

CITY of ALBUQUERQUE

TWENTY THIRD COUNCIL

COUNCIL BILL NO. O-19-61 ENACTMENT NO. _____

SPONSORED BY: Isaac Benton

1 **ORDINANCE**

2 CREATING A NEW SECTION. CREATING A NEW SECTION 21 OF CHAPTER 14
3 ROA 1994 AS AMENDED FOR PURPOSES OF ESTABLISHING THE
4 AFFORDABLE HOUSING IMPLEMENTING ORDINANCE.

5 BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF
6 ALBUQUERQUE:

7 Section 1. § 14-21 1 SHORT TITLE

8 Sections §14-1-1 through §14-21-8 of this article may be cited as the Affordable
9 Housing Implementing Ordinance.

10 § 14-21-2 FINDINGS.

11 WHEREAS, this article is established pursuant to the Mortgage Finance Authority
12 Act, NMSA 1978 § 58-18-1 et seq. (MFA Act) and the Affordable Housing Act,
13 NMSA 1978, §.6-27-1 et seq.

14 WHEREAS, this article is adopted to implement the City's affordable housing
15 programs in accordance with the New Mexico Constitution, Article IX § 14, the
16 Affordable Housing Act, NMSA 1978, § 6-27-1 et seq. and the Act Rules Sections 1
17 and 2; and

18 WHEREAS, the City is subject to the New Mexico Affordable Housing Act which
19 identifies specific requirements to ensure governmental entities donate resources to
20 qualifying grantees and to ensure long-term housing affordability; and

21 WHEREAS, the City has developed an Affordable Housing Plan (AHP) to comply
22 with the Act Rules; and

23 WHEREAS, the Mortgage Finance Authority (MFA), the entity charged by the
24 State of New Mexico with ensuring compliance with the Act, has determined the
25 City's current Affordable Housing General Oversight Ordinance (Ordinance) is
26 deficient of needed components; and

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1 WHEREAS, Staff, in conjunction with the MFA, has developed and updated the
2 Ordinance for incorporation.

3 (A) The Affordable Housing Act, NMSA 1978 § 6-27-1 et seq. (the “Act”)
4 implements the provisions of Subsections E and F of §14 of Article 9 of the New
5 Mexico Constitution; and

6 (B) The New Mexico Mortgage Finance Authority (“MFA”) has reviewed and
7 approved of the form and terms of this ordinance prior to final adoption hereof.

8 § 14-21-3 PURPOSE.

9 (A) To establish procedures to ensure that City housing assistance to
10 grantees are Qualifying Grantees who meet the requirements of the ordinance, and
11 rules promulgated pursuant to such legislation both at the time of the award and
12 throughout the term of any grant or loan under the Program. Housing Assistance
13 Grant shall mean the donation, provision or payment by the City of: 1) Land for
14 construction of an affordable housing project; 2) An existing building for conversion,
15 renovation, or demolition and reconstruction of affordable housing; 3) The costs of
16 financing infrastructure necessary to support affordable housing; or 4) The costs of
17 acquisition, development, construction, financing, and operation or owning
18 affordable housing; and

19 (B) To require long-term affordability of the City's Affordable Housing Projects
20 so that a project cannot be sold shortly after completion and taken out of the
21 affordable housing market to ensure a quick profit for the qualifying grantee; and

22 (C) To require the City to enter into a contract with the Qualifying Grantee
23 consistent with the Act, which contract shall include remedies and default provisions
24 in the event of the unsatisfactory performance by the Qualifying Grantee and which
25 contract shall be subject to the review of the MFA in its discretion; and

26 (D) To require that a grant or loan for the project must impose a contractual
27 obligation on the Qualifying Grantee that the affordable housing units in the project
28 be occupied by persons of Low or Moderate income; and

29 (E) To provide for adequate security against the loss of public funds or
30 property in the event that the Qualifying Grantee abandons or otherwise fails to
31 complete the project; and

32 (F) To require review and approval of the housing plan project budget by the
33 City before any expenditure of grant funds or transfer of granted property; and

- 1 (G) To require that a condition of grant or loan approval be proof of
2 compliance with all applicable state and local laws, rules, and ordinances; and
3 (H) To provide definitions for "low-income and moderate-income" and setting
4 out requirements for the verification of income levels; and
5 (I) To provide the City with a valid affordable housing program; and
6 (J) To require that the City have an MFA approved affordable housing plan or
7 MFA approved housing elements contained in a valid plan prior to authorizing a
8 housing assistance grant; and
9 (K) To require the Family and Community Services Department to promulgate
10 and follow Administrative Requirements and Rules and Regulations to implement
11 this ordinance, including but not limited to further describing application
12 requirements, procedures, and evaluations.

