

# CITY of ALBUQUERQUE

## TWENTY THIRD COUNCIL

COUNCIL BILL NO. O-19-62 ENACTMENT NO. O-2019-016

SPONSORED BY: Isaac Benton

1 **ORDINANCE**

2 **AMENDING CHAPTER 14, ARTICLE 9, ROA 1994 AS AMENDED, THE**  
3 **WORKFORCE HOUSING OPPORTUNITY ACT.**

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

6 **Section 1. That Chapter 14, Article 9, ROA 1994 is hereby amended and**  
7 **replaced as follows:**

8 **§ 14-9-1 SHORT TITLE.**

9 **Sections 14-9-1 through 14-9-8 of this article may be cited as the Workforce**  
10 **Housing Opportunity Act.**

11 **§ 14-9-2 FINDINGS.**

12 **(A) The Albuquerque/Bernalillo County Comprehensive Plan's goal is to**  
13 **increase the supply of affordable housing and ameliorate the problems of**  
14 **homelessness and displacement; and**

15 **(B) The City's Five Year Consolidated Plan 2018 – 2022 shows that**  
16 **20,370 renter households are severely cost-burdened and 12,300 homeowner**  
17 **households are severely cost-burdened; and**

18 **(C) There are currently 5,500 households on the Section 8 lottery pool of**  
19 **the Albuquerque Housing Authority; and**

20 **(D) On any given night in Albuquerque, at least 1,320 people are**  
21 **sleeping outside or in shelters, including families with children, veterans and**  
22 **people with disabilities and their path to independent living depends upon**  
23 **permanent, affordable housing; and**

24 **(E) Working families having safe, decent and affordably priced housing**  
25 **in stable neighborhoods is advantageous for personal success in school and**  
26 **work and is therefore a prerequisite for the economic success of our**  
27 **community; and**

1 (F) The Workforce Housing Trust Fund created in accordance with the  
2 City's Workforce Housing Opportunity Act, and the state's Affordable Housing  
3 Act and Rules, has created over 900 units of affordable housing over the  
4 period of 2007 to present, generated over four times the City contribution in  
5 private investments and supported near 1,500 construction jobs; and

6 (G) In order to maintain production of workforce housing to meet the  
7 needs of working families an adequate and stable source of funding is  
8 required.

9 § 14-9-3 APPLICABILITY.

10 This article is applicable to any Workforce Housing Project or Workforce  
11 Housing Subdivision assisted with Workforce Housing Trust funds. Other  
12 funds leveraged for a Trust Fund assisted project or subdivision will be  
13 subject to this article as well as the requirements and terms of the other  
14 funding source(s). When there is a conflict the most restrictive requirements  
15 and terms shall apply.

16 § 14-9-4 DEFINITIONS.

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

19 AFFORDABLE HOUSING PLAN. The Affordable Housing Plan is that  
20 component of the City's Five Year Consolidated Plan approved by the MFA  
21 prior to adoption by the City Council which defines and documents affordable  
22 housing needs in Albuquerque and establishes housing priorities for all City  
23 housing funds, including but not limited to, Workforce Housing Trust Funds,  
24 Community Development Block Grant funds and HOME Investment  
25 Partnerships funds.

26 PERMANENT AFFORDABILITY. Permanent Affordability is defined as two  
27 consecutive ninety-nine (99) year periods in during which a rental property  
28 funded through Workforce Housing Trust Funds will be restricted to renting a  
29 certain number of apartment units to low and moderate income households.  
30 Restrictive covenants or land use restrictions are filed on the assisted  
31 property to ensure compliance.

