City of Las Cruces®

PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 22 **Ordinance/Resolution#** 2592 **Council District:** N/A

For Meeting of November 1, 2010
(Adoption Date)
First Reading on September 20, 2010

TITLE: AN ORDINANCE REPEALING AND REPLACING CHAPTER 13, HOUSING, OF THE LAS CRUCES MUNICIPAL CODE, 1997, AS AMENDED AND ADDING A NEW SUBDIVISION TO THE NEW ARTICLE II WHEREBY CREATING THE AFFORDABLE HOUSING LAND BANK AND TRUST FUND ORDINANCE.

PURPOSE(S) OF ACTION: Repeals and replaces all of Chapter 13, Housing, of the Municipal Code and adds a new subdivision creating the Affordable Housing Land Bank and Trust Fund Ordinance.

Drafter and Staff Contact: David Dollahon		**Department:** Community Development		**Phone:** 528-3060	
Department	**Signature**	**Phone**	**Department**	**Signature**	**Phone**
Department Director		528-3066	Budget		541-2107
			Assistant City Manager		541-2271
Legal		541-2128	City Manager		541-2076

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS: The attached proposed Ordinance amends the City's Municipal Code, 1997, as amended, whereby the Housing Chapter (Chapter 13) is repealed and replaced creating an entirely new and re-codified Housing Chapter. This re-codification is to streamline the Articles, Divisions, and Subdivisions within the existing chapter and adds the new Affordable Housing Land Bank and Trust Fund Ordinance under the new Article II. which is renamed to "Housing Programs."

The re-codification includes a new division to the Housing Programs Article and creates/adopts the Affordable Housing Land Bank and Trust Fund Ordinance. This Ordinance is the result of the recommendation of the 2009 Affordable Housing Ad Hoc Committee's recommendation and the City Council's adoption of the 2009 Affordable Housing Strategic Plan under Resolution 10-057. The Land Bank will provide either dedicated lands available to or donated to the City for the creation of affordable housing, and the Trust Fund will utilize either general fund, bond proceeds, or other City financing resources to finance affordable housing projects. The two activities, i.e. the Land Bank and the Trust Fund, are being placed under one ordinance within the Housing Chapter of the Municipal Code because, while separate and independent, the two will most likely and are structured so that they may work together. For example, lands from the land bank can either be sold through low-interest loans or granted to specific affordable housing projects, in turn, the monies from the land loans will be paid back to the trust fund, to either purchase more land for the land bank or to finance other affordable

housing projects. In the reverse, trust fund monies can be used to buy land for the City's land bank or for others to use to finance affordable housing projects through grants or loans. Loans made from the trust fund will be paid back to the trust fund, including both principal and interest, which will finance future projects or may be used to purchase land for the land bank.

The Ordinance has two other key components: 1) the authority to issue bonds for affordable housing projects, which would be provided as loans to the projects which would be returned to the trust fund, while the actual bonds would be paid back through the bonding source (e.g. gross receipts tax bonds), and 2) the creation of a nonstandard board that serves as an advisory committee to the Council on the management and implementation of the Land Bank and Trust Fund. The creation of the advisory committee is being done simultaneously under a separate ordinance, which amends Chapter 2 of the Municipal Code, which codifies the City board ordinance.

Due to state Affordable Housing Act requirements, the Ordinance is proposed for first reading on September 20th and adoption on November 1st in order to allow for the Mortgage Finance Authority to review the Ordinance and provide their approval prior to formal adoption by the City Council.

SUPPORT INFORMATION:

1. Ordinance
2. Exhibit "A" – replacement of Chapter 13, Housing, of the Las Cruces Municipal Code, which includes the addition of the Affordable Housing Land Bank and Trust Fund Ordinance
3. Attachment "B" – Chapter 13 – reorganization crosswalk
4. Attachment "C" - existing Chapter 13 of the Municipal Code – reference only
5. Attachment "D" – proposed Affordable Housing Land Bank and Trust Fund ordinance – reference only

SOURCE OF FUNDING:

Is this action already budgeted?	Yes	☐	See fund summary below
	No	☒	If No, then check one below:
	Budget Adjustment Attached	☐	Expense reallocated from: _____
		☒	Proposed funding is from a new revenue source
		☐	Proposed funding is from fund balance in the _____ Fund.
Does this action create any revenue?			
	Yes	☒	Funds will be deposited into this fund: _____ in the amount of $_____. To be determined, will require separate resolution to adjust the City's budget when funds are identified for dedication and use
	No	☐	There is no new revenue generated by this action.

FUND SUMMARY:

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
N/A	N/A	N/A	N/A	N/A	N/A

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will repeal and replace Chapter 13 (Housing) of the Las Cruces Municipal Code, 1997, as amended, for re-codification and addition of the new Affordable Housing Land Bank and Trust Fund Ordinance. This action will begin to implement the recommendations from the 2009 Affordable Housing Strategic Plan which called for the creation of an Affordable Housing Land Bank and Trust Fund within the City.

2. Vote "No"; this will not repeal and replace Chapter 13 (Housing) of the Las Cruces Municipal Code, 1997, as amended, for re-codification nor will it include addition of the new Affordable Housing Land Bank and Trust Fund Ordinance. This action will not implement the recommendations from the 2009 Affordable Housing Strategic Plan which called for the creation of an Affordable Housing Land Bank and Trust Fund within the City.

3. Vote to "Amend"; this would be based on Council direction.

4. Vote to "Table"; this would not repeal and replace Chapter 13 of the Municipal Code and will require direction from the City Council.

REFERENCE INFORMATION

The resolution listed below is only for reference and is not included as attachments or exhibits.

1. Resolution No. 10-057

ORDINANCE NO. 11-012
COUNCIL BILL NO. 2592

AN ORDINANCE REPEALING AND REPLACING CHAPTER 13, HOUSING, OF THE LAS CRUCES MUNICIPAL CODE, 1997, AS AMENDED AND ADDING A NEW SUBDIVISION TO THE NEW ARTICLE II WHEREBY CREATING THE AFFORDABLE HOUSING LAND BANK AND TRUST FUND ORDINANCE.

The City Council is hereby informed that:

WHEREAS, the City of Las Cruces has identified the need for 3600 affordable rental housing units and 3700 affordable housing units for homeownership purposes within its 2006-2010 Consolidated Plan; and

WHEREAS, the City's need for affordable housing far exceeds the City's current abilities to address such need through the use of Community Development Block Grant and Home Investment Partnership Program entitlement funds from the U.S. Department of Housing and Urban Development; and

WHEREAS, through the use of a consulting firm and an ad hoc committee on affordable housing established in 2008 by the City Council, the City developed and adopted the 2009 Affordable Housing Strategic Plan in August 2009 under Resolution 10-057; and

WHEREAS, due to an exception to the State of New Mexico's Constitutional Anti-donation clause, the State has adopted an Affordable Housing Act by which local governments can assist with land, buildings, infrastructure, and financing of affordable housing projects for qualified low- and moderate-income families and individuals; and

WHEREAS, the City has taken necessary steps as required by State law to implement Affordable Housing Projects using local resources; and

WHEREAS, the 2009 Affordable Housing Strategic Plan called for the City to consider the establishment of both an affordable housing land bank and an affordable

housing trust fund to create opportunities within the community using local resources; and

WHEREAS, a draft ordinance proposed for incorporation to Chapter 13, Housing, of the Las Cruces Municipal Code, 1997, as amended, creating the Affordable Housing Land Bank and Trust Fund has been developed by City staff, received public input, and been reviewed and recommended by the City's Health and Human Services Advisory Committee for adoption by the City Council; and

WHEREAS, in reviewing Chapter 13 of the Las Cruces Municipal Code, staff feels that the chapter can be better structured to reflect the actions and authorities granted to the City and staff within the areas of housing; and

WHEREAS, the Staff proposes that Chapter 13 of the Las Cruces Municipal Code be repealed in its entirety and replaced with a re-codified chapter, including the addition of the Subdivision for the Affordable Housing Land Bank and Trust Fund Ordinance.

NOW, THEREFORE, Be it ordained by the governing body of the City of Las Cruces:

(I)

THAT Chapter 13 of the Las Cruces Municipal Code, 1997 as amended, is hereby repealed in its entirety.

(II)

THAT a new Chapter 13 of the Las Cruces Municipal Code, 1997, as amended, as shown in Exhibit "A," attached hereto and made part of this Ordinance, which includes the Affordable Housing Land Bank and Trust Fund, is hereby approved and adopted.

(III)

THAT City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE and APPROVED this _____ day of _____, 2010.

APPROVED:

(SEAL)

_____
Mayor

ATTEST:

_____
City Clerk

VOTE:
Mayor Miyagishima: _____
Councillor Silva: _____
Councillor Connor: _____
Councillor Pedroza: _____
Councillor Small: _____
Councillor Sorg: _____
Councillor Thomas: _____

Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:

_____
City Attorney

Chapter 13 - HOUSING*

ARTICLE I. – FAIR HOUSING

ARTICLE II. –HOUSING PROGRAMS

ARTICLE I. - FAIR HOUSING*

Cross reference—Human rights, ch. 14.

State law reference—Discrimination in housing, NMSA 1978, § 28-1-7 et seq.

Sec. 13-1. - Definitions.
Sec. 13-2. - Fair Housing Act adopted.
Sec. 13-3. - Declaration of policy.
Sec. 13-4. - Exemptions.
Sec. 13-5. - Discrimination in the sale or rental of housing and other prohibited practices.
Sec. 13-6. - Administration and enforcement.
Secs. 13-7—13-49. - Reserved.

Sec. 13-1. - Definitions.

As used in this article:

Adaptable dwelling units, when used with respect to covered multifamily dwellings, means dwelling units that include the features of adaptable design specified in the Fair Housing Act of 1988, 24 CFR 100.205c.

Aggrieved person includes any person who:

(1) Claims to have been injured by a discriminatory housing practice; or
(2) Believes that such person will be injured by a discriminatory housing practice that is about to occur.

CABO/ANSI guidelines means those guidelines (commonly cited as CABO/ANSI A117.1-1997) set forth in the 1997 edition of the American National Standard for buildings and facilities providing accessibility and usability for persons with disabilities. These guidelines can be obtained from the American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018.

Accessible, when used with respect to the public and common use areas of a building containing covered multifamily dwellings, means that the public or common use areas of the building can be approached, entered, and used by individuals with physical disabilities. The phrase "readily accessible to and usable by" is synonymous with accessibility.

Accessible route means a continuous unobstructed path connecting accessible elements and spaces in a building or within a site that can be negotiated by a person with a disability using a wheelchair, and that is also safe for and usable by people with other disabilities. Interior accessible routes may include corridors, floors, ramps, elevators and lifts. Exterior accessible routes may include parking access aisles, curb ramps, walks, ramps and lifts.

Bathroom means a bathroom which includes a water closet (toilet), lavatory (sink), and bathtub or shower.

Clear means unobstructed.

Common use areas means rooms, spaces or elements inside or outside of a building that are made available for the use of residents of a building or the guests thereof. These areas include hallways, lounges, laundry rooms, refuse rooms, mail rooms, recreational areas and passageways among and between buildings.

Covered multifamily dwellings means:

(1) Buildings consisting of four or more dwelling units if such buildings have one or more elevators; and

(2) Ground floor dwelling units in other buildings consisting of four or more dwelling units. Dwelling units within a single structure separated by firewalls do not constitute separate buildings.

Disability means, with respect to a person:

(1) A physical or mental impairment which substantially limits one or more of such person's major life activities.

(2) A record of having such an impairment; or

(3) Being regarded as having such an impairment.

But such term does not include current illegal use of or addiction to a controlled substance as defined in 21 U.S.C. Section 802. As used in this definition: (a) "Physical or mental impairment" includes (1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin, and endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, human immunodeficiency virus infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.

Discriminatory housing practice means an act that is unlawful under section 13-5 of this article.

Dwelling means any building, structure or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

Entrance means any exterior access point to a building or portion of a building used by residents for the purpose of entering. An entrance does not include a door to a loading dock or a door used primarily as a service entrance.

Familial status means one or more individuals (who have not attained the age of eighteen 18 years) being domiciled with:

(1) A parent or another person having legal custody of such individual or individuals; or

(2) The designee of such parent or other persons having such custody, with the written permission of such parent or other person. The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or in the process of securing legal custody of any individual who has not attained the age of eighteen (18) years.

Fair Housing Accessibility Guidelines means those guidelines set forth in 24 CFR Chapter I, Department of Housing and Urban Development, Part VI.

Family includes a single individual.

Ground floor means a floor of a building with a building entrance on an accessible route. A building may have one or more ground floors. Where the first floor containing dwelling units in a building is above grade, all units on that floor must be served by a building entrance on an accessible route. This floor will be considered to be a ground floor.

Person includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under title 11 of the United States Code ("U.S.C."), receivers and fiduciaries.

Residential real estate-related transaction means any of the following:

(1) The making or purchasing of loans or providing other financial assistance;
   a. For purchasing, constructing, improving, repairing, or maintaining a dwelling; or
   b. Secured by residential real estate.

(2) The selling, brokering, or appraising of residential real property.

To rent includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

Sec. 13-2. - Fair Housing Act adopted.

Title VIII of the Civil Rights Act of 1968, the Fair Housing Act of 1988, the Fair Housing Accessibility Guidelines of 1991, as amended, are hereby adopted and incorporated herein by reference.

Sec. 13-3. - Declaration of policy.

It is the policy of the city or provide, within constitutional limitations, for fair housing throughout the city. This fair housing ordinance is intended to compliment federal and state fair housing laws and should be interpreted consistently with such laws, unless otherwise stated.

Sec. 13-4. - Exemptions.

(a) Nothing in section 13-5 of this article, other than subsection 13-5(3) shall apply to any single-family house sold or rented by an owner, provided that:

(1) Such private individual owner does not own more than three such single-family houses at any one time; and

(2) In the case of the sale of any such single-family house by a private individual owner not residing in such house at the time of such sale or who was not the most recent resident of such house prior to such sale, the exemption granted by this subsection shall apply only with respect

to one such sale within any 24 month period; and

(3) Such bona fide private individual owner does not own any interest in, nor is there owned or reserved on his or her behalf, under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from the sale or rental of, more than three such single-family houses at any one time; and

(4) Such house is sold or rented without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent or salesman, or of such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such broker, agent salesman, or person (but nothing in this proviso shall prohibit the use of attorneys, escrow agents, abstractors, title companies, and other such professional assistance as necessary to perfect or transfer the title); and

(5) Such house is sold or rented without the publication, posting or mailing, of any advertisement or written notice in violation of section 13-5 of this article.

