

**Victor Local
Development
Corporation
(LDC)**

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THE PURPOSE OF THE VICTOR LDC

LDCs are Type C not-for-profit corporations¹ that may only be formed for a lawful business purpose “**to achieve a lawful public or quasi-public objective**” in a geographically circumscribed area. In carrying out its purposes and in exercising its powers, an LDC performs essential functions for the purpose of:

- instructing or training individuals to improve or develop their capabilities to start or run businesses.
- carrying on research for the purpose of aiding the community
 - by attracting new businesses to the community or area or
 - by encouraging the development or retention of a business in the community; and thus, improving and maintaining job opportunities;
 - to sponsor and promote local events while working cooperatively with Federal, State and Local Agencies/Organizations;
- to utilize tourism opportunities as an economic strategy to promote businesses.
- to work cooperatively with government and act in the public interest.²

WHAT CAN THE VICTOR LDC DO?

In addition to the normal powers held by all not-for-profit corporations, LDCs have the power:

- to assist financially in such construction, acquisition, rehabilitation and improvement of local businesses;
- to disseminate information and furnish advice, technical assistance and act as a liaison with federal, state and local authorities;
- to acquire real or personal property or interests therein;³
- to borrow money and to issue negotiable bonds, notes and other obligations therefore,
- to sell, lease, mortgage or otherwise dispose of or encumber any business or any of its real or personal property or any interest therein upon terms deemed necessary;⁴
- in connection with loans from the New York Job Development Authority (“NYJDA”), to enter into covenants and agreements and to comply with all the terms, conditions and provisions thereof;
- to carry out its corporate purposes; and
- to foster and encourage the location or expansion of businesses in the Village/Town of Victor in which LDCs operations are principally to be conducted.⁵

WARNING: LDCs may NOT

- A. attempt to influence legislation by propaganda or otherwise, or
- B. participate or intervene, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office.⁶

CONCLUSION

Whether your municipality is currently thriving or merely striving to weather tough economic times, an LDC can be an invaluable tool. They can redevelop just one fire-damaged building in your downtown, or they can redevelop an entire run-down neighborhood. They can train laid-off workers, or they can attract new businesses to the community. Whatever your municipality's economic needs, LDCs may be the right tool for your community.

Appendix

APPENDIX “A”

HOW MAY MUNICIPALITIES ASSIST LDCs?

In addition to forming an LDC, the local legislative body of a county, city, town, or village may, by resolution:

- determine that a parcel of real property owned by the municipality is not required for use by the municipality; and
- authorize the sale or lease of the real property to an LDC.

The sale or lease of the real property may be made without appraisal or public bidding for such price or rental and upon such terms as may be agreed upon between the municipality and the LDC. Lease terms may not exceed ninety-nine years.⁷ Before any sale or lease to an LDC may be authorized, a public hearing must be held by the local legislative body to consider the proposed sale or lease.⁸ Notice of the hearing must be published at least ten days before the hearing in the publication and in the manner designated by the local legislative body or the board of estimate.⁹ No other form of public notice is required.

WARNING: Title to land that a municipality sells or leases to an LDC may not be declared inalienable as a forest preserve or a parkland.¹⁰

An LDC that purchases or leases real property from a municipality may not, without the written approval of the municipality use the real property for any purpose except the purposes set forth in the LDC’s certificate of incorporation or reincorporation. If such use occurs without municipal approval, the Attorney General may bring an action or special proceeding to enjoin the unauthorized use.¹¹

APPENDIX “B”

FEDERAL AND STATE ECONOMIC DEVELOPMENT PROGRAMS

In addition to the LDC powers set forth in the Not-For-Profit Corporation Law, LDCs are frequently empowered to administer Federal or State programs or to receive funding from Federal or State sources.

Note: The availability of funding from the programs discussed below is generally dependent upon Federal and State budgetary considerations, the priorities of the agencies administering the programs, and the implementation of specific initiatives under the programs. *Thus, many of these programs are only available when the agencies issue requests for proposals or applications.* As a result, LDC administrators must establish contacts with the various administrators of these programs and periodically check with them to determine the availability of programmatic and funding opportunities.