32 WORKFORCE HOUSING. Dwelling units serving residents and their  
33 families whose annual income is at or below 80% of the Area Median Income

1 for Albuquerque (AMI) as adjusted for household size and determined by the  
2 U.S. Department of Housing and Urban Development. For rental housing  
3 monthly housing payment should not exceed 30% of the imputed income limit  
4 applicable to such unit or 35% under special conditions to be defined in the  
5 Workforce Housing Plan. For homeownership the home should be purchased  
6 under a Qualified Residential Mortgage as defined by the Consumer Financial  
7 Protection Bureau. A Qualified Residential Mortgage is a mortgage with terms  
8 that take into account the borrower's ability to repay the loan and includes  
9 loans that meet the standards of Fannie Mae, Freddie Mac, Federal Housing  
10 Administration or Veterans Administration. Subprime loans and similar loans  
11 contain terms, including but not limited to interest rates higher than prime  
12 loans, adjustable interest rates or mortgage terms over 30 years, which may  
13 cause the borrower to have difficulty repaying a mortgage. "Dwelling unit" is  
14 used in this article as defined in the Integrated Development Ordinance (see §  
15 14-16-7).

16 WORKFORCE HOUSING MEETING THE REQUIREMENTS OF THE  
17 WORKFORCE HOUSING OPPORTUNITY ACT. Workforce housing projects,  
18 subdivisions, and programs that receive funds and/or land from the Workforce  
19 Housing Trust Fund as the result of meeting eligibility criteria pursuant to the  
20 Affordable Housing Plan.

21 WORKFORCE HOUSING PROJECT or WORKFORCE HOUSING  
22 SUBDIVISION. The entire development in which at least 30% of the dwelling  
23 units meet the definition of workforce housing.

24 § 14-9-5 CREATION AND ADMINISTRATION OF THE WORKFORCE  
25 HOUSING TRUST FUND.

26 (A) Beginning with the 2017 General Obligation Bond Program, the  
27 Mayor is authorized and directed to set aside up to 8% of the biannual General  
28 Obligation Bond Capital Improvement Program, up to a maximum of  
29 \$10,000,000 per two-year cycle, to be directed to the Trust Fund for the  
30 purpose of providing workforce housing. This set aside shall be presented as  
31 a separate bond question which solely addresses permanently affordable  
32 rental housing and affordable homeownership assistance which includes the  
33 contribution of land upon which the unit will be constructed, down payment

1 assistance loan or any other type of direct or indirect financial assistance that  
2 enables the homebuyer to qualify for a Qualified Mortgage. If this question is  
3 turned down by the voters no CIP funds from that election shall be spent on  
4 workforce housing. All interest earnings of funds in the Trust Fund shall be re-  
5 appropriated to the Trust Fund. No funds in the Trust Fund can be  
6 appropriated or used for any other purpose than as described in the  
7 Workforce Housing Opportunity Act.

8 (B) The Fund income and interest earnings shall be appropriated for the  
9 purposes set forth in this article after recommendation by the Mayor and  
10 approval of the Council.

11 (C) Programming and Selection. The projects funded by the Trust Fund  
12 shall be selected and programmed as provided below:

13 (1) The Affordable Housing Committee. The Affordable Housing  
14 Committee (Committee) shall serve as the advisory committee to develop the  
15 Workforce Housing Plan and Needs Assessment and shall conduct an annual  
16 review of Plan progress.

17 (2) Workforce Housing Plan and Needs Assessment. The Committee,  
18 with the staff support of the Department of Family and Community Services  
19 (the Department) or its successor and technical support from representatives  
20 of the Office of Economic Development and the Planning Department, shall  
21 develop a Five Year Workforce Housing Plan also known as the Affordable  
22 Housing Plan, which shall be updated every five years. The Affordable  
23 Housing Plan shall be in accordance with the Affordable Housing Act (NMSA  
24 1978, § 62-7-1 et seq.) (Act), and the Affordable Housing Act Rules (Rules). The  
25 Affordable Housing Plan shall be based on a thorough needs assessment  
26 conducted by the Department showing the housing conditions of families at  
27 and below 80% of Area Median Income broken out by community planning  
28 areas, income classification, special needs, seniors, and homeless, and  
29 addressing the displacement of low income families. The Affordable Housing  
30 Plan shall identify the change in the City of Albuquerque of the number of  
31 market rate, affordable and non-affordable housing units, by income category  
32 and tenure, over the previous five years. The Affordable Housing Plan shall  
33 include all resources available to address affordable housing needs including,