(b) Nothing in section 13-5 of this article, other than subsection (3), shall apply to rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his/her residence.

(c) Nothing in section 13-5 of this article shall prohibit a religious organization or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, or national origin.

(d) Nothing in section 13-5 of this article shall prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.

(e) Nothing in section 13-5 of this article limits the applicability of any reasonable governmental restrictions regarding the maximum number of occupants permitted to occupy a dwelling.

(f) Nothing in section 13-5 of this article regarding familial status shall apply with respect to housing for older persons.

Housing for older persons means housing:

(1) Provided under any state or federal program that is specifically designed and operated to assist elderly persons; or

(2) Intended for, and solely occupied by, persons 62 years of age or older; or

(3) Intended and operated for occupancy by at least one person 55 years of age or older per unit, where at least 80 percent of the units in the housing facility are occupied by at least one person 55 years of age or older (except that newly constructed facilities need not comply with this requirement until 25 percent of the units in the facility are occupied), and where the facility meets other regulations adopted by the federal Department of Housing and Urban Development as set forth in 24 C.F.R. 100.304; however

(4) Housing shall not fail to meet the requirements for housing for older persons by reason of persons residing in such housing as of September 13, 1988, who do not meet the age requirements set forth in subsections (2) or (3) above; provided that all new occupants of such housing meet the age requirements of subsection (2) or (3); or unoccupied units; provided that such units are reserved for occupancy by persons who meet the age requirements of subsections (f)(2) or (3) of this section.

Sec. 13-5. - Discrimination in the sale or rental of housing and other prohibited practices.

Except as exempted by section 13-4 of this article, it shall be unlawful:

(1) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, ethnicity, color, religion, sex, or gender identity, disability, familial status, sexual orientation, ancestry, or national origin.

(2) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith because of race, ethnicity, color, religion, sex, or gender identity, disability, familial status, sexual orientation, ancestry, or national origin.

(3) To make, print, or publish, or cause to be made, printed, or published any notice, statement or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, ethnicity, color, religion, sex, or gender identity, disability, familial status, sexual orientation, ancestry, or national origin, or an intention to make any such preference, limitation or discrimination.

(4) To represent to any person because of race, ethnicity, color, religion, sex, or gender identity, disability, familial status, sexual orientation, ancestry, or national origin, that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

(5) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, ethnicity, color, religion, sex, or gender identity, disability, familial status, sexual orientation, ancestry, or national origin.

(6) a. To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a disability of:

1. That buyer or renter; or

2. A person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

3. Any person associated with that buyer or renter.

b. To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a disability of:

1. That person; or

2. A person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

3. Any person associated with that person.

c. For purposes of this subsection, discrimination includes:

1. A refusal to permit, at the expense of the disabled person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications are necessary to afford such person full enjoyment of the premises except that, in the case of a rental, the landlord may where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;

2. A refusal to make reasonable modifications in rules, policies, practices, or services, when such modifications are necessary to afford such person equal opportunity to use and enjoy a dwelling; or

3. In connection with the design and construction of covered multifamily dwellings for first occupancy, for which a city building permit is issued after adoption of the ordinance from which this article derives, a refusal to design and construct those dwellings in accordance with the 1988 Fair Housing Act, 2003 International Building Code and CABO/ANSI A117.1-1998, and their amendments, as made elsewhere within this

Municipal Code.

d. Nothing in subsection (b) requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety or other individuals or whose tenancy would result in substantial physical damage to the property of others.

(7) For any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, ethnicity, color, religion, sex, or gender identity, disability, familial status, sexual orientation, ancestry, or national origin. Nothing in this subparagraph prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, ethnicity, color, religion, sex, or gender identity, disability, familial status, sexual orientation, ancestry, or national origin.

(8) Deny any person access to or membership or participation in any multiple-listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against him/her in the terms or conditions of such access, membership, or participation, on account of race, ethnicity, color, religion, sex, or gender identity, disability, familial status, sexual orientation, ancestry, or national origin.

(9) Coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of any right granted or protected under this article.

Sec. 13-6. - Administration and enforcement.

(a) The authority and responsibility for administering the fair housing article shall be in the director of the community development department.

(b) All city agencies and departments shall administer their programs and activities relating to housing in a manner to affirmatively further the purposes of this article and shall cooperate with the community development department to further such purposes.

(c) The community development department shall review plans and construction of newly constructed covered multifamily dwellings for the purpose of making a determination as to whether the design and construction requirements of section 13-5(6)c.3. are met. No building permit shall be issued and no certificate of occupancy shall be issued for covered multifamily dwellings that do not meet those requirements. Notwithstanding the above, no one shall be denied a certificate of occupancy for failure to meet the requirements of section 13-5(6)c.3 if a city building permit was issued prior to the adoption of the ordinance from which this article is derived.

(d) The director of the community development department or his or her designee shall be responsible for providing information to and assisting aggrieved persons who request assistance in filing complaints with the U.S. Department of Housing and Urban Development, and/or in accordance with reporting/complaint filing processes established for the city not inconsistent with this section and this article.

(e) Whenever the director of the community development department has reason to believe that any person has engaged in a discriminatory housing practice in violation of section 13-5, the director may invite the person to discuss the violation and methods of correcting the cause of the violation.

(f) Any person who has reason to believe that any other person has engaged in a discriminatory housing practice in violation of section 13-5 may refer information and/or receive assistance in filing a complaint regarding the alleged violation to the community development department. Whenever the director of the community development department has reason to believe that any person has engaged in a discriminatory housing practice in violation of section 13-5, the director shall refer such information regarding the violation to the U.S. Department of Housing and Urban Development or the state human right commission for prosecution in accordance with subsection 13-6(g).

(g) If the community development department and/or codes enforcement/police department, in consultation with the city attorney's office, has reasonable cause to believe that a violation has occurred, the city shall refer the claim and information to the U.S. Department of Housing and Urban Development, or to the state human rights commission for violations of the state's fair housing statute for investigation and prosecution according to the Fair Housing Act of 1988.

Secs. 13-7. – 13-49. Reserved.

ARTICLE II. – HOUSING PROGRAMS

DIVISION 1. Housing Rehabilitation Program

Sec. 13-50. - Definitions.
Sec. 13-51. - Purpose.
Sec. 13-52. - Home rehabilitation program and handbook established.
Sec. 13-53. - Funding; rules, regulations.
Sec. 13-54. - Administration.
Sec. 13-55. - Review committee.
Sec. 13-56. - Appeals.
Sec. 13-57. - Limitations.
Sec. 13-58. - Performance bond account.
Secs. 13-59—13-99. - Reserved.

Sec. 13-50. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Administering city department means the community development department.

CDBG means the Community Development Block Grant program by the U.S. Department of Housing and Urban Development.

DPL (deferred payment loan) means an award of funds to an applicant for home rehabilitation, secured by a recorded mortgage against the property, which does not require repayment unless the DPL recipient ceases to maintain ownership and occupancy of the project property at any time after the date of final inspection until the DPL is paid in full.

Dwelling unit means a room or rooms, connected together, constituting an independent housekeeping unit for a family, as specified in chapter XX, building code, of the Las Cruces Municipal Code, 1997, as amended.

Eligible family means a kinship of one or more persons including an owner-occupant related to other members of a family nucleus by blood, adoption, or marriage. Such group shall have owned and occupied a dwelling unit on a continuous basis for a period of not less than 12 months immediately prior to the date of filing an application for home rehabilitation assistance.

Grant means an award of funds to an applicant for home rehabilitation, secured by a recorded mortgage against the property, which does not require repayment unless the grant recipient ceases to maintain ownership and occupancy of the project property for a specified period of time following the date of final inspection, as determined within program standards.

HOME means the HOME Investment Partnership program by the U.S. Department of Housing and Urban Development.

Improvement and rehabilitation means the necessary and required improvement of a property in accordance with program standards.

Owner-occupant means one or more persons as head of a household of an eligible family, who owns a dwelling unit within the city.

Program standards means the code requirements as defined in the Home Rehabilitation Handbook.

Sec. 13-51. - Purpose.

The purpose of the program created by this article is to make money available to applicants who are owner-occupants of residential properties and who, because of limited income and resources are unable to secure or qualify for funds from other sources under comparable terms and conditions, to finance improvement and rehabilitation of their properties to conform to minimum program standards.

Sec. 13-52. - Home rehabilitation program and handbook established.

There is to be created and established a voluntary grant, DPL, loan program to be known as the city home rehabilitation program for the improvement and rehabilitation of homes to be prescribed in a home rehabilitation handbook to be adopted by separate resolution by the city council.

Sec. 13-53. - Funding; rules, regulations.

(a) The city council shall, under its powers, appropriate funds and adopt necessary and appropriate rules and regulations to implement the purpose of this article.

(b) The appropriated funds, from either the CDBG, HOME, state or other city funds, as allocated by a city council resolution shall be used and maintained by the administering department to carry out the home rehabilitation program. All monies in such fund shall be available for making and administering grants, DPLs, and loans made pursuant to this article. All monies received by way of repayment of principal, interest and other earnings shall be deposited in the appropriate fund from which the original grant, DPL, or loan was made and applicable federal, state, or local regulations.

Sec. 13-54. - Administration.

The administering city department shall be responsible for the administration of this article.

Sec. 13-55. - Review committee.

The home rehabilitation handbook established within section 13-52 of this article shall prescribe the establishment and responsibilities of a home rehabilitation review committee to provide review of eligible applicants and have such other powers and responsibilities as may be provided for by resolution or by ordinance of the city council.

Sec. 13-56. - Appeals.

(a) *Grounds for appeals.* Any aggrieved homeowner or other person affected by a decision of the home rehabilitation review committee or program staff in the administration or enforcement of this article may appeal such decision to the community development director, excluding any federal or state requirements for determining income eligibility.

(b) *Authority of the community development director.* When an appeal alleges that there is an error in any requirement, decision, or determination by the committee or staff in the enforcement of this article, the community development director may, after all other procedures established by the provision

of this article have been exhausted, reverse, or affirm any requirement, decision or determination of the committee or staff or make any change in a requirement, decision or determination of the committee or staff.

(c) *Appeal of the community development director.* Any aggrieved contractor, developer, or other person affected by a decision of the community development director, may appeal such decision to the city council. Such appeal must be initiated in writing within 30 days after all other procedures established by this article have been exhausted.

(d) *Stay of proceedings.* An appeal shall stay all proceedings in furtherance of the action appealed unless the community development director, from whom the appeal is taken, certifies that by reason of facts a stay would cause imminent peril of life and property.

(e) *Appellant responsibility in appeals.* All appellants under this section are required to submit in writing to the city council a detailed statement of the grounds of their appeal, no later than 30 days after the decision is appealed. The written appeal shall state specifically the objections of the decision and the reasons for the appeal.

(f) *Notice of decisions.* A notice of the decision of the city council shall be sent by mail to all applicants no later than ten days after the decision is made. Said notice of decision shall be placed in the applicant's file.

Sec. 13-57. - Limitations.

(a) Grants, DPLs, and loans shall be made in the name of the city to an owner-occupant of a property that consists of one- or two-family dwelling units, used exclusively for residential purposes, which is occupied by the owner as his principal place of residence, and identified as the unit to be rehabilitated. The properties to be rehabilitated must be situated within the city limits.

(b) All grants, DPLs, and loans shall be selected, administered, and secured as determined by any rules adopted pursuant to section 13-52.

(c) Loans shall bear interest up to a maximum of three percent simple interest per annum on the outstanding balance thereof. The final loan interest rate shall be based on the applicant's income and other criteria established within the adopted home rehabilitation handbook.

(d) Monthly payments shall be made on all loans, excluding grants and DPL's. The home rehabilitation review committee shall review and make a recommendation to the community development director who may defer the payments for such periods as deemed appropriate and necessary upon its determination that the owner-occupant is unable to meet these payments because of limited income, unemployment, or for any other valid reason.

(e) The term of each loan shall be determined by each owner-occupant's ability to pay, not to exceed a 30-year period, excluding those DPLs, which shall be until occupancy or ownership changes occur in accordance with subsection 13-57(f).

(f) The full outstanding balance of the loan shall immediately become due and payable if the borrower ceases to be an owner-occupant of the property, or if title to the property is transferred prior to the maturity date provided in the recorded mortgage against the property.

(g) All grants, DPL's, and loans shall be reviewed annually to ensure compliance with all rules and regulations adopted pursuant to this article.

(h) Subordination of mortgages on all grants, DPL's, and loans shall be authorized in accordance with the adopted home rehabilitation handbook, subject to the review and approval by the city attorney's office.

Sec. 13-58. - Performance bond account.

(a) Established is a city-maintained, performance bond account to cover warranty issues related to the warranty guidelines and/or restrictions as prescribed within the home rehabilitation handbook.

(b) Performance bond account proceeds shall be collected and deposited from all contractors selected by the homeowner to complete the improvements and rehabilitation work on their dwelling unit.

(c) Any work subject to warranty guarantees not completed by the selected contractor during the warranty period shall be corrected by the performance bond account proceeds and any contractor not completing any warranty work may be subject to sanctions available to the city in accordance with the applicable local, state, and federal regulations, including, but not limited to debarment and/or suspension from participating in the home rehabilitation program.

(d) The performance bond account shall be established to have a minimum balance of $3,000.00 per city fiscal year, not to exceed a maximum balance of $10,000.00 per city fiscal year.

(e) Any performance bond account proceeds, in excess of the established maximum at the end of each fiscal year, shall be returned to the home rehabilitation program as program income for implementation of additional, future projects.

Secs. 13-59. – 13-99. Reserved.

