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GUIDELINES FOR FUNDING LOCAL CAPITAL PROJECTS

The 2017 Legislative Session is less than a month away. Legislation is already being pre-filed. Municipalities are putting together their capital outlay requests together. The League worked with representatives of DFA, LGD, LFC, and NMAC to put together the following Guidelines for Local Projects.

State aid through capital outlay has been a critical source of funding for local infrastructure projects. However, the process can be cumbersome and lengthy, and can result in incomplete projects and unspent proceeds.

In 2016, staff of the Legislative Finance Committee collaborated with the executive directors of the Association of Counties, the New Mexico Municipal League, and the Department of Finance and Administration to develop guidelines for prioritization and management of projects. The goal of the guidelines is to assist legislators and political subdivisions in their decision-making process when determining local project needs, while at the same time preserving legislators’ options to select and prioritize projects within their districts. The Legislative Council Service assisted in the process by providing technical support and explanation of the bill preparation process.

Proposed Guidelines

- Demonstrate project will reduce potential or actual health and safety hazards and liability issues or will provide sustainable infrastructure for community needs.
- Demonstrate all necessary plans, funds, and resources will be in place to complete a project within a reasonable timeframe (12 to 18 months) following enactment of the capital bill. Note: As statutorily required, if projects funded by severance tax bonds are not certified as ready to begin within two years, legislative authorization will automatically expire.
- Require grantees to justify outstanding projects with no activity or expenditures to determine if the projects need additional funding to complete, or if funds should be reauthorized for a different purpose.
- Leverage state funds with local, federal or other sources when possible to fully fund a complete project or usable phase. Consider that even minimal local contribution is known to improve project completion and success.
- Entities receiving capital outlay must be compliant with the State Audit Act and Executive Order 2013-006.
- Combining legislator funding to complete large regional projects is encouraged.
- Fund projects listed in Local Infrastructure Capital Improvement Plans (ICIP). All projects should be planned and prioritized to match demand for funds with supply of funds and to best utilize all funding sources available.
- Before a project is funded, the grantee should be consulted to ensure the project is a local priority and the operational and maintenance costs can be adequately addressed.
- Establish a $50,000 minimum level for projects funded from STB, unless a lesser amount is needed to complete a project. Larger projects are more likely to realize savings to state and local governments, reduce future year operating expenditures, provide for completion of projects in a timely manner, and streamline state and local administrative efforts.
- Severance tax bond projects, after authorized, must meet expenditure timelines required by the Internal Continued on page 13
LEGAL LESSONS

THE MUNICIPAL LODGERS’ TAX:
MANY QUESTIONS AND A FEW ANSWERS
By Randy Van Vleck, General Counsel

Part One

This is a continuation of the discussion concerning the municipal lodgers’ tax. In this article we will explore the various uses and limitations that are imposed by the statute. As in last month’s article, it is particularly important to pay attention to terms in **bold as they have particular meaning under the statute.**

Q: How is the tax collected?
A: Every vendor providing lodgings in a municipality imposing an occupancy tax shall collect the proceeds thereof on behalf of the municipality and shall act as a trustee for the municipality. The tax is collected directly from the vendees in accordance with a duly adopted ordinance of the municipality.

Q: How can lodgers’ tax proceeds be used?
A: Lodgers’ tax proceeds may be used in two broad categories. The first is for advertising, publicizing and promoting tourist-related attractions, facilities and events and the second is for other “eligible uses”.

Q: Are there limitations on how a municipality may spend lodgers’ tax proceeds?
A: Yes:
   a) If the municipality imposes an occupancy tax (lodgers’ tax) of no more than two percent, not less than one-fourth of the proceeds shall be used for advertising, publicizing and promoting tourist-related attractions, facilities and events.
   b) If the occupancy tax (lodgers’ tax) imposed is more than two percent and the municipality is not located in a class A county, not less than one-half of the proceeds from the tax shall be used for advertising, publicizing and promoting tourist-related attractions, facilities and events.
   c) If the occupancy tax (lodgers’ tax) imposed is more than two percent and the municipality is located in a class A county, not less than one-half of the proceeds from the tax shall be used for advertising, publicizing and promoting tourist-related attractions, facilities and events.
   d) The proceeds from the occupancy tax (lodgers’ tax) in excess of the amount required to be used for advertising, publicizing and promoting tourist-related attractions, facilities and events may be used for other “eligible uses”.
   e) The proceeds from the occupancy tax (lodgers’ tax) that are required to be used to advertise, publicize and promote tourist-related attractions, facilities and events shall be used within two years of the close of the fiscal year in which they were collected and shall not be accumulated beyond that date or used for any other purpose.

