



# City of Albuquerque

City of Albuquerque  
Government Center  
One Civic Plaza  
Albuquerque, NM 87102

## Legislation Details (With Text)

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**Title:** Creating A New Section. Creating A New Section 21 Of Chapter 14 ROA 1994 As Amended For Purposes Of Establishing The Affordable Housing Implementing Ordinance (Benton)  
**Sponsors:** Isaac Benton  
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Date	Ver.	Action By	Action	Result
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7/2/2019	2	Mayor	Signed by the Mayor	
6/27/2019	2	City Council	Sent to Mayor for Signature	
6/17/2019	2	City Council	Accepted with a Recommendation Do Pass (Immediate Action)	
6/17/2019	1	City Council	Passed as Amended	Pass
6/17/2019	1	City Council	Amended	Pass
6/10/2019	1	Finance & Government Operations Committee	Sent to Council with a recommendation of Do Pass	Pass
6/10/2019	1	Finance & Government Operations Committee	Sent to Council for Immediate Action	Pass
5/6/2019	1	President	Referred	
5/6/2019	1	City Council	Introduced and Referred	

## CITY of ALBUQUERQUE TWENTY THIRD COUNCIL

COUNCIL BILL NO. O-19-61 ENACTMENT NO. \_\_\_\_\_

SPONSORED BY: Isaac Benton

### ORDINANCE

Creating A New Section. Creating A New Section 21 Of Chapter 14 ROA 1994 As Amended For Purposes Of Establishing The Affordable Housing Implementing Ordinance (Benton)

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

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

Section 1. § 14-21-1 SHORT TITLE.

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

§ 14-21-2 FINDINGS.

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

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

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

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

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

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

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

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

§ 14-21-3 PURPOSE.

(A) To establish procedures to ensure that City housing assistance to grantees are Qualifying Grantees who meet the requirements of the ordinance, and rules promulgated

pursuant to such legislation both at the time of the award and throughout the term of any grant or loan under the Program. Housing Assistance Grant shall mean the donation, provision or payment by the City of: 1) Land for construction of an affordable housing project; 2) An existing building for conversion, renovation, or demolition and reconstruction of affordable housing; 3) The costs of financing infrastructure necessary to support affordable housing; or 4) The costs of acquisition, development, construction, financing, and operation or owning affordable housing; and

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

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

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

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

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

(G) To require that a condition of grant or loan approval be proof of compliance with all applicable state and local laws, rules, and ordinances; and

(H) To provide definitions for "low-income and moderate-income" and setting out requirements for the verification of income levels; and

(I) To provide the City with a valid affordable housing program; and

(J) To require that the City have an MFA approved affordable housing plan or MFA approved housing elements contained in a valid plan prior to authorizing a housing assistance grant; and

(K) To require the Family and Community Services Department to promulgate and follow Administrative Requirements and Rules and Regulations to implement this ordinance, including but not limited to further describing application requirements, procedures, and evaluations.

#### § 14-21-4 GENERAL DEFINITIONS.

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

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

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

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

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

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

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

AFFORDABLE HOUSING PROGRAM or PROGRAM. Affordable Housing Program shall mean any programs that the City and/or MFA establishes pursuant to the Act and based on the approved City of Albuquerque housing plan/housing elements.

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

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

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

More than \$100,000                      not less than 20 years

**APPLICANT.** 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.

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

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

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

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

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

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

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

- (1) Land upon which the affordable housing will be constructed; or
- (2) An existing building that will be renovated, converted, or demolished and reconstructed as affordable housing; or
- (3) The costs of acquisition, development, construction, financing, and operating or owning affordable housing; or
- (4) The costs of financing of infrastructure necessary to support affordable housing.

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

**INFRASTRUCTURE.** Infrastructure shall mean infrastructure improvements and infrastructure purposes.

Infrastructure improvement shall include, but not be limited to:

- (1) Sanitary sewage systems, including collection, transport, storage, treatment, dispersal, effluent use and discharge;
- (2) Drainage and flood control systems;

- (3) Water systems for domestic purposes including production, collection, storage, treatment, transport, delivery, connections, and dispersal;
- (4) Areas for motor vehicle use for travel, ingress, egress, and parking;
- (5) Trails and areas for pedestrian, equestrian, bicycle, or other non-motor vehicle use for travel, ingress, egress, and parking;
- (6) Park, recreational facilities, and open space areas for the use of residents for entertainment, assembly, and recreation;
- (7) landscaping, including earthwork, structures, plants, trees and related weather delivery systems;
- (8) Electrical transmission and distribution facilities;
- (9) Natural gas distribution facilities;
- (10) Lighting systems;
- (11) Cable or other telecommunications lines and related equipment;
- (12) Traffic control systems and devices, including signals, controls, markings, and signs;
- (13) Inspection, construction management, and related costs in connection with the furnishing of the items listed in this definition; and
- (14) Heating, air conditioning, and weatherization facilities, systems or services, and energy efficiency improvements that are affixed to real property.

Infrastructure Purpose shall mean:

- (1) Planning, design, engineering, construction, acquisition, or installation of infrastructure, including the costs of applications, impact fees and other fees, permits, and permits and approvals related to the construction, acquisition, or installation of the infrastructure;
- (2) Acquiring, converting, renovating, or improving existing facilities for infrastructure, including facilities owned, leased, or installed by the owner;
- (3) Acquiring interests in real property or water rights for infrastructure, including interests of the owner; and
- (4) Incurring expenses incident to and reasonably necessary to carry out the purposes specified in this definition.

MFA. The New Mexico Mortgage Finance Authority.

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

MFA RULES. The New Mexico Mortgage Finance Authority Affordable Housing Act Rules

promulgated pursuant to § 6-27-8 NMSA 1978 of the Act.

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

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

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

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

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

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

**STATE.** The State of New Mexico.

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

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

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

#### § 14-21-6 GENERAL REQUIREMENTS.

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

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



(B) Applicant Eligibility. The following applicants are eligible under the Act to apply for Affordable Housing Fund or a Housing Assistance Grant to provide housing 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 Grantees for the benefit of persons of Low or Moderate Income subject to the provisions of this ordinance, and with particular regard to their housing related needs.

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

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

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

(4) Nonresidential Property. Qualifying Grantees shall agree that they shall maintain any

non-residential property which has been acquired, rehabilitated, converted, leased, repaired, constructed, or which property has otherwise benefited from Affordable Housing Funds, including but not limited to any loans which have been repaid with Affordable Housing Funds and which loans previously were secured by such properties, as the facility which provides housing related services to persons of Low to Moderate income for so long as any or all of the Affordable Housing Funds which have been awarded, loaned, or otherwise conveyed to the Qualifying Grantee are unpaid and outstanding of the Affordability Period, whichever is longer.

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

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

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

(H) Recertification Procedures.

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

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

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

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

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

#### § 14-21-6 REQUIREMENTS AND RULES.

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

#### § 14-21-7 DISCRIMINATION PROHIBITED.

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

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

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

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

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