DIVISION 2. - AFFORDABLE HOUSING GENERAL OVERSIGHT

Sec. 13-100. - Title.
Sec. 13-101. - Authority and purpose.
Sec. 13-102. - Definitions.
Sec. 13-103. - General requirements.
Sec. 13-104. - Applications.
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Sec. 13-106. - Affordable housing requirements.
Sec. 13-107. - Consent to jurisdiction.
Sec. 13-108. - Recertification.
Sec. 13-109. - Compliance with the law.
Sec. 13-110. - Extension of affordable housing programs.
Sec. 13-111. - County, municipality, school district, or post secondary educational institution grant requirements.
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Sec. 13-100. - Title.

This article is hereby titled the "Affordable Housing General Oversight Ordinance for the City of Las Cruces."

Sec. 13-101. - Authority and purpose.

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

This article is adopted to implement the city's affordable housing program. In accordance with the New Mexico Constitution, Article IX. § 14, the Affordable Housing Act, NMSA 1978, § 6-27-1 et seq. (the "Act"), and the Act's rules, the purpose of the affordable housing general oversight ordinance is to:

(1) Establish general oversight procedures to ensure that both state and local housing assistance grantees are qualifying grantees who meet the requirements of the Affordable Housing Act and the rules promulgated pursuant to the Act, both at the time of the award and throughout the term of any grant or loan established under the program;

(2) Establish an application and award timetable for state housing assistance grants or loans to permit the selection of the qualifying grantee(s) by the city;

(3) Create a general evaluation process to determine qualifying grantees through the evaluation of:

a. The financial and management stability of the applicant;
b. The demonstrated commitment of the applicant to the city and the community;
c. A cost-benefit analysis of the project proposed by the applicant;
d. The benefits to the community of a proposed project;
e. The type or amount of assistance to be provided;
f. The scope of the proposed affordable housing project;

g. Any substantive or matching contribution by the applicant to the proposed project;

h. A performance schedule for the qualifying grantee(s) with performance criteria; and

i. Any other rules or procedures which the city believes is necessary for a full review and evaluation of the applicant and the application or which the MFA believes is necessary for a full review of the city's evaluation of the applicant;

(4) 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;

(5) Require that the city enter into a contract with the qualifying grantee(s) consistent with the Act, which contract shall include remedies and default provisions in the event of the unsatisfactory performance by the qualifying grantee(s) and which contract shall be subject to the review of the MFA in its discretion;

(6) Require that a grant or loan for a project must impose a contractual obligation on the qualifying grantee that the affordable housing units in any projects be occupied by persons of low- or moderate-income;

(7) 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;

(8) Require review and approval of any affordable housing project by the city and/or MFA before any expenditure of grant funds or transfer of granted property;

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

(10) Provide definitions for "low-income" and "moderate-income" and setting out requirements for verification of income levels; and

(11) Provide the city with the basis for a valid affordable housing program or the general oversight to establish other, more specific affordable housing programs or projects.

(12) Does not apply to the city's implementation of its community development block grant (CDBG), HOME investment partnership program (HOME) or any other HUD funded program, unless such funds are used in conjunction with the funds or grants authorized under this article and the Act.

Sec. 13-102. - Definitions.

Act shall mean the Affordable Housing Act, NMSA 1978, § 6-27-1 et seq.

Affordable shall mean consistent with minimum rent and/or income limitations set forth in the MFA Act, and in guidelines established by MFA.

Affordable housing means residential housing primarily for persons or households of low- or moderate-income.

Affordable housing funds shall mean any or all funds awarded or to be awarded, loaned or otherwise distributed under this article and/or the Act.

Affordable housing program shall mean any programs that the city and/or the MFA establish pursuant to the Act.

Affordable housing projects shall mean any work or undertaking, whether new construction, acquisition of existing residential housing, remodeling, improvement, rehabilitation or conversion approved by the city and/or the MFA for the primary purposes as allowed by the Act.

Applicant shall mean an individual; a governmental housing agency; regional housing

authority; tribal housing agency; 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 and/or the MFA.

Application shall mean an application to participate in one or more affordable housing projects or programs under the Act submitted by an applicant to the city and/or the MFA.

Builder shall mean a person or entity licensed as a general contractor to construct residential housing in the state which has been approved by the city and/or the MFA to participate in an MFA program and/or an affordable housing program under the Act.

Building shall mean 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 shall mean the City of Las Cruces, a New Mexico municipal corporation.

Congregate housing facility shall mean residential housing designed for occupancy by more than four 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 and each unit in a congregate housing facility shall contain at least its own living, sleeping, and bathing facilities.

Federal government shall mean the United States of America and any agency or instrumentality, corporate or otherwise, of the United States of America.

Household shall mean one or more persons occupying a housing unit.

Housing assistance grant means the donation by the city of:

(1) Land for construction of an affordable housing project;
(2) An existing building for conversion or renovation as affordable housing; or
(3) The costs of infrastructure necessary to support affordable housing.

HUD shall mean the United States Department of Housing and Urban Development.

Infrastructure shall mean infrastructure improvements and infrastructure purposes.

Infrastructure improvement includes, but is not limited to:

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

(2) Drainage and flood control systems, including collection, transport, diversion, storage, detention, retention, dispersal, use and discharge;

(3) Water systems for domestic purposes, including production, collection, storage, treatment, transport, delivery, connection 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) Parks, recreational facilities and open space areas for the use of residents for entertainment, assembly and recreation;

(7) Landscaping, including earthworks, structures, plants, trees and related water 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 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 shall mean the New Mexico Mortgage Finance Authority.

MFA Act shall mean the Mortgage Finance Authority Act, enacted as chapter 303 of the Laws of 1975 of the State of New Mexico, as amended, being sections 58-18-1 through 58-18-27, inclusive, NMSA 1978, as amended.

Mortgage shall mean a mortgage, mortgage deed, deed of trust or other instrument creating a lien, subject only to title exceptions as may be acceptable to the city and/or the MFA, on a fee interest in real property located within the state or on a leasehold interest that has a remaining term at the time of computation that exceeds or is renewable at the option of the lessee until after the maturity day of the mortgage loan or an instrument creating a lien on a mobile home.

Mortgage lender shall mean any bank or trust company, mortgage company, mortgage banker, national banking association, savings bank, savings and loan association, credit union, building and loan association and any other lending institution; provided that the mortgage lender maintains an office in the state, is authorized to make mortgage loans in the state and is approved by the city and/or the MFA and either the FHA, VA, FNMA (now known as Fannie Mae), or FHLMC (the Federal Home Loan Mortgage Corporation).

Mortgage loan shall mean a financial obligation secured by a mortgage, including a project mortgage loan.

Multiple family housing project shall mean residential housing that is designed for occupancy by more than four persons or families living independently of each other or living in a congregate housing facility, at least 60 percent of whom are persons of low or moderate income, including without limitation persons of low or moderate income who are elderly and handicapped, as determined by the city and/or the MFA, provided that the percentage of low-income persons and families shall be at least the minimum, if any, required by federal tax law.

Multi-family housing program shall mean a program involving a congregate housing facility, a multiple family housing project or a transitional housing facility.

Persons of low or moderate income shall mean one or more persons or a family who has a total annual gross income for the household that does not exceed 80 percent of the median annual income adjusted for family size for households within the Las Cruces Metropolitan Statistical Area (MSA), which include the city, as determined by HUD, on an annual basis. For purposes of this definition:

(1) "Annual gross income" shall mean the annual anticipated income from assets, regular cash or non-cash contributions, and any other resources and benefits determined to be income by HUD, as defined in 24 CFR Section 5.609;

(2) "Family" shall mean, but not be limited to, a single person, a group of persons consisting of the head of a household; his or her spouse, if any; and children, if any, as allowed under 24 CFR section 5.609; and

(3) "Adjusted for family size" shall mean adjusted in a manner which results in an income eligibility level that is lower for households having fewer than four people, or higher for households that have more than four people, than the base income eligibility based upon a formula established by HUD for the Las Cruces MSA.

Qualifying grantee means:

(1) An individual who is qualified to receive assistance pursuant to the Act and is approved by the city; and

(2) A governmental housing agency; regional housing authority; tribal housing agency; corporation, limited liability company, partnership, joint venture, syndicate, association; or a nonprofit organization that:

a. Is organized under state, local, or tribal laws and can provide proof of such organization;

b. If a nonprofit organization, has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual; and

c. Is approved by the city.

Recertification shall mean 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 shall mean the substantial renovation or reconstruction of an existing single-family residence or a multi-family housing project, which complies with requirements established by the MFA. 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 shall mean 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.

Responsible department shall mean the city's community development department.

Rules shall mean the rules promulgated by the MFA to implement that Affordable Housing Act.

State shall mean the State of New Mexico.

Transitional housing facility shall mean residential housing that is designed for temporary or transitional occupancy by persons of low or moderate income or having special needs.

Sec. 13-103. - General requirements.

The following requirements shall apply to all affordable housing projects made to and approved by the city under this article to a qualifying grantee.

(1) *Request for proposals.* The city, in its discretion, may issue one or more requests for proposals (RFPs); to solicit applications; or shall otherwise identify a qualifying grantee for the use of any affordable housing funds or housing assistance grants to be awarded, loaned, or otherwise distributed under this article or the Act.

(2) *Applicant eligibility.* The following individuals or entities (applicants) are eligible under the Act to apply for affordable housing funds or a housing assistance grant to provide housing or related services to persons of low or moderate income in their community:

a. All individuals who are qualified to receive assistance pursuant to the Act and the Rules;

b. All regional housing authorities, tribal governments, tribal housing agencies, and any governmental housing agencies;

c. All for-profit organizations, including any corporation, limited liability company, partnership, joint venture, syndicate, or association or a nonprofit organization; or

d. Nonprofit organizations are eligible to apply if the following requirements are met:

1. A primary mission of the nonprofit organization must be to provide housing or housing-related services to persons of low or moderate income; and

2. The nonprofit organization must have received its 501(c)(3) designation prior to submitting an application.

e. For any non-individual applicant to be eligible, it must also:

1. Be organized under state, local, or tribal laws and can provide proof of such organization;

2. If a nonprofit organization, have no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual;

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

4. Have among its purposes significant activities related to providing housing or services to persons or households of low or moderate income; and

5. Have no significant outstanding or unresolved monitoring findings from the city, the MFA, 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.

(3) Any eligible applicant may, at any time, submit to the city the information required by section 13-104(a) sub-paragraphs (4), (5), (6), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (20), (21), and (22) of this article and the rules, as applicable, in order to pre-qualify as a potential qualifying grantee. The city will review the information provided by any eligible applicant and in its discretion, may certify in writing that the applicant is a potential qualifying grantee. The city shall provide a copy of the

certification to the MFA upon its request. The city's certification shall be valid for up to one year, subject to the ability of the potential qualifying grantee to certify in writing, at the time of any application or response to any RFP, that there have been no material changes in any of the information or documentation provided by, or representations made by the potential qualifying grantee to the city and upon which information, documentation, and/or representations the city has based its decision to certify the applicant as a potential qualifying grantee. Notwithstanding the foregoing, simply because an applicant is certified by the city as a potential qualifying grantee does not mean that the potential qualifying grantee will be chosen by the city as a:

a. Qualifying grantee, or

b. That the MFA will determine that the potential qualifying grantee is a qualifying grantee, or

c. That any application submitted by the potential qualifying grantee is complete or otherwise in compliance with this article, the Act and the rules, or

d. That the potential qualifying grantee will be awarded any affordable housing funds or any housing assistance grants.

Sec. 13-104. - Applications.

(a) *Process for applying.* Individual applicants and all other applicants wishing to apply for a housing assistance grant to participate in any affordable housing program are also required to submit to the city the following, as applicable:

(1) One original application, together with all required schedules, documents, or such other information which may be required by the city or in any RFP which may have been issued by the city, must be included in the completed application;

(2) A proposal describing the nature and scope of the affordable housing project proposed by the applicant and for which the applicant is applying for funds or a grant under the Act, and which describes the type and/or amount of assistance which the applicant proposes to provide to persons of low or moderate income;

(3) Executive summary and project narrative(s) that address the evaluation criteria set forth in any RFP issued by the city for the affordable housing funds or the housing assistance grant for which the applicant is applying;

(4) For nonprofit organizations, proof of 501(c)(3) tax status;*

(5) For nonprofit organizations, documentation which confirms that no part of its net earnings inures to the benefit of any member, founder, contributor or individual;*

(6) Current annual budget for the applicant, including all sources and uses of funds, not just those related to relevant programs and/or a current annual budget only for the program for which the applicant is applying for a housing assistance grant, or as otherwise may be required by the city and/or the MFA in its discretion;*

(7) A proposed budget for the affordable housing project for which the applicant is applying for affordable housing funds or for a housing assistance grant;

(8) Approved mission statement that has among its purposes significant activities related to providing housing or housing-related services to persons or households of low or moderate income;*

(9) List of current board members, including designated homeless participation, where required by the city;*

(10) Current independent financial audit;*

(11) Evidence (or a certification as may be allowed by the city) that the applicant has a functioning accounting system that is operated in accordance with generally accepted accounting principals, or has a designated entity that will maintain such an accounting system consistent with generally accepted

accounting principals;*

(12) Evidence that the applicant has no significant outstanding or unresolved monitoring findings from the city, the MFA, or its most recent independent financial audit; or if it has any significant outstanding or unresolved monitoring findings from the city, the MFA, or its most recent independent financial audit, it has a certified letter from the city, the MFA, or the auditor stating that the findings are in the process of being resolved;*

(13) Organizational chart, including job titles and qualifications for the applicant's employees or as otherwise may be required by the city and/or the MFA in its discretion. Job descriptions may be submitted as appropriate;*

(14) Documentation that the applicant is duly organized under state or local law and is in good standing with any state authorities such as the public regulation commission (e.g. articles, bylaws, and certificate of good standing for a corporation; articles, operating agreement, and certificate of good standing for a limited liability company; partnership agreement and certificate of limited partnership for a partnership);*

(15) Certifications as may be required by the city signed by chief executive officer, board president or other authorized official of the applicant;*

(16) Information as may be required by the city in order for it to determine the financial and management stability of the applicant;*

(17) Information as may be required by the city in order for it to determine the demonstrated commitment of the applicant to the community;*

(18) Applicant shall submit a completed cost-benefit analysis, as required by the city and/or the MFA, of the affordable housing project proposed by the applicant. Any cost-benefit analysis must include documentation which clearly evidences that there is or will be a direct benefit from the project proposed by the applicant to the community and/or to the purported beneficiaries of the project, consistent with the provisions of the Act;

(19) Applicant shall submit information to the city supporting the benefits to the community of the affordable housing project proposed by the applicant;

(20) The city may require that the applicant provide proof of substantive or matching funds or contributions and/or in-kind donations to the proposed affordable housing project in connection with the application for funds under the Act. Nothing contained herein shall prevent or preclude an applicant from matching or using local, private, or federal funds in connection with a specific housing assistance grant or a grant of affordable housing funds under the Act;*

(21) Applicant shall provide the city with any certifications or other proof which it may require in order for the city to confirm that the applicant is in compliance with all applicable federal, state and local laws, rules and ordinances;*

(22) For applicants who are submitting applications in connection with a multi-family housing program, the following additional information shall also be required to be submitted by the applicant to the city:

a. A verified certificate that, among other things:

1. Identifies every multi-family housing program, including every assisted or insured project of HUD, RHS, FHA and any other state or local government housing finance agency in which such applicant has been or is a principal;

2. Except as shown on such certificate, states that:

(i) No mortgage on a project listed on such certificate has ever been in default, assigned to the United States government or foreclosed, nor has any mortgage relief by the mortgagee been given;

(ii) There has not been a suspension or termination of payments under any HUD assistance contract in which the applicant has had a legal or beneficial interest;

(iii) Such applicant has not been suspended, debarred or otherwise restricted

by any department or agency of the federal government or any state government from doing business with such department or agency because of misconduct or alleged misconduct; and

(iv) The applicant has not defaulted on an obligation covered by a surety or performance bond.

