revenue bonds may be transferred to any other fund of the County.

(f) Incentive payment bonds.

(1) Incentive payment revenue bonds or incentive payment refunding revenue bonds are:

- a. Not general obligations of the County; and
- b. Collectible only from the properly pledged incentive payment revenues, and each bond shall state that it is payable solely from the properly pledged incentive payment revenues and that the bondholders may not look to any other County fund for the payment of the interest and principal of the bonds.

(2) The bonds shall be executed by the chairman of the board and treasurer or the clerk and may be authenticated by any public or private transfer agent or registrar, or its successor, named or otherwise designated by the board. The bonds may be executed as provided under the Uniform Facsimile Signature of Public Officials Act (NMSA 1978, §§ 6-9-1 to 6-9-6, as amended), and the coupons, if any, shall bear the facsimile signature of the treasurer of the County.

(g) Refunding revenue bonds.

(1) The County, having issued incentive payment revenue bonds as herein authorized, may issue refunding revenue bonds for the purpose of refinancing, paying and discharging all or any part of the outstanding bonds of any outstanding issues. These bonds may be referred to as "Sandoval County, New Mexico, Incentive Payment Refunding Revenue Bonds."

(2) The County may pledge irrevocably for the payment of interest and principal on refunding bonds the appropriate pledged revenues that may be pledged to an original issue of bonds.

(3) Bonds for refunding and bonds for any purpose permitted herein may be issued separately or issued in combination in one or more series.

(h) Refunding bonds to be authorized by ordinance.

(1) Refunding bonds issued hereunder shall be authorized by ordinance. Any bonds that are refunded under the provisions of this subsection (h) shall be paid at maturity or on any permitted prior redemption date in the amounts, at the time and places and, if called prior to maturity, in accordance with any applicable notice provisions, all as provided in the proceedings authorizing the issuance of the refunded bonds or otherwise appertaining thereto, except for any bond that is voluntarily surrendered for exchange or payment by the holder or owner.

(2) Provisions shall be made for paying the bonds refunded at the time provided in subsection (h)(1) of this section. The principal amount of the refunding bonds may exceed the principal amount of the refunded bonds and may also be less than or the same as the principal amount of the bonds being refunded so long as provision is duly and sufficiently made for the payment of the refunded bonds.

(3) The proceeds of refunding bonds, including any accrued interest and premium appertaining to the sale of refunding bonds, shall either be immediately applied to the retirement of the bonds being refunded or be placed in escrow in a commercial bank or trust company that possesses and is exercising trust powers and that is a member of the federal deposit insurance corporation to be applied to the payment of the principal of, interest on and any prior redemption premium due in connection with the bonds being refunded; provided that such refunding bond proceeds, including any accrued interest and any premium appertaining to a sale of refunding bonds, may be applied to the establishment and maintenance of a reserve fund and to the payment of expenses incidental to the refunding and the issuance of the refunding bonds, the interest thereon and the principal thereof or both interest and principal as the County may determine. Nothing in this section requires the establishment of an escrow if the refunded bonds become due and payable within one year from the date of the refunding bonds and if the amounts necessary to retire the refunded bonds within that time are deposited with the paying agent for the refunded bonds. Any escrow shall not be limited to proceeds of refunding bonds but may include any other money available for its purpose. Any proceeds in escrow pending such use may be invested or reinvested in bills, certificates of indebtedness, notes or bonds that are direct obligations of, or the principal and interest of

which obligations are unconditionally guaranteed by, the United States or in certificates of deposit of banks that are members of the federal deposit insurance corporation, the par value of which certificates of deposit is collateralized by a pledge of obligations of, or the payment of which is unconditionally guaranteed by, the United States, the par value of which obligations is at least 75 percent of the par value of the certificates of deposit. Such proceeds and investments in escrow together with any interest or other income to be derived from any such investment shall be in an amount at all times sufficient as to principal, interest, any prior redemption premium due and any charges of the escrow agent payable therefrom to pay the bonds being refunded as they become due at their respective maturities or due at any designated prior redemption date in connection with which the County shall exercise a prior redemption option. Any purchaser of any refunding bond issued is in no manner responsible for the application of the proceeds thereof by the County or of its officers, agents or employees.

(4) Refunding bonds may bear such additional terms and provisions as may be determined by the County and the refunding bonds are not subject to the provisions of any other statute.

(i) Incentive payment refunding revenue bonds:

(1) May have interest, appreciated principal value or any part thereof, payable at intervals or at maturity as may be determined by the board in the ordinance;

(2) May be subject to prior redemption at the County's option at such time and upon such terms and conditions with or without the payment of a premium as may be provided by ordinance;

(3) May be serial in form and maturity or may consist of a single bond payable in one or more installments or may be in such other form as may be determined by the board; and

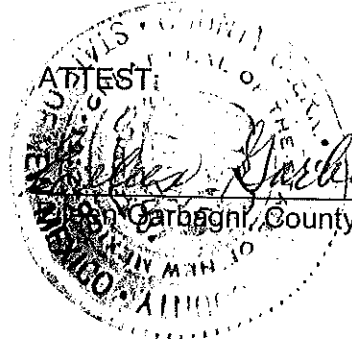
(4) Shall be exchanged for the bonds, and any accrued unpaid interest, being refunded at not less than par or sold at public or negotiated sale at, above or below par and at a price that results in a net effective interest rate that does not exceed the maximum permitted by the Public Securities Act (NMSA 1978, §§ 6-14-1 to 6-14-3, as amended).

(j) At any regular or special meeting called for the purpose of issuing incentive payment refunding revenue bonds, the board, by a majority vote of all the members of the board, may adopt an ordinance authorizing the issuance of the incentive payment refunding revenue bonds.

(Ord. No. 95-10-05.4B, § 12, 10-5-1995)



PASSED AND APPROVED THIS 18 DAY OF May, 2017.



[Signature]  
County Clerk

BOARD OF COUNTY COMMISSIONERS  
SANDOVAL COUNTY

[Signature]  
Don Chapman, Chairman

[Signature]  
David Heil, Vice Chairman

[Signature]  
James Dominguez, Member

[Signature]  
Jay Block, Member

[Signature]  
F. Kenneth Eichwald, Member

APPROVED AS TO FORM:

[Signature]  
Natalia Sanchez Downey,  
County Attorney