13 § 14-21-4 GENERAL DEFINITIONS.

14 For the purpose of this article, the following definitions shall apply unless the
15 context clearly indicates or requires a different meaning.

16 ACT. The Affordable Housing Act, NMSA 1978, § 6-27-1 et seq.

17 ADMINISTRATIVE REQUIREMENTS. The City of Albuquerque Family and
18 Community Services Department's *Administrative Requirements* and *Social Services*
19 *Contracts Procurement Rules and Regulations*, promulgated and approved pursuant
20 to the City of Albuquerque Purchasing Ordinance, as published now and as
21 amended in the future.

22 AFFORDABLE. Consistent with minimum rent and/or income limitations set forth
23 in the MFA Act, and in guidelines established by the MFA.

24 AFFORDABLE HOUSING. Affordable Housing shall mean residential housing
25 primarily for persons or households of low or moderate income.

26 AFFORDABLE HOUSING FUNDS. Affordable Housing Funds shall mean any or
27 all funds awarded or to be awarded, loaned or otherwise distributed under this article
28 or the Act.

29 AFFORDABLE HOUSING PLAN or PLAN. A plan pursuant to the Affordable
30 Housing Program that contemplates one or more affordable housing projects, which
31 may be developed in one or more phases.

32 AFFORDABLE HOUSING PROGRAM or PROGRAM. Affordable Housing
33 Program shall mean any programs that the City and/or MFA establishes pursuant to

1 the Act and based on the approved City of Albuquerque housing plan/housing
2 elements.

3 AFFORDABLE HOUSING PROJECT or PROJECT. Any work or undertaking,
4 whether new construction, acquisition of existing residential housing, remodeling,
5 improvement, rehabilitation or conversion, which may be undertaken in one or more
6 phases, as part of an Affordable Housing Plan, as approved by the City and/or the
7 MFA for the primary purposes as allowed by the Act.

8 AFFORDABILITY PERIOD. For homebuyer and rental projects, the length of the
9 affordability period depends on the amount of the investment in the property and the
10 nature of the activity funded. The table below provides the affordability periods:

11 Activity	Investment per Unit Minimum	Length of the Affordability Period
12 Homeownership and rental housing acquisition and/or rehabilitation		
13	Less Than \$15,000	not less than 5 years
14	\$15,000 -\$40,000	not less than 10 years
15	More than \$40,000	not less than 15 years
16	More than \$100,000	not less than 20 years

17 APPLICANT. An individual; regional or public housing authority; a for-profit
18 organization, including a corporation, limited liability company, partnership, joint
19 venture, syndicate or association or a nonprofit organization meeting the appropriate
20 criteria of the City.

21 BUILDING. A structure capable of being renovated or converted into affordable
22 housing or a structure that is to be demolished and is located on land donated for
23 use in connection with an affordable housing project.

24 CITY. The City of Albuquerque, New Mexico, a unit of local government under
25 the Constitution and laws of the State of New Mexico.

26 CONGREGATE HOUSING FACILITY. Residential housing designed for
27 occupancy by more than five persons of low or moderate income living
28 independently of each other. The facility may contain group dining, recreational,
29 health care or other communal living facilities. Each unit in a congregate housing
30 facility shall contain at least its own living, sleeping, and bathing facilities.

31 DEPARTMENT. The Family and Community Services Department, or its
32 successor department, as determined by the Mayor.

1 FEDERAL GOVERNMENT. The United States of America and any agency or
2 instrumentality corporate or otherwise of the United States of America.