3. If such applicant cannot certify to each of the above, such applicant shall submit a signed statement to explain the facts and circumstances which such applicant believes will explain the lack of certification. The city may then determine if such applicant is or is not qualified.

b. The experience of the applicant in developing, financing and managing multiple-family housing projects.

c. Whether the applicant has been found by the United States Equal Employment Opportunity Commission or the state human rights commission to be in noncompliance with any applicable civil rights laws.

(23) If the applicant is a mortgage lender, the city shall consider, among other things:

a. The financial condition of the applicant;

b. The terms and conditions of any loans to be made;

c. The aggregate principal balances of any loans to be made to each applicant compared with the aggregate principal balances of the loans to be made to all other applicants;

d. The city's assessment of the ability of the applicant or its designated servicer to act as originator and servicer of mortgage loans for any multi-family housing programs or other programs to be financed; and

e. Previous participation by the applicant in the MFA's programs and HUD, FHA, or RHS programs.

(24) All applications shall contain a verification signed by the applicant before a notary public that the information provided, upon penalty of perjury, is true and correct to the best of the applicant's information, knowledge, and belief.

(b) *Submission procedures.*

(1) *Time, place and method of submission delivery.*

a. If the city has issued an RFP, all applications must be received by the city no later than whatever deadline has been set forth in the RFP; otherwise, all applications must be received by the city by whatever deadline the city has established in connection with the respective award or grant. So that any qualifying grantees may be selected prior to January of the year in which any housing assistance grant would be made, the city shall issue any RFP's, solicit any applications, or otherwise identify any qualifying grantees no later than October 15 of any year in order to allow sufficient time for prospective applicants to respond to any such RFP, solicitation, or otherwise, and further to allow the MFA not less than 45 days in which to review any such applications or otherwise determine or confirm that an applicant is a qualifying grantee under the Act and consistent with the rules.

b Applications shall be submitted by applicants to the city in the form and by the time as required by the city and shall contain all information which is required by the Act, the rules, any RFP which may have been issued, and otherwise required by the city.

(2) *Additional factors.* The application procedures shall take into consideration:

a. Timely completion and submission to the city of an affordable housing program application or other appropriate response to any solicitation by the city;

b. Timely submission of all other information and documentation related to the program required by the city or as set forth in the rules;

c. Timely payment of any fees required to be paid to the city at the time of submission of the application; and

d. Compliance with program eligibility requirements as set forth in the Act and the rules.

(3) *Submission format.*

a. City or MFA forms must be used when provided and no substitutions will be accepted; however attachments may be provided as necessary.

b. An applicant's failure to provide or complete any element of an application, including all requirements of the city or as may be listed on any RFP, may result in the rejection of the application prior to review.

c. Illegible information, information inconsistent with other information provided in the application, and/or incomplete forms will be treated as missing information and evaluated accordingly.

d. The city and the MFA reserve the right to request further information from any applicant so long as the request is done fairly and does not provide any applicant an undue advantage over another.

e. The city in its discretion may cancel any RFP or reject any or all proposals in whole or part submitted by any applicant.

f. Neither the city nor the MFA shall be responsible for any expenses incurred by an applicant in preparing and submitting an application. However, the city or the MFA, as applicable, may establish and collect fees from applicants who file applications. Notice that fees will be charged and the amount of any such fees shall be included by the city or the MFA, as applicable, in any RFP or otherwise shall be advertised as part of the application solicitation process.

(c) *Review by the city.* On receipt of an application, the city shall:

(1) Determine whether the application submitted by the applicant is complete and responsive;

(2) Determine whether the applicant is a qualifying grantee as defined herein and the Act;

(3) Review and analyze whether the applicant has shown a demonstrated need for activities to promote and provide affordable housing and related services to persons of low or moderate income;

(4) Determine whether the applicant has demonstrated experience related to providing housing or services to persons of low or moderate income, as well as experience and/or the capacity to administer the affordable housing program or project for which the applicant has applied;

(5) Determine whether the applicant's proposal provides a plan for coordinating with other service providers in the community; whether the applicant's plan addresses how low income or moderate income individuals or families in need of housing and/or housing related supportive services can receive supportive services and referrals to federal, state and local resources; and, whether the applicant's plan addresses outreach efforts to reach the population to be served as identified by the city in any RFP or otherwise;

(6) Determine whether the applicant has support from public service agencies, or such other support as may be required by the city and/or the MFA in its discretion, for its proposed services in the community. Public service agencies shall include, but are not limited to, any entities that support affordable housing and which believe that the program or project proposed by the applicant is worthy and advisable, but which are not involved, either directly or indirectly, in the affordable housing program or project for which the applicant is applying;

(7) Ascertain the amount of any matching funds or in-kind services specific to the program which may be utilized by the applicant in connection with the program;

(8) Ascertain whether any local, private, or federal funds will be used by the applicant in connection with the specific grant for which the applicant is applying;

(9) Ascertain whether the applicant has and can demonstrate the capability to manage the implementation of the program for which the applicant is applying;

(10) If applicant is a prior recipient of either a housing assistance grant, affordable housing funds and/or other program funds, confirm that the applicant had no outstanding findings or matters of noncompliance with program requirements from the city or the MFA, as applicable 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;

(11) If applicant is a prior recipient of either a housing assistance grant, affordable housing funds and/or other program funds, confirm that the applicant reasonably committed and expended the funds under the prior program and/or met anticipated production levels as set forth in any contract with the city or the MFA, as applicable, for those prior program funds;

(12) Evaluate the applicant's proposal in part based upon the applicant's current financial audit;

(13) Evaluate the applicant's proposed budget for the project for which the applicant is applying for affordable housing funds or a housing assistance grant which proposed budget must be approved by the city before applicant can be approved as a qualifying grantee and any expenditure of grant funds under the Act or granted property is transferred to the applicant;

(14) On receipt of an application from a builder, the city will analyze the builder's ability to construct and sell sufficient residential housing units to persons of low or moderate income within the time or times as may be required by the city.

(15) The city may consider whatever factors it deems appropriate to ensure a reasonable geographic allocation for all affordable housing programs within the city.

(d) *Deadline for review of application.* Unless the period is extended for good cause shown, the MFA shall act on applications within 45 days of the date of the MFA's receipt of an application that the MFA deems to be complete and, if not acted upon, the application shall be deemed approved.

(e) *Certification by the city to the MFA.* The city shall so certify in writing to the MFA upon:

(1) Completion of its review of the application;

(2) Determination that the application is complete;

(3) Determination that the requirements of the rules and the Act have been satisfied; and

(4) Determination that the applicant is a qualifying grantee.

(f) *Review by the MFA.* The MFA upon its receipt of the certification from the city may, in its discretion, review the application and any of the materials submitted by the applicant to the city. The MFA may also request any additional information from the applicant, which it may require in order to determine whether the applicant is a qualifying grantee under the Act and the application is complete. The MFA will then notify the city of its determination of whether or not the application is complete and that the requirements of the Act and the rules have been satisfied and the applicant is a qualifying grantee. Unless the period is extended for good cause shown, the MFA shall act on an application within 45 days of its receipt of any application, which the MFA deems to be complete, and, if not acted upon, the application shall be deemed to be approved.

(g) *Notification of acceptance.* The city, upon completion of its review of the application and an evaluation of the criteria for approval of the application as set forth in the Act, in this article, the rules and in any RFP issued by the city and upon its determination that the applicant is a qualifying grantee, and upon its receipt of notification from the MFA that it agrees that the application is complete and that the Act and the rules have been satisfied and the applicant is a qualifying grantee, by written notice shall notify each applicant which has submitted an application of the approval or disapproval of its application. Upon approval of its application, the applicant shall be considered approved to participate in the affordable housing program. The city's and the MFA's determination of any application shall be conclusive.

Sec. 13-105. - Additional requirements.

Upon acceptance, the following additional requirements shall apply to any applicant, who is a qualifying grantee:

(1) *Contractual requirements.* The qualifying grantee shall enter into one or more contracts with the city, which contract(s) shall be consistent with the Act and subject to the review of the MFA, in its discretion, and which contract(s) shall include remedies and default provisions in the event of the

unsatisfactory performance by the qualifying grantee;

(2) *Security provisions; collateral requirements.* In accordance with the Act and the rules, the city shall require the qualifying grantee to execute documents, which will provide adequate security against the loss of public funds or property in the event the qualifying grantee abandons or fails to complete the affordable housing project, and which shall further provide, as may be permitted by law, for the recovery of any attorneys' fees and costs which the city and/or the MFA may incur in enforcing the provisions of the rules, the Act and/or any agreement entered into by the city and the qualifying grantee, and which documents may include, but are not limited to the following: note, mortgage, loan agreement, land use restriction agreement, restrictive covenant agreements and/or any other agreement which the city may require in order to allow for any funds which the qualifying grantee may receive under a housing assistance grant to be adequately secured and to allow the city and the MFA to ensure that such funds shall be utilized by the qualifying grantee in accordance with the Act and the rules;

(3) *Performance schedule and criteria.* The qualifying grantee shall be required to abide by a reasonable performance schedule and performance criteria which the city, in its discretion, may establish; and

(4) *Examination of books and records.* The qualifying grantee shall submit to and the city shall cause to be made such examinations of the books and records of each qualifying grantee as the city and/or the MFA deems necessary or appropriate to determine the qualifying grantee's compliance with the terms of the Act, the rules and any contracts between the qualifying grantee and the city. The city and/or the MFA may require each qualifying grantee to pay the costs of any such examination.

(5) *Infrastructure cost reimbursement contracts.*

a. *Cost reimbursements.* Payment to a qualifying grantee under cost reimbursable contract provisions shall be made upon the city's receipt from the qualifying grantee of certified and documented invoices for actual expenditures allowable under the terms of any agreement between the qualifying grantee and the city.

b. *Cost reimbursements for units of service.* Payment under any unit cost contract provisions shall be made upon the city's receipt from the qualifying grantee of a certified and documented invoice showing the number of units of service provided during the billing period.

c. *Rate at which costs incurred.* Under unit cost or cost reimbursable contracts, it is anticipated that costs will be incurred by the qualifying grantee at an approximate level rate during the term of any agreement between the qualifying grantee and the city. If the city determines that the qualifying grantee is under-spending or overspending, then the city may reduce the budget and/or exercise such other budgetary fiscal controls it deems appropriate.

d. *Invoices.* Qualifying grantees shall not submit invoices more than once a month, unless written approval is obtained in advance from the city. Failure to submit invoices within 20 days of the close of the month for which payment is sought may result in the non-availability of funds for reimbursement.

e. *No dual application of costs.* The qualifying grantee shall certify that any direct or indirect costs claimed by the qualifying grantee will not be allocable to or included as a cost of any other program, project, contract, or activity operated by the qualifying grantee and which has not been approved by the city in advance in writing.

f. *Prohibition of substitution of funds.* Any affordable housing funds or other amounts received by qualifying grantee may not be used by qualifying grantee to replace other amounts made available or designated by state or local governments through appropriations for use for the purposes of the Act.

g. *Cost allocation.* If required by the city, the qualifying grantee shall clearly identify and distribute all costs incurred pertaining to the affordable housing project by a methodology and cost allocation plan at times and in a manner prescribed by, or acceptable to the city.

(6) *Additional information.* Qualifying grantees shall provide the city with any and all information which the city reasonably may require in order for it to confirm that the qualifying grantees continue to

satisfy the requirements of the Act and the rules throughout the term of any contract and/or any affordability period (defined below) or otherwise as may be required by the city or the MFA in its discretion. At a minimum, on an annual basis, the city shall certify to the MFA in writing that the qualifying grantee is still in compliance with the Act and the rules.

Sec. 13-106. - Affordable housing requirements.

(a) All affordable housing funds or housing assistance grants awarded under the Act are to be used by qualifying grantees for the benefit of persons of low or moderate income subject to the provisions of the Act 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, weatherized, 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 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 (defined below), which ever is longer.

(2) *Multi-family property.*

a. *Single apartment within a multi-family property.* Qualifying grantees shall agree that, if any single apartments are to be rehabilitated, weatherized, converted, leased, repaired, constructed, or otherwise are to benefit from affordable housing funds, those apartments shall be leased to persons of low or moderate income at the time of any such award. Qualifying grantees, who are the landlords and/or owners of such properties, shall further agree to contribute at least 60 percent of the cost of the rehabilitation, weatherization, conversion, lease, repair, and/or construction. 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 uncured 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.

b. *Multiple apartments.* Qualifying grantees shall agree that, if multiple apartments or an entire multi-family property are to be acquired, rehabilitated, weatherized, 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, they shall maintain not less than 60 percent of the housing units 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, which ever is longer.