Q: What are these other “eligible uses”?
A: A municipality may use the
proceeds from the occupancy tax (lodgers’ tax) to defray costs of:

a) Administrative costs in collecting and enforcing the lodgers’ tax ordinance.

b) Establishing, operating, purchasing, constructing, otherwise acquiring, reconstructing, extending, improving, equipping, furnishing or acquiring real property or any interest in real property for the site or grounds for tourist-related facilities and attractions or tourist-related transportation systems of the municipality, the county in which the municipality is located.

c) The principal of and interest on any prior redemption premiums due in connection with and any other charges pertaining to revenue bonds authorized by Section 3-38-23 or 3-38-24 NMSA 1978.

d) Advertising, publicizing and promoting tourist-related attractions, facilities and events of the municipality and tourist-related facilities, attractions events within the area.

e) Providing police and fire protection and sanitation service for tourist-related facilities, attractions and events located in the respective municipality.

f) Providing a required minimum revenue guarantee for air service to the municipality to increase the ability of tourists to easily access the municipality’s tourist-related facilities, attractions and events.

g) Any combination of these purposes or transactions, but for no other municipal purpose.

Q: How do we get started?
A: The municipality must adopt a lodgers’ tax ordinance.

Q: Are there any specific requirements of the ordinance?
A: Yes. The ordinance must:

a) Provide for procedure for licensing each vendor and for refusing a vendor a license after an opportunity has been given to the vendor of a public hearing thereon by the governing body of the municipality.

b) State the rate or other amount of the occupancy tax; the times, place and method for the payment of the occupancy tax proceeds to the municipality; the accounts and other records to be maintained in connection with the occupancy tax; a procedure for making refunds and resolving disputes relating to the occupancy tax, including exceptions pertaining thereto; the procedure for preservation and destruction of records and their inspection and investigation; vendor audit requirements; applicable civil and criminal penalties; and a procedure of liens, and sales to satisfy such liens.

c) Provide other rights, privileges, powers, immunities and other details relating to any such vendor licenses, the collection of the occupancy tax and the remittance of the proceeds thereof to the municipality in the discretion of the municipality.

Bill Foster is a digital marketing master. The serial entrepreneur developed keyword and search-engine ad revenue for pioneering companies such as Infoseek and Excite and now wants to use his experience and knowledge to help local businesses compete with national chains and internet behemoths.

Foster is a founder of yellCast, a New Mexico startup that connects buyers with local merchants by providing search-engine results that go a step beyond Yelp, Google and Bing and offer an interactive portal where buyers and sellers communicate directly. With this service, consumers who want to shop locally don’t need to call multiple merchants to find a specific product; yellCast provides the platform that allows merchants to respond to specific requests.

Turning the tide

Foster’s interest is more than philanthropic; he intends to fill a market need and make money doing it. But for him, yellCast is also a way to reverse the trend of money leaving local communities when consumers purchase products online from companies thousands of miles away — a trend he helped create. “This is our apology,” he said about the startup.

Shopping locally keeps money circulating at home and generates tax revenue that supports public services such as parks, community centers and essential services. According to the American Inde-
dependent Business Alliance, every dollar spent at an independent local business returns an average of three times more money to the local community than a dollar spent at a chain store.

Local shopping also reduces environmental impacts associated with packaging, processing and shipping goods over long distances. And local businesses are job creators, hiring local workers. According to the U.S. Small Business Administration, small businesses created 63 percent of the new jobs created in the United States between 1993 and 2013.

The yellCast method

Using yellCast, consumers can send a query to multiple merchants that appear in their search results. For example, a Santa Fe shopper looking for a specific coat — say a men's waterproof down jacket — uses yellCast to scan the internet for those keywords plus the place-name “Santa Fe.” The shopper then selects the merchants she wants to contact for more information or to obtain a specific size.

Local merchants receive the request and respond based on inventory and accessibility. A local merchant might not have the product but can offer to order it. Searchers remain anonymous until their order is placed, and they avoid the unwanted advertising that typically follows searches on better-known platforms because yellCast doesn’t sell or even save the information it collects.