1 but not limited to, CDBG, HOME, other grants, the City General Fund,  
2 Enterprise Funds, other City Housing Funds, State of New Mexico, and Low  
3 Income Housing Tax Credits, and New Market Tax Credits, five year goals and  
4 objectives and one year objectives, recommended strategies for  
5 implementation and standards for monitoring and evaluation of completed  
6 projects. The Affordable Housing Plan shall include a matrix showing the  
7 annual and five year housing production goals and objectives and  
8 organizations committed to its production. The Affordable Housing Plan shall  
9 address expansion of the capacity of the non-profit housing development  
10 organizations and identify resources necessary to carry out needed  
11 expansion. The Affordable Housing Plan shall identify, based on housing  
12 market data standards, City neighborhoods as "stable", "disinvesting", or  
13 "gentrifying" and shall make it clear that different housing and affordable  
14 housing strategies are being pursued within the different categories of  
15 neighborhoods. The Committee shall hold at least three public hearings on the  
16 draft Affordable Housing Plan prior to making recommendations to the Mayor  
17 and the Council. The Affordable Housing Plan shall serve as the housing  
18 component of the Consolidated Plan after review and comment by Committee  
19 and submitted for review and approval to the New Mexico Mortgage Finance  
20 Authority. The Affordable Housing Plan shall be conveyed by the Mayor to the  
21 Council by a resolution every five years in accordance with requirements  
22 promulgated by the U.S. Department of Housing and Urban Development and  
23 shall be adopted by the Council with or without amendments. The Affordable  
24 Housing Plan shall be reviewed and progress evaluated annually by the  
25 Committee and a report sent to the Council.

26 (3) Priorities and Uses of Funds. When feasible and practical available,  
27 funds in any General Obligation Bond biannual program shall be used for land  
28 acquisition for workforce housing projects and subdivisions only in areas  
29 designated as Metropolitan Redevelopment Areas, Centers and Corridors, and  
30 within 660 feet of an area mapped in Centers and Corridors per the  
31 Comprehensive Plan. Funds in any General Obligation Bond biannual  
32 program may be used for zero to low interest or, in certain cases, loans that  
33 may be forgivable for multi-family rental projects that meet the requirements

1 of the Workforce Housing Opportunity Act and fall within the geographic areas  
2 described above. Funds may be used for scattered site, single-family housing  
3 purchase, homeownership assistance, rehab, lease-to-own and resale of  
4 existing housing stock. The priorities for use of all funds shall be determined  
5 by reference to the program elements as shown in § 14-9-5, but in all cases the  
6 following requirements shall be met.

7 (a) Resources shall be allocated according to need in any General  
8 Obligation Bond biannual program with the goal that 50% of all resources  
9 benefiting families at or below 50% of AMI and 30% of all resources benefiting  
10 families at or below 30% AMI. Loans that may be forgivable may be considered  
11 for use only in multi-family rental projects benefiting families whose income is  
12 at or below 30% AMI. Income Averaging as defined under Section 42 of the  
13 IRS Code as authorized by the Consolidated Appropriations Act of 2018 is  
14 permissible for multi-family rental projects utilizing Low Income Housing Tax  
15 Credits subject to approval by the New Mexico Mortgage Finance Authority.

16 (b) Not more than 20% of resources shall be used for project  
17 related soft development costs as defined by the Affordable Housing Plan.

18 (c) Workforce housing projects shall be accomplished by City  
19 approved builders and developers including an individual; a government  
20 housing agency; a for-profit organization, including a corporation, limited  
21 liability company, partnership, joint venture, syndicate or association or a  
22 nonprofit organization. Criteria for approval of projects shall be promulgated  
23 by the Family and Community Services Department.