(3) *Nonresidential property.* Qualifying grantees shall agree that they shall maintain any nonresidential property which has been acquired, rehabilitated, weatherized, 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 a facility which provides housing related-services to persons of low or 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 or the affordability period, which ever is longer.

(b) *Housing assistance grant affordability requirements.* Qualifying grantees shall agree that they shall maintain any land or buildings received as a housing assistance grant either as either single-family or multi-family affordable housing in accordance with paragraphs (a)(1) and (a)(2) of this section or as a facility which provides housing related-services to persons of low or moderate income in accordance with paragraph (a)(3) of this section, as applicable, for the duration of the affordability period. Qualifying grantees shall agree that they shall maintain any land or buildings for which they have received the

costs of infrastructure as a housing assistance grant either as either single-family or multi-family affordable housing or as a facility which provides housing related-services to persons of low or moderate income, as applicable, 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, county or municipality shall apply.

(c) *Affordability period defined.* If the fair market value of any housing assistance grant or the total amount of affordable housing funds that have been or will be awarded, loaned, donated, or otherwise conveyed to the qualifying grantee is from:

(1) $1.00 to $14,999.99, then the affordability period shall be not less than five years;

(2) $15,000.00 up to and including $40,000.00, then the affordability period shall be not less than ten years;

(3) $40,000.01 up to and including $100,000.00, then the affordability period shall be not less than 15 years;

(4) Greater than $100,000.01, then the affordability period shall be not less than 20 years.

(d) *Affordability period extension.* 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. Notwithstanding the foregoing, at the discretion of the MFA, weatherization funds conveyed from the state to the MFA and/or any other similar conveyances where an affordability period is not practical, shall not be subject to the affordability period requirements of this section; but nevertheless, any such conveyances may be subject to recapture on some pro-rated basis as determined by the city and/or the MFA.

Sec. 13-107. - Consent to jurisdiction.

Each qualifying grantee shall consent to the jurisdiction of the courts of the state over any proceeding to enforce compliance with the terms of the Act, the rules, this article, and any agreement between the qualifying grantee and the city and/or the MFA.

Sec. 13-108. - Recertification.

The qualifying grantee must meet the requirements of the Act, the rules, this article, and any applicable ordinance both at the time of any award and through out the term of any grant and contract related thereto. The city may establish procedures for re-certifying qualifying grantees from time to time. Qualifying grantees which 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.

Sec. 13-109. - Compliance with the law.

Qualifying grantee shall provide the city with any certifications or other proof which 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.

Sec. 13-110. - Extension of affordable housing programs.

The city and/or MFA shall have the power to create variations or extensions of such affordable housing programs created under this article or the MFA shall have the power to create additional programs that comply with the Act and the rules.

Sec. 13-111. - County, municipality, school district, or post secondary educational institution grant requirements.

(a) If a county or a municipality makes a housing assistance grant under the Act, it shall provide the MFA with documentation, which confirms that it has an existing valid affordable housing plan or housing elements contained in its general or comprehensive plan. The county or municipality shall also provide the MFA with a copy of the proposed ordinance and with a written certification that the proposed grantee is in compliance with Act and the rules so that the MFA may confirm both that the ordinance is in compliance with the Act, that the application is complete, and that the proposed grantee is a qualifying grantee under the Act and the rules. The proposed ordinance must authorize the grant, state the requirements and purpose of the grant, and authorize the transfer or disbursement to the qualifying grantee only after a budget is submitted to and approved by the governing body of the county or municipality. The ordinance may provide for matching or using local, private or federal funds either through direct participation with a federal agency pursuant to federal law or through indirect participation through the MFA. The proposed ordinance shall comply with the Act and the rules, as amended. The proposed ordinance shall be effective subject to local ordinance requirements for publication and filing. The city, in its discretion, may also hold any award of affordable housing funds or any housing assistance grant made by any county or municipality in suspense pending the issuance by the city of any RFP or pending the award of the affordable housing funds or of the housing assistance grant by the city to the qualifying grantee without the issuance of an RFP by the city. Any award of affordable housing funds or a housing assistance grant by a county or a municipality shall subject the qualifying grantee of the award or grant to the oversight of the city and the MFA under this article, the Act, and the rules.

(b) If a school district or a post-secondary educational institution intends to make a housing assistance grant, then it shall provide the MFA with a written certification that the proposed grantee is in compliance with the Act and the rules so that the MFA may confirm that the application is complete and the proposed grantee is a qualifying grantee under the Act and the rules. Any transfer of land by a school district to a county or municipality to be further granted as part or all of an affordable housing grant shall be subject to the additional limitations contained in the Act that the school district and the governing body of the city enter into a contract that provides the school district with a negotiated number of affordable housing units that will be reserved for employees of the school district. Any transfer of land by a post-secondary educational institution shall be subject to the additional limitations contained in the Act that:

(1) The property transferred shall be granted by the county, municipality or tribal government as part of all of an affordable housing grant; and

(2) The governing board of the post-secondary educational institution and the governing body of the county, municipality or tribal government enter into a contract that provides the post-secondary educational institution with affordable housing units.

As used in this section, post-secondary educational institution means a state university or a public community college. The city, in its discretion, may also hold any housing assistance grant made by any school district or post-secondary educational institution in suspense pending the issuance by the city of any RFP or pending the award of the housing assistance grant by the city to the qualifying grantee without the issuance of an RFP by the city. Any award of a housing assistance grant by a school district or a postsecondary educational institution shall subject the qualifying grantee of the grant to the oversight of the city and the MFA under this article, the Act, and the rules.

Sec. 13-112. - 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 nondiscrimination and equal opportunity, and the city and the MFA shall require compliance by all qualifying grantees with all applicable federal and state laws and regulations relating to affirmative action, nondiscrimination and equal opportunity.

Sec. 13-113. - Administration.

The city and the MFA shall administer any affordable housing programs in accordance with provisions of the Act, the rules, any applicable state and federal laws and regulations as each of which may be amended or supplemented from time to time. The city and the MFA, in establishing, funding and administering the affordable housing programs and by making, executing, delivering and performing any award, contract, grant or any other activity or transaction contemplated by the Act, shall not violate any provision of law, rule or regulation or any decree, writ, order, injunction, judgment, determination or award and will not contravene the provisions of or otherwise cause a default under any of its agreements, indentures, or other instruments to which it may be bound.

Secs. 13-114—13-130. - Reserved.

Subdivision 1. - AFFORDABLE HOUSING IMPACT FEE WAIVER

Sec. 13-131. - Title.
Sec. 13-132. - Authority and purpose.
Sec. 13-133. - Definitions.
Sec. 13-134. - Administration.
Sec. 13-135. - Program established.
Sec. 13-136. - Qualified affordable housing.
Sec. 13-137. - Process established.
Sec. 13-138. - Affordability restrictions; recapture of funds.
Sec. 13-139. - Funding.
Sec. 13-140. - Appeals.
Secs. 13-141. – 13-199 - Reserved.

Sec. 13-131. - Title.

This article is hereby titled the "Affordable Housing Impact Fee Waiver Ordinance for the City of Las Cruces."

Sec. 13-132. - Authority and purpose.

This article is established pursuant to:

(1) The Development Fee Act, NMSA 1978 § 5-8-1 et seq. (the Development Fee Act);
(2) The Affordable Housing Act, NMSA 1978, § 6-27-1 et seq. (the Affordable Housing Act);
(3) The city's Municipal and Development Codes, 1997, (LCMC 1997), as amended, chapter 13, housing, and more specifically articles I (fair housing) and II (affordable housing general oversight) of said chapter, and chapter 33 (development impact fee) et seq.

The purpose of this article is to implement a development fee waiver or alternative payment program for qualifying entities, developers, and owners of and for the development of affordable housing projects in the city, in accordance with the Development Fees Act, and to further ensure compliance with both the Affordable Housing Act and the city's affordable housing general oversight and fair housing articles, LCMC 1997, as amended, § 13-1 et seq.

Sec. 13-133. - Definitions.

Affordable Housing Act shall mean the New Mexico Affordable Housing Act, NMSA 1978, § 6-27-1 et seq., as amended.

Administering city department means the community development department.

Affordable housing means any housing development built to benefit those whose income is at or below 80 percent of the area median income; and who will pay no more than 30 percent of their gross monthly income towards such housing or as may be defined in accordance with New Mexico State Statute, § 5-8-2, NMSA, 1978, as may be amended in the future.

Affordable housing projects shall mean any work or undertaking, whether new construction, acquisition and expansion of existing residential housing, or conversion approved by the city and subject to the application of required development impact fees and/or the city or the MFA for the primary purposes as allowed by the Affordable Housing Act.

Alternative payment means the assessment of any established and eligible development impact fee, and the payment of said development impact fee from any identified city source, fund, or other source than by the qualifying entities, developers or owners for the creation or conversion of affordable housing and affordable housing projects. Other city fund does not include existing city utility department development impact fee or rate-based funds.

Development Impact Fee Act shall mean the New Mexico Development Fee Act, NMSA 1978, § 5-8-1 et seq., as amended.

Fee affected department means any department affected by the fee waiver or alternative payment of development impact fees, including but not limited to the utilities department for water and wastewater, and the facilities department for parks, and any other future departments affected by the adoption of new development impact fees.

Fee waiver means the assessment of any established and eligible development impact fee, without requiring the payment of said development impact fee at the time of building permit issuance for the creation or conversion of affordable housing and affordable housing projects. For waived fees related to enterprise funds, such as water and wastewater development impact fees, these fees will be paid from other non-utility funding sources.

Sec. 13-134. - Administration.

The administering city department shall be responsible for the administration of this article in cooperation with the fee affected departments and the city's financial services department.

Sec. 13-135. - Program established.

There is to be created and established a voluntary program to be known as the affordable housing impact fee waiver program for the waiver of or the alternative payment of city-established development impact fees for all types of new affordable housing types created in the city on a fiscal year basis. This impact fee waiver program is an established affordable housing program in accordance with and as defined by the New Mexico Affordable Housing Act and the city's affordable housing general oversight article, and shall be prescribed in a handbook to be adopted by separate resolution by the city council.

Sec. 13-136. - Qualified affordable housing.

(a) For purposes of providing fee waivers or alternative payment for qualifying affordable housing projects, the definition of affordable housing, as contained in section 13-133 of this article shall govern.

(b) Nothing within this article or within the established program shall prevent the use of the fee waiver or alternative payment for mixed-use or mixed-market (both market-rate and affordable housing) projects; however, the fee waiver or alternative payment shall be limited to only those eligible and restricted affordable housing projects and/or units of the mixed-use or mixed-market projects.

Sec. 13-137. - Process established.

(a) Each year, as part of the city's annual budget adoption resolution and in accordance with § 13-139, the city council shall establish a maximum funding or limitation amount for the fee waiver and/or alternative payment amount for each type of development impact fee assessed by the city.

(b) The administering department shall establish procedures in accordance with article II and section 13-135 of this chapter for qualifying, specific affordable housing projects (i.e. residential, transitional housing facility, and multiple housing projects); qualifying grantees, recertification, and other program requirements. Generally, the qualifying grantee and projects shall be accomplished through an annual application or proposal process by the administering department.

(c) Following the established procedures, the administering department shall grant either fee waiver and/or alternative payment allocations to individual projects each fiscal year, until such time as all funds or allocations have been allocated and in consultation with the fee affected department.

(1) Should the allocations be exhausted in and prior to the end of the fiscal year, then qualifying grantees and projects may either pay the full applicable development impact fee or wait until the next fiscal year or a special allocation by the city council during the most current fiscal year.

(2) The waiver or alternative payment shall not be retroactive to a project in which a building permit has been issued in a prior allocation period or prior fiscal year.

(d)Provided funds remain within the fee waiver or alternative payment fund, the administering department shall provide the qualifying project with a voucher equal to the full amount of all development impact fees. However, due to limitations in funds, the administering department may issue a voucher for an amount less than the full development impact fee for any one development fee category for any given project. For any voucher less than the full development impact fee, the remaining impact fee balance shall be the responsibility of the qualifying grantee, developer, or owner.

(1) The voucher shall serve as verification of eligibility to the qualifying grantee and project.

(2) The qualifying grantee shall submit the voucher to the permitting department, along with all other permit requirements to serve as payment for the development fees.

(3) The permitting department will provide the administering department with the corresponding permit information, along with the used voucher, so that the fee affected and finance departments, will be provide necessary reporting information, including tracking of available allocations and allocation reductions. This action shall authorize appropriate transfer from the fee waiver and/or alternative fund to the appropriate development impact fee fund.

(4) The administering department shall also provide necessary reporting requirements to the city council and the mortgage finance authority in accordance with the Affordable Housing Act.

Sec. 13-138. - Affordability restrictions; recapture of funds.

(a) For those qualifying grantees and projects, whereby development impact fee waivers or alternative payments have been made, the affordability restriction shall be based on cumulative value of the combined fee waiver and/or alternative payment for that specific project.

(b) The affordability restriction period shall be established based on § 13-106 of this Code. The affordability restriction period shall be established through the securing and recording of a restrictive covenant against the property within the records of the clerk of the county or other acceptable method that ensures the preservation of the affordable housing project or units.

(c) Recapture and re-use of the funds/allocations shall be in accordance with § 13-106 and § 13-139 of this Code.

Sec. 13-139. - Funding.

(a) The city council may, under its powers, appropriate necessary funds and or fee waiver limitations and adopt necessary and appropriate rules and regulations to implement this article. Utility funds shall not be used as a funding source for waived fees.

(b) Any appropriated non-utility funds, including those from the general fund, other federal, state, or other city funds, shall be used and maintained by the administering department to carry out the development impact fee waiver program.

(1) With exception provided for development impact fees that have restrictions due to bond obligations, any monies received in such fee waiver or alternative payment fund shall be available for making and administering future fee waivers for the all impact fees or as mandated by the state or federal agency or funding restrictions, where applicable.

(2) Should monies be recaptured, prior to the qualified affordable housing unit's full affordability period, due to conversion or loss of the affordable housing unit, then such recaptured funds shall be credited to the appropriate fee waiver for which it was originally waived or the funding source of the waived fees. Said recaptured funds shall be used for future development impact fee payment, unless other restrictions from the original funding source restrict their use, then such restriction shall apply.