3 HOUSEHOLD. One or more persons occupying a housing unit.

4 HOUSING ASSISTANCE GRANT. The donation, provision, or payment by the
5 City of:

6 (1) Land upon which the affordable housing will be constructed; or

7 (2) An existing building that will be renovated, converted, or demolished and
8 reconstructed as affordable housing; or

9 (3) The costs of acquisition, development, construction, financing, and
10 operating or owning affordable housing; or

11 (4) The costs of financing of infrastructure necessary to support affordable
12 housing.

13 HUD. The United States Department of Housing and Urban Development.

14 INFRASTRUCTURE. Infrastructure shall mean infrastructure improvements and
15 infrastructure purposes.

16 Infrastructure improvement shall include, but not be limited to:

17 (1) Sanitary sewage systems, including collection, transport, storage,
18 treatment, dispersal, effluent use and discharge;

19 (2) Drainage and flood control systems;

20 (3) Water systems for domestic purposes including production, collection,
21 storage, treatment, transport, delivery, connections, and dispersal;

22 (4) Areas for motor vehicle use for travel, ingress, egress, and parking;

23 (5) Trails and areas for pedestrian, equestrian, bicycle, or other non-motor
24 vehicle use for travel, ingress, egress, and parking;

25 (6) Park, recreational facilities, and open space areas for the use of residents
26 for entertainment, assembly, and recreation;

27 (7) landscaping, including earthwork, structures, plants, trees and related
28 weather delivery systems;

29 (8) Electrical transmission and distribution facilities;

30 (9) Natural gas distribution facilities;

31 (10) Lighting systems

32 (11) Cable or other telecommunications lines and related equipment;

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1 (12) Traffic control systems and devices, including signals, controls,
2 markings, and signs;

3 (13) Inspection, construction management, and related costs in connection
4 with the furnishing of the items listed in this definition; and

5 (14) Heating, air conditioning, and weatherization facilities, systems or
6 services, and energy efficiency improvements that are affixed to real property.

7 Infrastructure Purpose shall mean:

8 (1) Planning, design, engineering, construction, acquisition, or installation of
9 infrastructure, including the costs of applications, impact fees and other fees,
10 permits, and permits and approvals related to the construction, acquisition, or
11 installation of the infrastructure;

12 (2) Acquiring, converting, renovating, or improving existing facilities for
13 infrastructure, including facilities owned, leased, or installed by the owner;

14 (3) Acquiring interests in real property or water rights for infrastructure,
15 including interests of the owner; and

16 (4) Incurring expenses incident to and reasonably necessary to carry out the
17 purposes specified in this definition.

18 MFA. The New Mexico Mortgage Finance Authority.

19 MFA ACT. The Mortgage Finance Authority Act, enacted as Chapter 303 of the
20 Laws of 1975 of the State of New Mexico, as amended (NMSA 1978, § 58-18-1
21 through § 58-18-27).

22 MFA RULES. The New Mexico Mortgage Finance Authority Affordable Housing
23 Act Rules promulgated pursuant to § 6-27-8 NMSA 1978 of the Act.

24 PERSONS OF LOW TO MODERATE INCOME. Persons of low or moderate
25 income shall mean one or more persons or a family with a total gross annual income
26 for the household that does not exceed 80 percent of the Area Median Income
27 adjusted for family size for households within the Albuquerque Metropolitan
28 Statistical Area (MSA) as determined by HUD on an annual basis, and with the
29 following conditions.

30 (1) Persons of low income shall mean persons in households with annual
31 gross incomes below 60 percent of the Area Median Income for Albuquerque, as
32 approved and published each year by MFA and verified by the City.

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(2) Persons of Moderate Income shall mean persons in households with annual gross incomes between 60% and 80% of Area Median Income for Albuquerque as approved and published each year by MFA and verified by the City.

POLICIES AND PROCEDURES. Policies and procedures of the MFA, including but not limited to, mortgage loan purchasing, selling, servicing and reservation procedures, which the MFA may update and revise from time to time as the MFA deems appropriate.

QUALIFYING GRANTEE.