24 (d) Projects receiving funding or land under the Workforce  
25 Housing Opportunity Act shall leverage non-City funds by at least a 4:1 ratio  
26 (non-City to City resources). The Affordable Housing Plan may make  
27 exception to this ratio for certain hard to develop projects as defined in the  
28 Affordable Housing Plan and that would otherwise be financially impact  
29 without such an exception. Federal and state funds flowing through the City  
30 are not considered City funds for purposes of this requirement.

31 (e) Any Workforce Housing Trust funds used to benefit an  
32 individual or a household directly, such as homeownership assistance or

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homeowner housing rehabilitation will be subject to recapture or resale provisions at the time of sale or refinancing of the affected property.

(4) **Project Priorities.** The Committee shall develop a policy-based ranking system so that proposed projects can be prioritized. The system of ranking shall be included in the Affordable Housing Plan. Priority shall be given to financially sound proposals that rank the highest according to the priorities based on guidelines found in the Program Elements. Priority with respect to newly constructed projects shall also be given to proposals that demonstrate a commitment to energy efficiency and utility conservation. The Committee can establish minimum standards below which a project will not be approved. The Department shall issue a standing request for proposals so that developers have adequate time to secure land and formulate proposals for City consideration.

#### **§ 14-9-6 PROGRAM ELEMENTS.**

The following elements, among others, shall be used to develop a priority setting and project ranking system for development under this article.

(A) **Neighborhood conditions.** Workforce housing should be designed, located and integrated into the community so as to serve to stabilize that neighborhood, with the long term goal of creating "stable" mixed-income neighborhoods, not "disinvesting" or "gentrifying" ones. Thus, in a disinvesting neighborhood, the goal is to increase housing and other investment, enhance the neighborhood image, preserve a mixed-income environment by upgrading the existing housing inventory, encourage higher income families and serve as a catalyst for additional investment. In a neighborhood with increasing housing prices the goal is to preserve a mixed income environment and avoid the dislocation of low income residents by creating a reserve of permanent affordable rental workforce housing protected from price increases and danger of converting to market rate housing, allowing renters to own their housing, and otherwise financially insulating low income residents from financial burdens of gentrification while accruing its benefits.

(B) **Design and Location Criteria.** Access to public transportation; jobs and housing balance; pedestrian access to shopping, schools and recreation;

1 retail in close proximity to residential; energy efficient construction; water  
2 conservation; Universal Design Standards, quality design and construction all  
3 enhance the value of workforce housing and, as required, the standards of the  
4 applicable zone in the Integrated Development Ordinance.

5 (C) Preservation. Mechanisms are available for preserving existing and  
6 new workforce housing. Neighborhoods with rising land values will most  
7 benefit from a balance of tools that work toward permanently affordable rental  
8 housing, in addition to a shorter term mechanism that will achieve the goals of  
9 attracting investment into neighborhoods that are experiencing declining land  
10 values. All rental housing shall be permanently affordable. Trust Funds used  
11 for homeownership assistance shall be subject to recapture or resale  
12 provisions. No funds from sources other than the biannual General Obligation  
13 Bond Capital Improvement Program or interest earnings of such shall be  
14 considered as part of the Trust Fund nor shall such funds from other sources  
15 be subject to the requirement of permanent affordability. Rental projects  
16 funded in part from the Trust Fund and in part from other sources shall be  
17 subject to the requirement of permanent affordability.

18 Trust funds used for homeownership assistance shall be subject to  
19 recapture or resale provisions. Homebuyer assistance is a direct subsidy to  
20 the homebuyer and includes funds for down payment, closing costs,  
21 rehabilitation costs or other financial assistance provided directly to the  
22 homebuyer. The maximum homeownership assistance for any individual  
23 homebuyer will be \$20,000. This maximum amount may be adjusted annually  
24 by the Department of Family and Community Services by a maximum of 5%.  
25 The homeownership assistance must be repaid if it is provided directly to the  
26 homebuyer. Upon resale the seller may sell to any willing buyer at any price.  
27 If the new buyer of the property has an income at or below 80% AMI, the  
28 homeownership assistance may be assumed by the new buyer. The  
29 homeownership assistance will be secured by a promissory note and  
30 mortgage. The terms of the promissory note will be at zero percent interest  
31 with the repayment of the principal balance due upon the resale, refinance or  
32 failure to occupy the property. Once the Trust Funds are repaid to the City the  
33 property is no longer subject to any Trust Fund restrictions. The funds



1 returned to the City shall be deposited in the Trust Fund account and shall be  
2 used for future Trust Fund eligible activities.