(3) Recaptured monies may, as determined by city council and provided the fee waiver was not provided using non-city funds, be deposited in a local affordable housing trust or similar fund, should one exist.

Sec. 13-140. - Appeals.

(a) *Grounds for appeals.* Any aggrieved qualifying grantee or party, owner, tenant or other person affected by a decision of the program staff in the administration or enforcement of this article may appeal such decision to the community development director, excluding any federal or state requirements for determining income eligibility.

(b) *Authority of the community development director.* When an appeal alleges that there is an error in any requirement, decision, or determination by the staff in the enforcement of this article, the community development director may, after all other procedures established by the provision of this article have been exhausted, reverse, or affirm any requirement, decision or determination of the staff or make any change in a requirement, decision or determination of the staff.

(c) *Appeal of the community development director.* Any aggrieved qualifying grantee or party, owner, tenant, or other person affected by a decision of the community development director, may appeal such decision to the city council. Such appeal must be initiated in writing within 30 days after all other procedures established by this article have been exhausted.

(d) *Stay of proceedings.* An appeal shall stay all proceedings in furtherance of the action appealed unless the community development director, from whom the appeal is taken, certifies that by reason of facts a stay would cause imminent peril of life and property.

(e) *Appellant responsibility in appeals.* All appellants under this section are required to submit in writing to the city council a detailed statement of the grounds of their appeal, no later than 30 days after the decision is appealed. The written appeal shall state specifically the objections of the decision and the reasons for the appeal.

(f) *Notice of decisions.* A notice of the decision of the city council shall be sent by mail to all applicants no later than ten days after the decision is made. Said notice of decision shall be placed in the applicant's file.

Secs. 13-141 – 13-199. - Reserved.

Subdivision 2. - AFFORDABLE HOUSING LAND BANK AND TRUST FUND ORDINANCE

Sec. 13-200. - Title.
Sec. 13-201. - Authority.
Sec. 13-202. – Legislative Findings.
Sec. 13-203. - Purpose.
Sec. 13-204. - Definitions.
Sec. 13-205. - Administration.
Sec. 13-206. – Affordable Housing Land Bank established.
Sec. 13-207. – Affordable Housing Trust Fund established.
Sec. 13-208. – Advisory Committee created.
Sec. 13-209. – Award of Trust Funds or Land Bank disposals and accountability.
Sec. 13-210. –Use of Funds and Land for eligible activities, Matching funds, Conflict with Federal Requirements.
Sec. 13-211. – Bond Projects; Bond Proceeds as part of Housing Trust Fund.
Sec. 13-212. –Interconnection, Severability, and Consent of Jurisdiction.
Sec. 13-213. – Appeals
Sec. 13-214. - 13-249 – Reserved.

13-200. Title.

This Ordinance is hereby titled the "Affordable Housing Land Bank and Trust Fund Ordinance" for the City of Las Cruces.

13-201. Authority.

This Ordinance is established pursuant to the express statutory authority conferred upon municipalities to enact or provide:

(a) ordinances pursuant to its police power, Section 3-17-1B NMSA 1978;
(b) a housing code pursuant to Section 3-17-6A(8) NMSA 1978;
(c) affordable housing pursuant to subsections E and F of Article 9, Section 14 of the New Mexico Constitution;
(d) the Affordable Housing Act, NMSA 1978, §6-27-1 et seq. (the Affordable Housing Act);
(e) The City of Las Cruces Municipal Codes, 1997, (LCMC 1997), as amended, Chapter 13, Housing, specifically Article II (Affordable Housing General Oversight) of said chapter; and

in particular to provide land for or a portion of the cost of financing and/or authorizing housing assistance grants for the purpose of affordable housing pursuant to Section 6-27-5 NMSA 1978 (2007), and pursuant to any and all such other authority as may be applicable including but not limited to the City's recognized authority to protect the general welfare of its citizens. This ordinance is adopted pursuant to the City of Las Cruces' power under its municipal charter which was adopted effective March 5, 1985, pursuant to the Municipal Charter Act Section 3-15-1 to 3-15-16 NMSA 1978 and Article 10, Section 6 of the Constitution of the State of New Mexico.

13-202. Legislative Findings.

The governing body has determined that:

(a) The City has the authority to and should actively participate in the creation of a comprehensive housing services delivery system that addresses the full continuum of housing needs from the homeless to the homebuyer, especially in the area of affordable housing;

(b) The City has identified the need for all types of affordable housing as part of the City's most recent Consolidated Plan (i.e. 2006-2010 HUD Consolidated Plan adopted by Resolution 06-317 on May 1, 2006), and the City's Affordable Housing Strategic Plan adopted by Resolution 10-057 on August 17, 2009;

(c) The cost of land is an important factor in the total cost of developing affordable housing;

(d) The cost of financing and the lack of affordable capital can be significant barriers to the creation and preservation of affordable housing and can be an obstacle in providing housing that addresses multiple community housing needs and priorities; and

(e) It is in the public interest to create both an Affordable Housing Land Bank and Affordable Housing Trust Fund that can work together or singularly in the creation and/or preservation of affordable housing.

13-203. Purpose.

The purpose of this Ordinance is to develop both a land bank and housing trust fund for the development of affordable housing projects in the City of Las Cruces, in accordance with both the Affordable Housing Act and the City of Las Cruces Affordable Housing General Oversight Ordinance, LCMC 1997, as amended, §13-100 to 13-113. Further, this ordinance is to:

(a) identify methods to allow for the dedication of land to the Affordable Housing Land Bank (AHLB) for the City of Las Cruces from City and other sources;

(b) identify the initial source of funds which shall either be dedicated to qualified affordable housing projects, either through loans or grants and of which the proceeds from said loans shall be the Affordable Housing Trust Fund (AHTF) for the City of Las Cruces; and

(c) restrict allowable uses of AHLB and AHTF to provide or pay all or a portion of the costs of acquisition, development, construction, renovation or conversion, financing, operation or purchase of affordable housing or infrastructure to support affordable housing which meets agreed upon community housing goals and objectives.

The AHLB and AHTF are not intended to be the sole sources of land or funding for affordable housing eligible activities or projects and support or contributions from the AHLB or AHTF are expected to develop additional sources of funds.

13-204. Definitions.

AHLB means the affordable housing land bank of the City of Las Cruces, NM.

AHTF means the affordable housing trust fund of the City of Las Cruces, NM.

Affordable Housing Act shall mean the New Mexico Affordable Housing Act, NMSA 1978, §6-27-1 et seq., as amended.

Administering city department means the community development department.

Affordable housing means residential housing primarily for persons or households of low, moderate, or middle income.

Affordable Housing Projects shall mean the same as defined within the City's Affordable Housing General Oversight Ordinance or as defined with Article II Section 13-102, of this Municipal Code, as amended.

Allowable uses means those uses for the AHLB or AHTF which are set forth in Section 13-203, 13-206, and 13-207.

Committee means the City's Affordable Housing Trust Fund and Land Bank Advisory Committee, who shall serve the City Council.

Community housing priorities means priorities established from time to time by the City Council of the City of Las Cruces to guide the allocations of funds from the AHTF or selling, leasing, or granting of land from the AHLB.

13-205. Administration.

The administering city department shall be responsible for the administration of this article.

13-206. Affordable Housing Land Bank Established.

(a) There is hereby established a land bank, to be known as the City of Las Cruces Affordable Housing Land Bank (AHLB). The AHLB is a part of the City of Las Cruces, to be managed and operated by the administering department or through another entity established through City procurement processes, by which land can be donated or sold to or disposed from for the purpose of developing qualified affordable housing.
(b) Land disposal may be done by grant or through loan, and should the land be sold, the proceeds are to be placed in the Affordable Housing Trust for use in accordance with the AHTF policies and procedures established under this Ordinance.
(c) The City shall, through resolution, establish the policies and procedures for the operation of the AHLB.
(d) At a minimum, the AHLB shall limit the land for disposal by the following amounts:
    (1) Grants: Not to exceed 40% of the land bank holdings based on the number of lots, tracts, or parcels, and
    (2) Sells: Not less than 50% of the land bank holdings shall be sold for the development through the issuance of Affordable Housing Project Loans.
(e) The City shall follow the affordability restrictions and recapture of fund procedures established in Section 13-106 of the Las Cruces Municipal Code, 1997, as amended.
(f) The administering department shall establish procedures in accordance with Article II, Sections 13-102 through 13-106, and Section 13-110 of this chapter for qualifying, specific affordable housing projects (i.e. residential, transitional housing facility, and multiple housing projects); qualifying grantees, recertification, and other program requirements.

13-207. Affordable Housing Trust Fund Established.

(a) There is hereby established a trust fund to be known as the City of Las Cruces Affordable Housing Trust Fund (AHTF). The AHTF is a part of the City of Las Cruces, to be managed and operated by the administering department or through another entity established through City procurement processes, by which trust funds can be granted or loaned for the purposes of developing qualified affordable housing.

(1) The AHTF shall consist of all distributions and appropriations made to the fund. Earnings of the fund shall be credited to the fund, and unexpended and unencumbered balances in the fund shall not revert to any other funds. The City Council shall serve as both the trustee and investment agent for the fund.

(2) The fund shall consist of revenue from the following sources, recurring or not:

a. Proceeds from the use of bond funds to develop affordable housing projects,
b. Appropriations and transfers from the general fund,
c. Donations or any private contributions to the fund,
d. Special revenue streams from other Local, State, Federal and philanthropic sources,
e. Sale of Land from the land bank,
f. Any other money appropriated or distributed to the fund, and
g. 10% of all proceeds from City-owned land sales or other city-established land development projects, as of the effective date of this ordinance, excluding those lands purchased or sold from such sources that have certain restrictions or limitations from the original land purchase source (i.e. properties purchased with restrictions or restricted funding sources that require re-payment or rededication to a limiting use) and those properties sold from the AHLB.

(b) The City shall, through resolution, establish the policies and procedures for the operation of the AHTF. At a minimum, in any given fiscal year, the AHTF shall restrict the use of fund proceeds in the following amounts:

1. Affordable Housing Project Grants – not more than 39%,
2. Affordable Housing Project Loans – not less than 50%, and
3. Program Administration – not more than 10%.

(c) The City shall follow the affordability restrictions and recapture of fund procedures established in Section 13-106 of the Las Cruces Municipal Code, 1997, as amended.

(d) The administering department shall establish procedures in accordance with Article II, Sections 13-102 through 13-106, and Section 13-110 of this chapter for qualifying, specific affordable housing projects (i.e. residential, transitional housing facility, and multiple housing projects); qualifying grantees, recertification, and other program requirements. Generally, the qualifying grantee and projects shall be accomplished through an annual application or proposal process by the administering department.

13-208. Advisory Committee created.

(a) The Affordable Housing Trust Fund and Land Bank Advisory Committee is hereby created, in accordance with and as established in Article IV, Division 3, Subdivision X, of Chapter 2 of this Municipal Code, as amended.

(b) The Committee shall review all project applications and make recommendations to the City Council for funding them.

(c) The Committee shall not be involved in or advisory to the Council in matters relating to the investment of the Fund.

(d) The Committee shall adopt rules and/or procedures for the review of and standards for recommending applications for loans or grant projects, which shall be adopted by Resolution of the City Council.

13-209. Award of Trust Funds or Land Bank disposals and accountability.

(a) Trust funds and land bank dispositions shall be awarded on a competitive basis. The administering department shall work with the Advisory Committee to develop an application and

applicant scoring mechanism that encourages applicants to develop solutions that are responsive to local needs and are consistent with sound housing policy.

(b) The City Council shall be responsible for ensuring that on an annual basis the total funds awarded for housing activities, including the value of the land disposed from the Land Bank, attract at least two times as much funding from other sources.

13-210. Use of Funds and Land for eligible activities, Matching funds, Conflict with Federal Requirements

(a) Money from the trust fund and lands disposed from the land bank and any matching funds from other sources may be used to finance in whole or in part any loans or grant projects that will provide affordable housing. Money from the trust fund may also be used to reimburse the City administering department for actual expenses incurred in administering the fund in an amount not exceed limits established elsewhere within this Article.

(b) Money from the fund may be used to match federal, local, state, or private money to be used for projects authorized under this Article.

(c) If any part of the Trust Fund or Land Bank is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state and/or the City, the conflicting part of that act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of that act in its application to the agencies concerned. The rules adopted pursuant to the provisions of this Article shall meet those federal requirements that are a necessary condition to the receipt of federal funds by the City.

13-211. Bond Projects; Bond Proceeds as part of Housing Trust Fund.

(a) The City, at its discretion and within established authorities, may issue bonds for the creation of affordable housing projects. Bonds may be from General Obligation, Gross Receipts Tax Bond Recycling, or other eligible bond opportunities available to the City. Said bonds are to be used for qualified affordable housing projects, as outlined within Article II, Sections 13-102 through 13-106, and Section 13-110 of this chapter.

(b) The original issuance and use of the bond funds are not part of the AHTF.

(c) Bond funds are to be awarded through the processes established within this ordinance and loaned to qualified projects and uses, and said loan proceeds are to be repaid to the AHTF, including all principal amounts and interest earned.

13-212. Interconnection, Severability, and Consent of Jurisdiction.

(a) *Interconnection.* The AHLB and AHTF are interconnected; however, their interconnection is not exclusive to their use with other affordable housing programs or projects, either through the City of Las Cruces or other entities, and the existence of either the AHLB or the AHTF is not dependent on the existence of each other or the use with other affordable housing programs or projects.

(b) *Severability.* If any article, section, paragraph, sentence, phrase, or part hereof is declared unconstitutional or invalid by a court of competent jurisdiction, all remaining portions shall not be affected.

(c) *Consent of Jurisdiction.* Affordable Housing Projects completed under this Article shall consent to the jurisdiction of the courts of the state over any proceeding to enforce compliance with the terms of the Act, the rules, this article, and any agreement between the qualifying grantee and the city and/or the MFA.

13-213. Appeals.

(a) *Grounds for appeals.* Any aggrieved qualifying grantee or party, owner, tenant or other person affected by a decision of the program staff in the administration or enforcement of this article may appeal such decision to the community development director, excluding any federal or state requirements for determining income eligibility.