(1) An individual who is qualified to receive assistance pursuant to the Act and is processed and approved by the City in accordance with the Administrative Requirements and the Rules and Regulations; and

(2) A governmental housing agency, regional housing authority, corporation, limited liability company, partnership, joint venture, syndicate, association or nonprofit organization that is; (a) organized under the state or local laws and can provide proof of such organization; and (b) if a nonprofit, has no part of its earnings inuring to the benefit of any member, founder, contributor, or individual; and (c) is approved by the City in accordance with the Administrative Requirements and the Rules and Regulations.

RECERTIFICATION. The recertification of applicants and/or qualifying grantees participating in any affordable housing programs or in any programs under the Act as determined necessary from time to time by the City and/or the MFA.

REHABILITATION. The substantial renovation or reconstruction of an existing single-family residence or a "Multi-Family Housing Project", which complies with requirements established by the City. Rehabilitation shall not include routine or ordinary repairs, improvements or maintenance, such as interior decorating, remodeling or exterior painting, except in conjunction with other substantial renovation or reconstruction.

RESIDENTIAL HOUSING. Any building, structure or portion thereof that is primarily occupied, or designed or intended primarily for occupancy, as a residence by one or more households and any real property that is offered for sale or lease for the construction or location thereon of such a building, structure or portion thereof. Residential Housing includes congregate housing, manufactured homes and

1 housing intended to provide or providing transitional or temporary housing for
2 homeless persons.

3 RESIDENTIAL USE. Shall mean that the structure or the portion of the structure
4 to benefit from the Affordable Housing Funds or Housing Assistance Grant, is
5 designed primarily for use as the principal residence of the occupant or occupants
6 and shall exclude vacation or recreational homes.

7 RFP. Any request for proposal or request for qualifications made by the City.

8 RULES AND REGULATIONS. The City of Albuquerque Family and Community
9 Services Department Social *Services Contracts Procurement Rules and Regulations*
10 promulgated and approved pursuant to the City of Albuquerque Purchasing
11 Ordinance, Chapter 5, Article 5 ROA1994, as published now and as amended in the
12 future.

13 STATE. The State of New Mexico.

14 § 14-21-5 AUTHORIZATION OF CITY CONTRIBUTIONS.

15 (A) The City may make Housing Assistance Grants, improve Infrastructure, or
16 provide Affordable Housing Funds, by City Council resolution, for Affordable Housing
17 Projects.

18 (B) This ordinance is created and shall be administered in accordance with
19 the Act and in accordance with the MFA Rules. All affordable housing contributions
20 authorized by this ordinance will be in compliance with the Act and Plan and any
21 recipients of all such contributions will comply with the ordinance, Administrative
22 Requirements, and Rules and Regulations.

23 § 14-21-6 GENERAL REQUIREMENTS.

24 The following requirements shall apply to all Housing Assistance Grants, and/or
25 Affordable Housing Funds awarded, loaned or otherwise distributed by the City to a
26 Qualifying Grantee under the ordinance.

27 (A) Procurement. The City, in its discretion, shall procure services according
28 to its Rules and Regulations or shall otherwise identify a Qualifying Grantee for the
29 use of any Affordable Housing Funds or Housing Assistance Grants to be awarded,
30 loaned, donated or otherwise distributed under the Act.

31 (B) Applicant Eligibility. The following applicants are eligible under the Act to
32 apply for Affordable Housing Fund or a Housing Assistance Grant to provide housing
33 or related services to persons of Low or Moderate Income in the community.

(1) All individuals who are qualified to receive assistance pursuant to this ordinance, the Administrative Requirements and the Rules and Regulations;

(2) An individual, regional or public housing authority, a for-profit organization, including a corporation, limited liability company, partnership, joint venture, syndicate or association, or a nonprofit organization meeting the appropriate criteria of the City.

(a) Have a functioning accounting system that is operated in accordance with generally accepted accounting principles or has designated entity that will maintain such an accounting system consistent with generally accepted accounting principles; and

(b) Have among its purposes significant activities related to providing housing or services to persons or households of Low or Moderate Income; and

(c) Have no significant outstanding or unresolved monitoring finding from the City, or its most recent independent financial audit, or if it has any such findings, it has a certified letter from the City, the MFA, or auditor stating that the findings are in the process of being resolved, and

(d) The names of all Qualifying Grantees, certified or recertified, shall be submitted annually to MFA for review and approval.