FEDERAL PROGRAMS

There are numerous federal programs of which LDCs may take advantage. Parties interested in accessing federal programs should monitor federal Notices of Fund Availability (NOFAs) and should also cultivate and maintain close contacts with the federal agencies’ regional offices serving their area. The main federal agencies offering economic development assistance are the Department of Housing and Urban Development, the Department of Commerce (particularly the Economic Development Administration), the United States Department of Agriculture, and the Department of Labor. Information on the programs currently being offered by these and other federal agencies can be obtained by visiting their websites¹² or by contacting the regional office serving your area.

STATE PROGRAMS

The following are examples of *statutorily* enacted State programs in which LDCs may participate. This list is not exhaustive and these programs may be operating under different names or may currently be inactive.

(1) Empire State Development Corporation

The New York State Urban Development Corporation (doing business as the Empire State Development Corporation (ESDC)) is the lead economic development agency for the State of New York. Created pursuant to the New York State Urban Development Corporation Act,¹³ the ESDC has extensive powers to address the economic needs of the State. ESDC has regional offices located throughout the State. LDCs should contact their local ESDC regional office to determine the availability of any funding or programmatic opportunities. For example, the ESDC may sell or lease all or any portion of real or personal property constituting a land use improvement project to an LDC, if the ESDC finds that the sale or

lease is in conformity with a plan for clearing, re-planning, reconstructing or rehabilitating sub-standard, and unsanitary areas in the municipality in which the project is located. The sale or lease may take place without public bidding, public sale, or public notice. The ESDC also administers numerous relevant economic development programs, including:

Urban and Community Development Program Grants

LDCs are eligible to apply to ESDC for Urban and Community Development Program assistance grants. The grants are awarded on a competitive basis in response to requests for proposals and through direct applications that are accepted at the discretion of the ESDC. The grants are provided for:

- commercial revitalization projects in central business districts or commercial strips that include architectural design studies and services and other redevelopment work in connection with the design and implementation of a plan for façade and other improvements to commercial strips and central business districts throughout New York State. The UCDP assistance grants may include monies available for individual property owners and/or tenants who agree to improve their property in accordance with an overall design plan, provided that, such individual property owners and/or tenants shall be required to match the amount of any grant awarded to them;
- studies, surveys or reports, and feasibility studies and preliminary planning studies to assess a particular site or sites or facility or facilities for any economic development purpose other than residential; and
- identifying development opportunities with established business improvement districts.¹⁴

Applications for UCDP assistance grants must comply with those requirements the ESDC deems necessary including, but not limited to:

- the potential impact the proposed project would have on economic development and employment opportunities in the community and the region; and
- the existence of significant support for the activities from the local business community, local government and community organizations within the community, including the commitment of financial resources.¹⁵

Urban and Community Commercial Revitalization Revolving Loan Fund

The Urban and Community Commercial Revitalization Revolving Loan Fund stimulates the development of central business districts and commercial strips through a decentralized lending program. Loans from the fund are awarded through a competitive process initiated by ESDC, which includes a request for proposals as well as direct applications accepted at other times at the discretion of the corporation. Loans and loan guarantees made from the loan fund may be used to improve, expand, and startup businesses located in central business districts and commercial strips. LDCs are eligible to administer the loans and loan guarantees. Initial funding of revolving loan funds is dependent upon State budget considerations.¹⁶

Industrial Effectiveness Expansion, Retention, and Attraction Assistance Program

Under the Industrial Effectiveness Expansion, Retention, and Attraction Assistance Program, ESDC provides loans and grants in an effort to provide financial assistance to industrial firms that will create or preserve substantial numbers of jobs, assist in the expansion or retention of businesses located in New York State, assist in attracting businesses to the State, fill gaps in financing from other private and public sources, and enhance geographic areas of the State that are currently substandard or un sanitary, or are in danger of becoming substandard or unsanitary. LDCs are eligible to receive project loans and interest subsidy grants from ESDC to develop urban industrial sites, industrial parks and incubator buildings owned the LDC.¹⁷ To be eligible for a loan or interest subsidy grant, the LDC must demonstrate that the project:

- will create or preserve a substantial number of jobs;
- will assist in the expansion or retention of a business located in the State or the attraction of a business to the State;
- is consistent with the purposes of the program; and
- is to be located in a substandard or unsanitary area, or is in danger of becoming a substandard or unsanitary area, wherein there exists a condition of substantial and persistent unemployment or underemployment.¹⁸

(2) New York Job Development Authority

The New York Job Development Authority (NYJDA), also doing business as the ESDC, is a public benefit corporation created under the Public Authorities Law to assist and promote the general prosperity and economic welfare of the people of the State, to improve their standard of living, to improve employment opportunities in any area of the State, to advance the development of industrial, manufacturing, research and development, or other eligible business enterprises throughout the State, and to assist in financing the cost of projects for the construction, acquisition, rehabilitation or improvement of pollution control facilities.¹⁹ LDCs are eligible to receive NYJDA financing for constructing, acquiring, rehabilitating, or improving:

- new, existing or firmer industrial or manufacturing plants;
- buildings used for research and development; or
- other eligible business facilities within the state.²⁰

LDC projects may include acquiring real property for any of the above-referenced projects. In addition, LDCs are eligible to receive financing for purchasing machinery and equipment to be used within the state.²¹ Finally; LDCs are eligible to receive financing from the pollution control fund for constructing, acquiring, rehabilitating, or improving pollution control facilities.²²

To be eligible for NYJDA loans, an LDC must be incorporated, in addition to its other purposes:

- to construct new industrial or manufacturing plants or new research and development buildings;
- to acquire machinery and equipment deemed related thereto;

- to acquire, rehabilitate, and improve for use by others, industrial or manufacturing plants in the area of the state in which an assisted project is to be located;
- to assist financially in such construction, acquisition, rehabilitation and improvement;
- to maintain such plants, buildings and equipment for others; and
- to study and promote, alone or in concert with local officials and interested local groups, the economic growth and business prosperity of the area and the solution of other civic problems of the region which includes such areas.²³

LDCs may also loan funds to employee ownership associations to acquire or rehabilitate an existing industrial or manufacturing plant located in the State for the purpose of operating it as an employee-owned enterprise.²⁴

Note: The LDCs must develop, promote, and ensure that, whenever possible, women and traditionally disadvantaged minority groups are afforded equal opportunity for loans from the NYJDA through the LDC and for contracts in connection with the construction of the projects financed by loans from NYJDA through the LDC. However, the corporation may request that the NYJDA implement the provisions of this subdivision.²⁵

(3) Empire Zones

Empire Zones²⁶ are areas designated by the State that are characterized by persistent and pervasive poverty, high unemployment, limited new job creation, a dependence on public assistance income, dilapidated and abandoned industrial and commercial facilities, and shrinking tax bases.²⁷ Certified businesses that located within an Empire Zone are eligible to receive a variety of tax breaks and credits, and reductions in utility rates.²⁸ Each Empire Zone is administered by its own empire zone boards. LDCs are eligible to contract with empire zone boards to administer Empire Zones for the purposes of:²⁹

- planning economic development strategy for the zone;
- marketing and promoting the zone;
- assisting companies in applying for available benefits;
- preparing applications for financing assistance and other technical assistance services;
- coordinating the delivery of state and local programs within the zones; and
- operating other economic development assistance programs that further the empire zone development plan as may be appropriate.³⁰

In addition, LDCs are eligible to receive tax credits for business development activities within an Empire Zones that are approved by the governing empire zone board.

LDC activities may also qualify as “community development projects” under the empire development program. To qualify for “community development project” status, an empire development zone board must approve the project as one advancing the zone’s development plan. The projects are limited to:

- child care programs serving zone residents and businesses;

- community development projects in direct support of economic development and business revitalization activities, such as commercial revitalization projects; and
- LDC business development activities.³¹

(4) New York Business Development Corporation

The New York Business Development Corporation (NYBDC) was created in 1955 and was one of the State's first major economic development agencies. The NYBDC has a broad mandate to assist businesses, maximize employment opportunities, and to improve the standard of living in the State.³² LDCs may enter into cooperative relationships with the NYBDC to increase awareness and visibility of the NYBDC's programs.³³ In addition, the NYBDC may contract or otherwise affiliate with LDCs to market NYBDC's programs to small and medium sized businesses, to provide technical, financial packaging and loan application assistance to businesses seeking financial assistance from the NYBDC, including but not limited to, minority owned business enterprises and small and medium sized businesses located in economically distressed areas.³⁴