(b) *Authority of the community development director.* When an appeal alleges that there is an error in any requirement, decision, or determination by the staff in the enforcement of this article, the community development director may, after all other procedures established by the provision of this article have been exhausted, reverse, or affirm any requirement, decision or determination of the staff or make any change in a requirement, decision or determination of the staff.

(c) *Appeal of the community development director.* Any aggrieved qualifying grantee or party, owner, tenant, or other person affected by a decision of the community development director, may appeal such decision to the city council. Such appeal must be initiated in writing within 30 days after all other procedures established by this article have been exhausted.

(d) *Stay of proceedings.* An appeal shall stay all proceedings in furtherance of the action appealed unless the community development director, from whom the appeal is taken, certifies that by reason of facts a stay would cause imminent peril of life and property.

(e) *Appellant responsibility in appeals.* All appellants under this section are required to submit in writing to the city council a detailed statement of the grounds of their appeal, no later than 30 days after the decision is appealed. The written appeal shall state specifically the objections of the decision and the reasons for the appeal.

(f) *Notice of decisions.* A notice of the decision of the city council shall be sent by mail to all applicants no later than ten days after the decision is made. Said notice of decision shall be placed in the applicant's file.

13-214. to 13-249. Reserved.

Chapter 13 – Reorganization Crosswalk

Article, Division, Subdivision, Section Title	Repealed Chapter 13 – location	New Chapter 13 - location
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In General	Article I	N/A (eliminated)
Housing Rehabilitation Program	Article II	Article II, Division I
Fair Housing	Article III	Article I
Affordable Housing General Oversight	Article IV	Article II, Division II
Affordable Housing Impact Fee Waiver	Article V	Article II, Division II, Subdivision I
Affordable Housing Land Bank and Trust Fund	N/A	Article II, Division II, Subdivision II
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Bond Projects; Bond Proceeds as part of Housing Trust Fund	Reserved (New)	13-211
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Chapter 13 - HOUSING*

Cross reference—Community development housing board, § 2-316 et seq.; municipal housing authority, § 2-646 et seq.; health and human services, ch. 12; nuisances, ch. 18; solid waste, ch. 25; utilities, ch. 28; buildings and building regulations, ch. 30; subdivisions, ch. 37; zoning, ch. 38.

ARTICLE I. - IN GENERAL
ARTICLE II. - HOUSING REHABILITATION PROGRAM
ARTICLE III. - FAIR HOUSING
ARTICLE IV. - AFFORDABLE HOUSING GENERAL OVERSIGHT
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ARTICLE I. - IN GENERAL

Secs. 13-1—13-25. - Reserved.

Secs. 13-1—13-25. - Reserved.

ARTICLE II. - HOUSING REHABILITATION PROGRAM*

Editor's note—

Ord. No. 2243, §§ I and II, adopted November 7, 2005, amended the Code by repealing former art. II, §§ 13-26—13-34, and adding a new art. II. Former art. II pertained to similar subject matter, and derived from the Code of 1988, §§ 25-31—25-39.

Sec. 13-26. - Definitions.
Sec. 13-27. - Purpose.
Sec. 13-28. - Home rehabilitation program and handbook established.
Sec. 13-29. - Funding; rules, regulations.
Sec. 13-30. - Administration.
Sec. 13-31. - Review committee.
Sec. 13-32. - Appeals.
Sec. 13-33. - Limitations.
Sec. 13-34. - Performance bond account.
Secs. 13-35—13-60. - Reserved.

Sec. 13-26. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Administering city department means the community development department.

CDBG means the Community Development Block Grant program by the U.S. Department of Housing and Urban Development.

DPL (deferred payment loan) means an award of funds to an applicant for home rehabilitation, secured by a recorded mortgage against the property, which does not require repayment unless the DPL recipient ceases to maintain ownership and occupancy of the project property at any time after the date of final inspection until the DPL is paid in full.

Dwelling unit means a room or rooms, connected together, constituting an independent housekeeping unit for a family, as

specified in chapter XX, building code, of the Las Cruces Municipal Code, 1997, as amended.

Eligible family means a kinship of one or more persons including an owner-occupant related to other members of a family nucleus by blood, adoption, or marriage. Such group shall have owned and occupied a dwelling unit on a continuous basis for a period of not less than 12 months immediately prior to the date of filing an application for home rehabilitation assistance.

Grant means an award of funds to an applicant for home rehabilitation, secured by a recorded mortgage against the property, which does not require repayment unless the grant recipient ceases to maintain ownership and occupancy of the project property for a specified period of time following the date of final inspection, as determined within program standards.

HOME means the HOME Investment Partnership program by the U.S. Department of Housing and Urban Development.

Improvement and rehabilitation means the necessary and required improvement of a property in accordance with program standards.

Owner-occupant means one or more persons as head of a household of an eligible family, who owns a dwelling unit within the city.

Program standards means the code requirements as defined in the Home Rehabilitation Handbook.

(Ord. No. 2243, § II, 11-7-05)

Sec. 13-27. - Purpose.

The purpose of the program created by this article is to make money available to applicants who are owner-occupants of residential properties and who, because of limited income and resources are unable to secure or qualify for funds from other sources under comparable terms and conditions, to finance improvement and rehabilitation of their properties to conform to minimum program standards.

(Ord. No. 2243, § II, 11-7-05)

Sec. 13-28. - Home rehabilitation program and handbook established.

There is to be created and established a voluntary grant, DPL, loan program to be known as the city home rehabilitation program for the improvement and rehabilitation of homes to be prescribed in a home rehabilitation handbook to be adopted by separate resolution by the city council .

(Ord. No. 2243, § II, 11-7-05)

Sec. 13-29. - Funding; rules, regulations.

(a)
The city council shall, under its powers, appropriate funds and adopt necessary and appropriate rules and regulations to implement the purpose of this article.
(b)
The appropriated funds, from either the CDBG, HOME, state or other city funds, as allocated by a city council resolution shall be used and maintained by the administering department to carry out the home rehabilitation program. All monies in such fund shall be available for making and administering grants, DPLs, and loans made pursuant to this article. All monies received by way of repayment of principal, interest and other earnings shall be deposited in the appropriate fund from which the original grant, DPL, or loan was made and applicable federal, state, or local regulations.

(Ord. No. 2243, § II, 11-7-05)

Sec. 13-30. - Administration.

The administering city department shall be responsible for the administration of this article.

(Ord. No. 2243, § II, 11-7-05)

Cross reference—Administration, ch. 2.

Sec. 13-31. - Review committee.

The home rehabilitation handbook established within section 13-28 of this article shall prescribe the establishment and responsibilities of a home rehabilitation review committee to provide review of eligible applicants and have such other powers and responsibilities as may be provided for by resolution or by ordinance of the city council.

(Ord. No. 2243, § II, 11-7-05)

Cross reference—Boards, commissions and committees, § 2-186 et seq.

Sec. 13-32. - Appeals.

(a)
Grounds for appeals. Any aggrieved homeowner or other person affected by a decision of the home rehabilitation review committee or program staff in the administration or enforcement of this article may appeal such decision to the community development director, excluding any federal or state requirements for determining income eligibility.
(b)
Authority of the community development director. When an appeal alleges that there is an error in any requirement, decision, or determination by the committee or staff in the enforcement of this article, the community development director may, after all other procedures established by the provision of this article have been exhausted, reverse, or affirm any requirement, decision or determination of the committee or staff or make any change in a requirement, decision or determination of the committee or staff.
(c)
Appeal of the community development director. Any aggrieved contractor, developer, or other person affected by a decision of the community development director, may appeal such decision to the city council. Such appeal must be initiated in writing within 30 days after all other procedures established by this article have been exhausted.
(d)
Stay of proceedings. An appeal shall stay all proceedings in furtherance of the action appealed unless the community development director, from whom the appeal is taken, certifies that by reason of facts a stay would cause imminent peril of life and property.
(e)
Appellant responsibility in appeals. All appellants under this section are required to submit in writing to the city council a detailed statement of the grounds of their appeal, no later than 30 days after the decision is appealed. The written appeal shall state specifically the objections of the decision and the reasons for the appeal.
(f)
Notice of decisions. A notice of the decision of the city council shall be sent by mail to all applicants no later than ten days after the decision is made. Said notice of decision shall be placed in the applicant's file.

(Ord. No. 2243, § II, 11-7-05)

Cross reference—Boards, commissions and committees, § 2-186 et seq.

Sec. 13-33. - Limitations.

(a)
Grants, DPLs, and loans shall be made in the name of the city to an owner-occupant of a property that consists of one- or two-family dwelling units, used exclusively for residential purposes, which is occupied by the owner as his principal place of residence, and identified as the unit to be rehabilitated. The properties to be rehabilitated must be situated within the city limits.
(b)
All grants, DPLs, and loans shall be selected, administered, and secured as determined by any rules adopted pursuant to section 13-28.
(c)
Loans shall bear interest up to a maximum of three percent simple interest per annum on the outstanding balance thereof. The final loan interest rate shall be based on the applicants income and other criteria established within the adopted home rehabilitation handbook.
(d)
Monthly payments shall be made on all loans, excluding grants and DPL's. The home rehabilitation review committee shall review and make a recommendation to the community development director who may defer the payments for such periods as deemed appropriate and necessary upon its determination that the owner-occupant is unable to meet these payments because of limited income, unemployment, or for any other valid reason.
(e)
The term of each loan shall be determined by each owner-occupant's ability to pay, not to exceed a 30-year period, excluding those DPLs, which shall be until occupancy or ownership changes occur in accordance with subsection 13-33(f).
(f)
The full outstanding balance of the loan shall immediately become due and payable if the borrower ceases to be an owner-occupant of the property, or if title to the property is transferred prior to the maturity date provided in the recorded mortgage against the property.
(g)
All grants, DPL's, and loans shall be reviewed annually to ensure compliance with all rules and regulations adopted pursuant to this article.
(h)
Subordination of mortgages on all grants, DPL's, and loans shall be authorized in accordance with the adopted home rehabilitation

handbook, subject to the review and approval by the city attorney's office.

(Ord. No. 2243, § II, 11-7-05)

Sec. 13-34. - Performance bond account.

(a)
Established is a city-maintained, performance bond account to cover warranty issues related to the warranty guidelines and/or restrictions as prescribed within the home rehabilitation handbook.
(b)
Performance bond account proceeds shall be collected and deposited from all contractors selected by the homeowner to complete the improvements and rehabilitation work on their dwelling unit.
(c)
Any work subject to warranty guarantees not completed by the selected contractor during the warranty period shall be corrected by the performance bond account proceeds and any contractor not completing any warranty work may be subject to sanctions available to the city in accordance with the applicable local, state, and federal regulations, including, but not limited to debarment and/or suspension from participating in the home rehabilitation program.
(d)
The performance bond account shall be established to have a minimum balance of $3,000.00 per city fiscal year, not to exceed a maximum balance of $10,000.00 per city fiscal year.
(e)
Any performance bond account proceeds, in excess of the established maximum at the end of each fiscal year, shall be returned to the home rehabilitation program as program income for implementation of additional, future projects.

(Ord. No. 2243, § II, 11-7-05)

Secs. 13-35—13-60. - Reserved.

Las Cruces, New Mexico, Code of Ordinances >> PART II - MUNICIPAL CODE >> Chapter 13 - HOUSING >> ARTICLE III. - FAIR HOUSING >>

ARTICLE III. - FAIR HOUSING*

Cross reference—Human rights, ch. 14.

State law reference—Discrimination in housing, NMSA 1978, § 28-1-7 et seq.

Sec. 13-61. - Definitions.
Sec. 13-62. - Fair Housing Act adopted.
Sec. 13-63. - Declaration of policy.
Sec. 13-64. - Exemptions.
Sec. 13-65. - Discrimination in the sale or rental of housing and other prohibited practices.
Sec. 13-66. - Administration and enforcement.
Secs. 13-67—13-99. - Reserved.

Sec. 13-61. - Definitions.

As used in this article:

Adaptable dwelling units, when used with respect to covered multifamily dwellings, means dwelling units that include the features of adaptable design specified in the Fair Housing Act of 1988, 24 CFR 100.205c.

Aggrieved person includes any person who:

(1)
Claims to have been injured by a discriminatory housing practice; or
(2)
Believes that such person will be injured by a discriminatory housing practice that is about to occur.

CABO/ANSI guidelines means those guidelines (commonly cited as CABO/ANSI A117.1-1997) set forth in the 1997 edition of the American National Standard for buildings and facilities providing accessibility and usability for persons with disabilities. These guidelines can be obtained from the American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018.

Accessible, when used with respect to the public and common use areas of a building containing covered multifamily dwellings, means that the public or common use areas of the building can be approached, entered, and used by individuals with physical disabilities. The phrase "readily accessible to and usable by" is synonymous with accessibility.

Accessible route means a continuous unobstructed path connecting accessible elements and spaces in a building or within a site that can be negotiated by a person with a disability using a wheelchair, and that is also safe for and usable by people with other disabilities. Interior accessible routes may include corridors, floors, ramps, elevators and lifts. Exterior accessible routes may include parking access aisles, curb ramps, walks, ramps and lifts.

Bathroom means a bathroom which includes a water closet (toilet), lavatory (sink), and bathtub or shower.

Clear means unobstructed.

Common use areas means rooms, spaces or elements inside or outside of a building that are made available for the use of residents of a building or the guests thereof. These areas include hallways, lounges, laundry rooms, refuse rooms, mail rooms, recreational areas and passageways among and between buildings.

Covered multifamily dwellings means:

(1)
Buildings consisting of four or more dwelling units if such buildings have one or more elevators; and
(2)
Ground floor dwelling units in other buildings consisting of four or more dwelling units. Dwelling units within a single structure separated by firewalls do not constitute separate buildings.

Disability means, with respect to a person:

(1)
A physical or mental impairment which substantially limits one or more of such person's major life activities.
(2)
A record of having such an impairment; or
(3)
Being regarded as having such an impairment.

But such term does not include current illegal use of or addiction to a controlled substance as defined in 21 U.S.C. Section 802. As used in this definition: (a) "Physical or mental impairment" includes (1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin, and endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, human immunodeficiency virus infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.