3 Rental properties shall enter into a monitoring agreement with the City or  
4 other entity as approved by the City to provide an annual audit of compliance  
5 with affordability requirements and the Affordable Housing Act, NMSA 1978, §  
6 6-27-1 et seq. Audits will take into account the requirements of all funding  
7 sources and those requirements may conflict. Federal requirements preempt  
8 these ordinances. For purposes of this ordinance, income eligible families will  
9 not be evicted from their rental dwelling unit if over time their income  
10 increases above the eligible level. However, provisions should be made to  
11 relocate the family within a mixed income workforce housing project to a  
12 market rate dwelling or adjust their rents appropriately if their income  
13 warrants such a change.

14 (D) Link to Growth Management Plan. In developing and adopting the  
15 Affordable Housing Plan, there should be consistency with and support for the  
16 City's growth management plan as defined by the adopted Planned Growth  
17 Strategy and Comprehensive Plan. This requirement for consistency and  
18 support is not intended to mandate the development of workforce housing,  
19 specific distribution or locations for workforce housing but may be a factor in  
20 such decisions.

21 §14-9-7 NOTIFICATION OF TENANTS.

22 In all City land use actions that will result in the displacement of tenants,  
23 subject to federal and state law as appropriate, the applicant is required to  
24 notify the residents affected by first-class mail at least two weeks prior to the  
25 public hearing on the action. If names of tenants impacted by displacement  
26 cannot be readily obtained in a City directory, the applicant may address  
27 tenants as "resident" in required notifications.

28 § 14-9-8 RULES AND REGULATIONS.

29 The Department of Family and Community Services or its successor, or  
30 another City department as designated by the Mayor, shall establish rules and  
31 regulations to provide for implementation of this article. The Mayor, shall  
32 publish a draft of the rules and regulations for public comment within 120  
33 days of the adoption of the Workforce Housing Plan.

1       **SECTION 2. SEVERABILITY CLAUSE.** If any section, paragraph, word or  
2 phrase of this ordinance is for any reason held to be invalid or unenforceable  
3 by any court of competent jurisdiction, such decision shall not affect the  
4 validity of the remaining provisions of this ordinance. The Council hereby  
5 declares that it would have passed this ordinance and each section,  
6 paragraph, sentence, clause, word or phrase thereof irrespective of any  
7 provision being declared unconstitutional or otherwise invalid.

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

11       **SECTION 4. EFFECTIVE DATE.** This ordinance shall take effect five days  
12 after publication by title and general summary.

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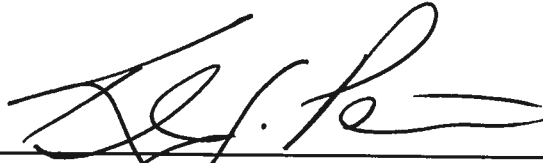
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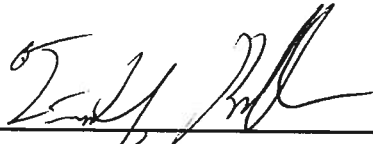
1 PASSED AND ADOPTED THIS 17th DAY OF June, 2019  
2 BY A VOTE OF: 9 FOR 0 AGAINST.

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8 Klarissa J. Peña, President  
9 City Council

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12 APPROVED THIS 2 DAY OF July, 2019

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15 Bill No. O-19-62

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19 Timothy M. Keller, Mayor  
20 City of Albuquerque

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22 ATTEST:

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24 Katy Duhigg, City Clerk  
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