(C) Application. All applicants wishing to apply for a housing assistance grant or an award of Affordable Housing Funds shall follow the City's application process, as more specifically set forth in Chapter 6 of the Rules and Regulations.

(D) Additional Requirements. The selected Qualifying Grantee shall enter into one or more contracts with the City, which contract(s) shall be consistent with and further the purposes of this ordinance. At a minimum, such contracts shall comply with the terms set forth in Chapter 8 of the Rules and Regulations.

(E) The Affordable Housing Plan is the consolidated planning and needs assessment as it occurs every five years that serves as the comprehensive housing affordability strategy and community development plan in compliance with HUD regulations at 24 CFR Part 91, The Affordable Housing Act and Rules and this ordinance. All Housing Assistance Grants or awards of Affordable Housing Funds shall be in compliance with the Affordable Housing Act and Rules.

(F) Affordable Housing Requirements. All Affordable Housing Funds or Housing Assistance Grants awarded under the Act shall be used by Qualifying

1 Grantees for the benefit of persons of Low or Moderate Income subject to the
2 provisions of this ordinance, and with particular regard to their housing related
3 needs.

4 (1) Single Family Property. Qualifying Grantees shall agree that they shall
5 maintain any single-family property which has been acquired, rehabilitated,
6 converted, leased, repaired, constructed, or which property has otherwise benefited
7 from Affordable Housing Fund, including but not limited to any loans which have
8 been repaid with Affordable Housing Funds and which loans previously were
9 secured by such properties, as Affordable Housing for so long as any or all of the
10 Affordable Housing Funds which have been awarded, loaned, or otherwise
11 conveyed to the Qualifying Grantee are unpaid and outstanding, or the Affordability
12 Period, whichever is longer.

13 (2) Single Apartment within a Multi-Family Property. Qualifying Grantees shall
14 agree that, if any single apartments are to be rehabilitated, converted, leased,
15 repaired, constructed, or otherwise are to benefit from the Affordable Housing Fund;
16 those apartments shall be leased to persons of low or moderate income at the time
17 of any such award. Qualifying Grantees also shall agree that the persons of low or
18 moderate income, who are tenants of those apartments, shall be allowed to remain
19 tenants for so long as there are no incurred defaults by those tenants under their
20 respective leases and provided that there is no just cause for the landlord to
21 terminate any lease agreement with those tenants.

22 (3) Multi-Family Property. Multiple Apartments. Qualifying Grantees shall
23 agree that, if multiple apartments or an entire multi-family property are to be
24 acquired, rehabilitated, converted, leased, repaired, constructed, or otherwise are to
25 benefit from Affordable Housing Funds, including but not limited to any loans which
26 have been repaid with Affordable Housing Funds and which loans previously were
27 secured by such properties such properties shall be maintained as affordable
28 housing for so long as any or all of the Affordable Housing Funds which have been
29 awarded, loaned or otherwise conveyed to the Qualifying Grantee are unpaid and
30 outstanding, of the Affordability Period, whichever is longer. Qualifying Grantees
31 also shall agree that the persons of Low or Moderate Income, who are tenants of
32 those apartments, shall be allowed to remain tenants for so long as there are no
33 incurred defaults by those tenants under their respective leases and provided that

1 there is no just cause for the landlord to terminate any lease agreement with those
2 tenants.

3 (4) Nonresidential Property. Qualifying Grantees shall agree that they shall
4 maintain any non-residential property which has been acquired, rehabilitated,
5 converted, leased, repaired, constructed, or which property has otherwise benefited
6 from Affordable Housing Funds, including but not limited to any loans which have
7 been repaid with Affordable Housing Funds and which loans previously were
8 secured by such properties, as the facility which provides housing related services to
9 persons of Low to Moderate income for so long as any or all of the Affordable
10 Housing Funds which have been awarded, loaned, or otherwise conveyed to the
11 Qualifying Grantee are unpaid and outstanding of the Affordability Period, whichever
12 is longer.