Businesses can register on yellCast at no charge, and they only pay for the service if they respond to an inquiry. The service is currently free during the pilot in Santa Fe, yellCast’s test market and where city officials hope merchants and consumers embrace the platform.

To that end, more than 20 community organizations have joined yellCast in the Live Local and Prosper Pledge, which asks people to help invigorate Santa Fe’s economy by making an extra effort to spend locally throughout the year. The yellCast platform is expected to expand to other cities in 2017.

To use yellCast, start a search at https://yellcast.com/indexb.php/. Merchants can sign up by clicking on the Business Sign-Up link in the upper right corner of the website after scrolling to the bottom of the page.

Finance New Mexico assists individuals and businesses with obtaining skills and funding resources for their business or idea. To learn more, go to www.FinanceNewMexico.org.
THE FIRST SESSION OF THE 53RD LEGISLATURE

will convene at noon on January 17 in Santa Fe. This will be a 60-day session in which any issue may be addressed by legislators as opposed to a 30-day session held in even-numbered years that is restricted to finance and taxation proposals.

One of the main issues facing legislators in January will be a potential budget deficit that is constitutionally impermissible in New Mexico. During the Special Session held in the fall, legislators did a one-time fix of a budget shortfall, but another looms as the session approaches. Several bills have already been pre-filed dealing with sentencing guidelines and penalty enhancements that the Martinez administration attempted during the Special Session.

The New Mexico Municipal League Board of Directors has prioritized the following 2016-2017 Resolutions and Statement of Municipal Policy for the 2017 Legislative Session:

1. Protect Municipal Tax Base and Revenues
   State and Local Tax Reform – supports creation of a study group to develop a tax reform plan for New Mexico and have representation from the New Mexico Municipal League and the New Mexico Association of Counties in order to give input on state and local tax reform. (Resolution 2016-18)

2. Whistleblower Protection Act – amend the Whistleblower Protection Act to limit violations and limit the applicability of the Act. (Resolution 2016-8)

3. Law Enforcement – support the following issues affecting Law Enforcement: the Sex Offender Registration and Notification Act (Resolution 2016-25); mental health legislation to provide funding and statutory support for mental health resources (Resolution 2016-28); and, Domestic Violence Offenses (Resolution 2016-32)

4. Jurisdiction of Police Officers – seek legislation to extend territorial jurisdiction of municipal police officers. (Resolution 2016-31)

To see the complete list of the League’s 2016-17 Resolutions and Statement of Municipal Policy, visit www.nmml.org/legislativenews.

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Mariah Valdez, Roberta Baca, Enforcement Division Director for the New Mexico Insurance Fraud Bureau, and Anita Tafoya, Support Service Director. The Bureau received their Certificate of Recognition from the League’s Law Enforcement Accreditation Program during the 2016 Law Enforcement Conference on December 8.

Lease Executive Director Bill Fulginiti and Claims Technician Flora Vigil, Flora retired in December after 28 years with the League. From left: Maria Ortiz, Receptionist; Jackie Portillo, Support Services Coordinator; Sharon Griego, Office Clerk II; Flora Vigil; Mariah Valdez, Administrative Assistant; and Valerie Maes, office Clerk I.

NM CPM Annual Advisory Board Meeting – left to right; Grace Philips, Patrick Torres, Michael Steininger, Julia Lanham, Bruce Hinricks, Edwin Burckle, Will Ticknor, Susan Mayes, Mary Delorenzo, Emily Oster, Marlo Aragon, Reese Fullerton, Jon Boren, and Tasha Martinez.
Above: photos from the Town of Bernalillo’s 32nd Annual Nighttime Christmas Parade. Below are photos from the Town of Edgewood as they celebrated their 1st Annual Christmas Tree Lighting and Bonfire. The event included Christmas music by the Roosevelt A. Montoya K-8 School in Tijeras and Choirs from Edgewood Middle School, South Mountain Elementary School and Moriarty High School.
The City of Hobbs wishes you and yours a very happy holiday season!

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New Mexico Certified Public Manager Offers Classes Throughout 2017

The New Mexico Municipal League and New Mexico Cooperative Extension Service are strategic partners in the professional development program called the NM EDGE. EDGE is an acronym for Education Designed to Generate Excellence in the public sector. NMML, along with representatives from the New Mexico Association of Counties, state elected offices, and various state agencies serve on the New Mexico Certified Public Manager Advisory Board, which met last week at their 2016 Annual Meeting. The mutual goal is Better Government through Education.