(5) Entrepreneurship Support Centers

Through the Entrepreneurial Assistance Program, the State of New York created support centers that provide training to dislocated workers, minorities and women in the principles and practice of entrepreneurship, in order to prepare them to pursue self-employment opportunities.³⁵ LDCs are eligible to establish entrepreneurship support centers³⁶ and to receive grants of up to \$50,000 to operate these support centers.³⁷ The State's Department of Economic Development (DED) may periodically issue requests for proposals to establish support centers.

Endnotes

1. Not-For Profit Corporation Law (“N-PLC”) § 1411(b).
2. N-PCL § 1411(a).
3. N-PCL § 1411(c) authorizes LDCs to acquire property in a broad variety of ways including “by purchase, lease, gift, bequest, devise or otherwise.”
4. LDCs may dispose of property with out leave of the court, notwithstanding N-PCL § 510, which governs the disposition of all or substantially all of a not-for-profit corporation’s assets.
5. N-PCL § 1411(c).
6. N-PCL § 1411(c).
7. N-PCL § 1411(d)(2).
8. N-PCL § 1411(d)(3).
9. N-PCL § 1411(d)(4).
10. N-PCL § 1411(d)(1).
11. N-PCL § 1411(d)(5).
12. The Department of Housing and Urban Development website is www.hud.gov.
The Department of Commerce website is www.commerce.gov
The Economic Development Administration website is www.osec.doc.gov/eda.
The Department of Agriculture website is www.usda.gov.
The Department of Labor website is www.labor.gov.
13. Unconsolidated Laws §6254.
14. Unconsolidated Laws §6266-d.
15. Unconsolidated Laws §6266-d(5)(a).
16. 21 NYCRR § 4216.2.
17. 21 NYCRR § 4208.3.
18. 21 NYCRR § 4211.5.
19. See Pub. Auth. Law §§ 1802 & 1803.
20. Pub. Auth. Law § 1803(2)(a).
21. Pub. Auth. Law § 1803(2)(b).
22. PAL § 1803(4); See also 21 NYCRR § 350.2.
23. PAL § 1825(1).

Warning: To be eligible for NYJDA programs, LDCs may not have a member or employee who owns more than 5% of the capital stock of the project occupant, or of the business enterprise described in Public Authorities Law § 1827. If a member or employee of the LDC has any material financial interest in, is employed by, or is a consultant to any such project occupant or business enterprise or any other business enterprise including a bank or other lending institution having a material financial relationship with such project occupant or business enterprise, the member or employee must fully disclose the interest or involvement to the LDC and to the NYJDA in the form and manner NYJDA prescribes. In addition, the member or employee may not participate in any evaluation of, or decision concerning, an application pursuant to PAL § 1824 regarding the project applicant or business enterprise. PAL § 1825(2).

In addition, LDCs must agree to be bound by the rules and regulations of the NYJDA relating to assisted projects and the operations of LDCs, including the use of the loan evaluation criteria and methods established by the NYJDA pursuant to PAL § 1804(13-b)

and the criteria established by the NYJDA pursuant to PAL § 1804 (13-c). Moreover, the LDC must allow the NYJDA to examine its books of account and corporate records at times the Authority may require during the term of any loan made to the LDC by the Authority. PAL § 1825(3).

24. PAL §§ 1836-a, 1836-b, 1836-c, 1836-d, 1836-e, 1836-f, 1836-g.

25. PAL § 1825(4).

26. Empires Zones were formerly known as economic development zones.

27. The Empire Zone program is governed by Article 18-B of the General Municipal Law.

28. See GML § 966.

29. 5 NYCRR § 10.2.

30. GML § 963.

31. 5 NYCRR § 10.2.

32. Banking Law § 212(1)(a).

33. Banking Law § 212(1)(b).

34. Banking § 212(3).

35. 5 NYCRR § 41.1.

36. 5 NYCRR § 41.2.

37. 5 NYCRR § 41.3.