13 (5) Housing Assistance Grant Affordability Requirements. Qualifying Grantees
14 shall agree that they shall maintain any land or building received as a housing
15 assistance grant either as a single-family or multi-family affordable housing or as a
16 facility which provides housing related services to persons of Low or Moderate
17 income for the duration of the Affordability Period. In calculating the Affordability
18 Period for Housing Assistance Grants of either land or buildings, the fair market
19 value of the land or buildings or the costs of infrastructure at the time of the donation
20 by the state or the City shall apply.

21 (6) Affordability Period. The City, in its discretion, may increase the
22 Affordability Period in any contract, note, mortgage, loan agreement, land use
23 restriction agreement, restrictive covenant agreements, and/or any other agreement
24 which the City may enter into with any Qualifying Grantee or beneficiary of the
25 Affordable Housing Funds or of the Housing Assistance Grant with the Affordable
26 Housing Act and Rules..

27 (G) Consent to Jurisdiction. Each Qualifying Grantee shall consent to the
28 jurisdiction of the courts of the State of New Mexico over any proceeding to enforce
29 compliance with the terms of the Act, the Rules and this ordinance and any
30 agreement between the Qualifying Grantee and the City.

31 (H) Recertification Procedures.

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1 (1) The Qualifying Grantee must meet the requirements of the Act, the Rules
2 and this ordinance both at the time of any award and throughout the term of any
3 grant and contract related thereto.

4 (2) The City may establish procedures for recertifying Qualifying Grantees
5 from time to time compliance with the Affordable Housing Act and Rules.

6 (3) Qualifying Grantees that fail to satisfy the requirements for recertification
7 shall cease to be eligible and shall be denied further participation in Affordable
8 Housing Programs until the requirements of the City and the MFA are satisfied.

9 (4) Compliance with the Law. The Qualifying Grantee shall provide the City
10 with any certifications or other proof that it may require in order for the City and the
11 MFA to confirm that the Qualifying Grantee and the Qualifying Grantee's proposed
12 Project are in compliance with all applicable federal, state and local laws, rules and
13 ordinances.

14 (l) Extension of Affordable Housing Programs. The City shall have the power
15 to create variations or extensions of Affordable Housing Programs, or additional
16 programs that comply with the Affordable Housing Act and the Rules.

17 § 14-21-6 REQUIREMENTS AND RULES.

18 The Department has promulgated Administrative Requirements and Rules and
19 regulations further describing how the Plan and Program will be administered, and
20 how procurements will be conducted. Copies of the current Administrative
21 Requirements and Rules and Regulations are adopted with this ordinance, and may
22 be amended from time to time by the Department. Amendments to the
23 Administrative Requirements, Rules and Regulations, or this ordinance shall be
24 submitted to MFA for review prior to adoption.

25 § 14-21-7 DISCRIMINATION PROHIBITED.

26 The development, construction, occupancy and operation of an Affordable
27 Housing Program or an Affordable Housing Project financed or assisted under the
28 Act shall be undertaken in a manner consistent with principles of non-discrimination
29 and equal opportunity, and the City shall require compliance by all Qualifying
30 Grantees with all applicable federal and state laws and regulations relating to
31 affirmative action, non- discrimination and equal opportunity.

32 SECTION 2. SEVERABILITY CLAUSE. If any section, paragraph, word or
33 phrase of this ordinance is for any reason held to be invalid or unenforceable by any

1 court of competent jurisdiction, such decision shall not affect the validity of the
2 remaining provisions of this ordinance. The Council hereby declares that it would
3 have passed this ordinance and each section, paragraph, sentence, clause, word or
4 phrase thereof irrespective of any provision being declared unconstitutional or
5 otherwise invalid.

6 SECTION 3. COMPILATION. The amendments set forth in Section 1 above
7 shall amend, be incorporated in and made part of the Revised Ordinances of
8 Albuquerque, New Mexico, 1994.

9 SECTION 4. EFFECTIVE DATE. This ordinance shall take effect five days after
10 publication by title and general summary.

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