The NMCPCM program is administered by the NM EDGE and is a program of NMSU Cooperative Extension Service. The first municipal Certified Public Manager graduate, Conrad Cordova from Town of Taos, earned certification in 2015 and walked at a graduation ceremony during the NMML’s Annual Conference in Albuquerque. Twelve NMCPCM candidates are in the process of qualifying this January.

General classes will be offered in Santa Fe, January 16-18, 2017 at the Drury Inn. Classes may be taken “a la carte” or “cafeteria-style” meaning take any class you wish (a pre-requisite would still apply) or you can choose to certification track and take classes that apply to the designation you are pursuing. Most classes apply toward a Certified Public Manager designation, should you decide to go for the nationally recognized, nationally accredited CPM.

More information about the NMCPCM program, January classes, 2017 Calendar, and how to enroll in the program, are available at the NM EDGE website (nmedge.nmsu.edu) or by emailing nmedge@nmsu.edu.

Wanna be in? Join us, and be in!

---

**NM EDGE Roadmap to Certification**

**Classes January 16-18, 2017 | Drury Plaza - Santa Fe, NM**

**NM EDGE** is a program of New Mexico Cooperative Extension Service (email us at nmedge@nmsu.edu)

Featuring the NM Certified Public Manager® (CPO, CPS, & CPM) system of national certification.

NM EDGE Classes are open to all public sector officials and employees. Check nmedge.nmsu.edu for other certifications in which these may apply.

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<th>Monday</th>
<th>January 16</th>
<th>8:30 - 11:30 am</th>
<th>CPO 144</th>
<th>Risk Mgt</th>
<th>CPO 131</th>
<th>HR Law</th>
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<td>CPM 272</td>
<td>Research Tools</td>
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<td>Do the Right Thing</td>
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<td>Election Law I</td>
<td>AO 108</td>
<td>Home Valuation</td>
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<td>1</td>
<td>1:00 - 4:00 pm</td>
<td>CPM 111</td>
<td>Leadership</td>
<td>CPM 274</td>
<td>Test of Public Programs</td>
<td>CPM 102</td>
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<td>2</td>
<td>5:30 - 8:30 pm</td>
<td>CPM 151</td>
<td>Foundation for Communicating</td>
<td>CPM 134</td>
<td>Recruit the Best of the Bunch</td>
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<td>Discipline &amp; Termination</td>
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<td>CPM 109</td>
<td>Parliamentary Procedure</td>
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<td>Tax Roll Correction</td>
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**Tuesday January 17**

| 8:30 - 11:30 am | CPM 156 | Improving Writing Skills | CPM 146 | Knowing the Law I |
| 1:00 - 4:00 pm | CPM 122 | Leading with a Leader | CPM 123 | Managing Organizational Change |
| 5:30 - 8:30 pm | CPM 133 | Being a Leader | CPM 110 | Understanding the Law I |

**Wednesday January 18**

| 8:30 - 11:30 am | CPM 145 | Developing a Safe & Productive Workplace | CPM 211 | Knowing the Law II |
| 1:00 - 4:00 pm | CPM 145 | Improving Records & Inspection | CPM 232 | Job Analysis & Comp |
| 5:30 - 8:30 pm | CPM 146 | Improving Records & Inspection | CPM 233 | Job Analysis & Comp |

**THE MUNICIPAL REPORTER, JANUARY 2017**
Revenue Service Code of 1986. Confirm that the project will be able to encumber 5% of funds within six months of bond issuance and expend 85% of funds within three years of bond issuance.

- Water projects should be funded using criteria established by existing state programs such as: Safe Drinking Water Act of 1974, Clean Water Act of 1977, and Water Project Finance Act.

- Funding for economic development purposes pursuant to the Local Economic Development Act (LEDA) requires special project documentation. The Legislative Council Service requires that the project participation agreement accompany the request for drafting.

- Non-Governmental Funding: If a capital request is from a non-governmental entity (non-profit or private), require requestor to obtain prior written confirmation from an eligible political subdivision agreeing they will own the capital asset and are willing and able to enter into a lease or operating agreement to comply with the Anti-Donation Clause of the New Mexico Constitution. The State Board of Finance will not issue bonds until the project demonstrates anti-donation compliance.
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