Discriminatory housing practice means an act that is unlawful under section 13-65 of this article.

Dwelling means any building, structure or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

Entrance means any exterior access point to a building or portion of a building used by residents for the purpose of entering. An entrance does not include a door to a loading dock or a door used primarily as a service entrance.

Familial status means one or more individuals (who have not attained the age of eighteen 18 years) being domiciled with:

(1)
A parent or another person having legal custody of such individual or individuals; or
(2)
The designee of such parent or other persons having such custody, with the written permission of such parent or other person.

The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or in the process of securing legal custody of any individual who has not attained the age of eighteen (18) years.

Fair Housing Accessibility Guidelines means those guidelines set forth in 24 CFR Chapter I, Department of Housing and Urban Development, Part VI.

Family includes a single individual.

Ground floor means a floor of a building with a building entrance on an accessible route. A building may have one or more ground floors. Where the first floor containing dwelling units in a building is above grade, all units on that floor must be served by a building entrance on an accessible route. This floor will be considered to be a ground floor.

Person includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives,

mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under title 11 of the United States Code ("U.S.C."), receivers and fiduciaries.

Residential real estate-related transaction means any of the following:

(1)
The making or purchasing of loans or providing other financial assistance;
a.
For purchasing, constructing, improving, repairing, or maintaining a dwelling; or
b.
Secured by residential real estate.
(2)
The selling, brokering, or appraising of residential real property.

To rent includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

(Code 1988, § 16-82; Ord. No. 1753, § I, 8-2-99)

Sec. 13-62. - Fair Housing Act adopted.

Title VIII of the Civil Rights Act of 1968, the Fair Housing Act of 1988, Fair Housing Accessibility Guidelines of 1991, are hereby adopted and incorporated herein by reference.

(Code 1988, § 16-80; Ord. No. 1753, § I, 8-2-99)

Sec. 13-63. - Declaration of policy.

It is the policy of the city or provide, within constitutional limitations, for fair housing throughout the city. This fair housing ordinance is intended to compliment federal and state fair housing laws and should be interpreted consistently with such laws, unless otherwise stated.

(Code 1988, § 16-81; Ord. No. 1753, § I, 8-2-99)

Sec. 13-64. - Exemptions.

(a)
Nothing in section 13-65 of this article, other than subsection 13-65(3) shall apply to any single-family house sold or rented by an owner, provided that:
(1)
Such private individual owner does not own more than three such single-family houses at any one time; and
(2)
In the case of the sale of any such single-family house by a private individual owner not residing in such house at the time of such sale or who was not the most recent resident of such house prior to such sale, the exemption granted by this subsection shall apply only with respect to one such sale within any 24 month period; and
(3)
Such bona fide private individual owner does not own any interest in, nor is there owned or reserved on his or her behalf, under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from the sale or rental of, more than three such single-family houses at any one time; and
(4)
Such house is sold or rented without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent or salesman, or of such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such broker, agent salesman, or person (but nothing in this proviso shall prohibit the use of attorneys, escrow agents, abstractors, title companies, and other such professional assistance as necessary to perfect or transfer the title); and
(5)
Such house is sold or rented without the publication, posting or mailing, of any advertisement or written notice in violation of section 13-65 of this article.
(b)
Nothing in section 13-65 of this article, other than subsection (c) shall apply to rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his/her residence.
(c)
Nothing in section 13-65 of this article shall prohibit a religious organization or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization from limiting the sale, rental or occupancy of dwellings which it

owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, or national origin.

(d)

Nothing in section 13-65 of this article shall prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.

(e)

Nothing in section 13-65 of this article limits the applicability of any reasonable governmental restrictions regarding the maximum number of occupants permitted to occupy a dwelling.

(f)

Nothing in section 13-65 of this article regarding familial status shall apply with respect to housing for older persons.

Housing for older persons means housing:

(1)

Provided under any state or federal program that is specifically designed and operated to assist elderly persons; or

(2)

Intended for, and solely occupied by, persons 62 years of age or older; or

(3)

Intended and operated for occupancy by at least one person 55 years of age or older per unit, where at least 80 percent of the units in the housing facility are occupied by at least one person 55 years of age or older (except that newly constructed facilities need not comply with this requirement until 25 percent of the units in the facility are occupied), and where the facility meets other regulations adopted by the federal Department of Housing and Urban Development as set forth in 24 C.F.R. 100.304; however

(4)

Housing shall not fail to meet the requirements for housing for older persons by reason of persons residing in such housing as of September 13, 1988, who do not meet the age requirements set forth in subsections (2) or (3) above; provided that all new occupants of such housing meet the age requirements of subsection (2) or (3); or unoccupied units; provided that such units are reserved for occupancy by persons who meet the age requirements of subsections (f)(2) or (3) of this section.

(Code 1988, § 16-83; Ord. No. 1753, § I, 8-2-99)

Sec. 13-65. - Discrimination in the sale or rental of housing and other prohibited practices.

Except as exempted by section 13-64 of this article, it shall be unlawful:

(1)

To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, ethnicity, color, religion, sex, or gender identity, disability, familial status, sexual orientation, ancestry, or national origin.

(2)

To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith because of race, ethnicity, color, religion, sex, or gender identity, disability, familial status, sexual orientation, ancestry, or national origin.

(3)

To make, print, or publish, or cause to be made, printed, or published any notice, statement or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, ethnicity, color, religion, sex, or gender identity, disability, familial status, sexual orientation, ancestry, or national origin, or an intention to make any such preference, limitation or discrimination.

(4)

To represent to any person because of race, ethnicity, color, religion, sex, or gender identity, disability, familial status, sexual orientation, ancestry, or national origin, that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

(5)

For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, ethnicity, color, religion, sex, or gender identity, disability, familial status, sexual orientation, ancestry, or national origin.

(6) a.

To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a disability of:

1.

That buyer or renter; or

2.

A person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

3.

Any person associated with that buyer or renter.

b.

To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a disability of:

1.

That person; or

2.

A person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or
3.
Any person associated with that person.
c.
For purposes of this subsection, discrimination includes:
1.
A refusal to permit, at the expense of the disabled person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications are necessary to afford such person full enjoyment of the premises except that, in the case of a rental, the landlord may where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;
2.
A refusal to make reasonable modifications in rules, policies, practices, or services, when such modifications are necessary to afford such person equal opportunity to use and enjoy a dwelling; or
3.
In connection with the design and construction of covered multifamily dwellings for first occupancy, for which a city building permit is issued after adoption of the ordinance from which this article derives, a refusal to design and construct those dwellings in accordance with the 1988 Fair Housing Act, 2003 International Building Code and CABO/ANSI A117.1-1998, and their amendments, as made elsewhere within this Municipal Code.
d.
Nothing in subsection (b) requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety or other individuals or whose tenancy would result in substantial physical damage to the property of others.
(7)
For any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, ethnicity, color, religion, sex, or gender identity, disability, familial status, sexual orientation, ancestry, or national origin. Nothing in this subparagraph prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, ethnicity, color, religion, sex, or gender identity, disability, familial status, sexual orientation, ancestry, or national origin.
(8)
Deny any person access to or membership or participation in any multiple-listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against him/her in the terms or conditions of such access, membership, or participation, on account of race, ethnicity, color, religion, sex, or gender identity, disability, familial status, sexual orientation, ancestry, or national origin.
(9)
Coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of any right granted or protected under this article.

(Code 1988, § 16-84; Ord. No. 1753, § I, 8-2-99; Ord. No. 2208, §§ I, II, 7-5-05)

Sec. 13-66. - Administration and enforcement.

(a)
The authority and responsibility for administering the fair housing article shall be in the director of the community development department.
(b)
All city agencies and departments shall administer their programs and activities relating to housing in a manner to affirmatively further the purposes of this article and shall cooperate with the community development department to further such purposes.
(c)
The community development department shall review plans and construction of newly constructed covered multifamily dwellings for the purpose of making a determination as to whether the design and construction requirements of section 13-65(6)c.3. are met. No building permit shall be issued and no certificate of occupancy shall be issued for covered multifamily dwellings that do not meet those requirements. Notwithstanding the above, no one shall be denied a certificate of occupancy for failure to meet the requirements of section 13-65(6)c.3 if a city building permit was issued prior to the adoption of the ordinance from which this article is derived.
(d)
The director of the community development department or his or her designee shall be responsible for providing information to and assisting aggrieved persons who request assistance in filing complaints with the U.S. Department of Housing and Urban Development, and/or in accordance with reporting/complaint filing processes established for the city not inconsistent with this section and this article.
(e)
Whenever the director of the community development department has reason to believe that any person has engaged in a discriminatory housing practice in violation of section 13-65, the director may invite the person to discuss the violation and methods of correcting the cause of the violation.
(f)
Any person who has reason to believe that any other person has engaged in a discriminatory housing practice in violation of section 13-65 may refer information and/or receive assistance in filing a complaint regarding the alleged violation to the community development department. Whenever the director of the community development department has reason to believe that any person has engaged in a discriminatory housing practice in violation of section 13-65, the director shall refer such information regarding the violation to the U.S. Department of Housing and Urban Development or the state human right commission for prosecution in accordance with subsection 13-66(g).
(g)

If the community development department and/or codes enforcement/police department, in consultation with the city attorney's office, has reasonable cause to believe that a violation has occurred, the city shall refer the claim and information to the U.S. Department of Housing and Urban Development, or to the state human rights commission for violations of the state's fair housing statute for investigation and prosecution according to the Fair Housing Act of 1988.

(Code 1988, § 16-85; Ord. No. 1753, § I, 8-2-99; Ord. No. 2208, §§ I, II, 7-5-05)

Secs. 13-67—13-99. - Reserved.

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ARTICLE IV. - AFFORDABLE HOUSING GENERAL OVERSIGHT

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Sec. 13-100. - Title.

This article is hereby titled the "Affordable Housing General Oversight Ordinance for the City of Las Cruces."

(Ord. No. 2319, § I, 9-5-06)

Sec. 13-101. - Authority and purpose.

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

This article is adopted to implement the city's affordable housing program. In accordance with the New Mexico Constitution, Article IX. § 14, the Affordable Housing Act, NMSA 1978, § 6-27-1 et seq. (the "Act"), and the Act's rules, the purpose of the affordable housing general oversight ordinance is to:

(1)
Establish general oversight procedures to ensure that both state and local housing assistance grantees are qualifying grantees who meet the requirements of the Affordable Housing Act and the rules promulgated pursuant to the Act, both at the time of the award and throughout the term of any grant or loan established under the program;
(2)
Establish an application and award timetable for state housing assistance grants or loans to permit the selection of the qualifying grantee(s) by the city;
(3)
Create a general evaluation process to determine qualifying grantees through the evaluation of:
a.
The financial and management stability of the applicant;
b.
The demonstrated commitment of the applicant to the city and the community;
c.

A cost-benefit analysis of the project proposed by the applicant;
d.
The benefits to the community of a proposed project;
e.
The type or amount of assistance to be provided;
f.
The scope of the proposed affordable housing project;
g.
Any substantive or matching contribution by the applicant to the proposed project;
h.
A performance schedule for the qualifying grantee(s) with performance criteria; and
i.
Any other rules or procedures which the city believes is necessary for a full review and evaluation of the applicant and the application or which the MFA believes is necessary for a full review of the city's evaluation of the applicant;
(4)
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;
(5)
Require that the city enter into a contract with the qualifying grantee(s) consistent with the Act, which contract shall include remedies and default provisions in the event of the unsatisfactory performance by the qualifying grantee(s) and which contract shall be subject to the review of the MFA in its discretion;
(6)
Require that a grant or loan for a project must impose a contractual obligation on the qualifying grantee that the affordable housing units in any projects be occupied by persons of low- or moderate-income;
(7)
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;
(8)
Require review and approval of any affordable housing project by the city and/or MFA before any expenditure of grant funds or transfer of granted property;
(9)
Require that a condition of grant or loan approval be proof of compliance with all applicable state and local laws, rules, and ordinances;
(10)
Provide definitions for "low-income" and "moderate-income" and setting out requirements for verification of income levels; and
(11)
Provide the city with the basis for a valid affordable housing program or the general oversight to establish other, more specific affordable housing programs or projects.
(12)
Does not apply to the city's implementation of its community development block grant (CDBG), HOME investment partnership program (HOME) or any other HUD funded program, unless such funds are used in conjunction with the funds or grants authorized under this article and the Act.

(Ord. No. 2319, § I, 9-5-06)

Sec. 13-102. - Definitions.

Act shall mean the Affordable Housing Act, NMSA 1978, § 6-27-1 et seq.

Affordable shall mean consistent with minimum rent and/or income limitations set forth in the MFA Act, and in guidelines established by MFA.

Affordable housing means residential housing primarily for persons or households of low- or moderate-income.

Affordable housing funds shall mean any or all funds awarded or to be awarded, loaned or otherwise distributed under this article and/or the Act.

Affordable housing program shall mean any programs that the city and/or the MFA establish pursuant to the Act.

Affordable housing projects shall mean any work or undertaking, whether new construction, acquisition of existing residential housing, remodeling, improvement, rehabilitation or conversion approved by the city and/or the MFA for the primary purposes as allowed by the Act.

Applicant shall mean an individual; a governmental housing agency; regional housing authority; tribal housing agency; 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 and/or the MFA.

Application shall mean an application to participate in one or more affordable housing projects or programs under the Act

submitted by an applicant to the city and/or the MFA.

Builder shall mean a person or entity licensed as a general contractor to construct residential housing in the state which has been approved by the city and/or the MFA to participate in an MFA program and/or an affordable housing program under the Act.

Building shall mean 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 shall mean the City of Las Cruces, a New Mexico municipal corporation.

Congregate housing facility shall mean residential housing designed for occupancy by more than four 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 and each unit in a congregate housing facility shall contain at least its own living, sleeping, and bathing facilities.

Federal government shall mean the United States of America and any agency or instrumentality, corporate or otherwise, of the United States of America.

Household shall mean one or more persons occupying a housing unit.

Housing assistance grant means the donation by the city of:

(1)
Land for construction of an affordable housing project;
(2)
An existing building for conversion or renovation as affordable housing; or
(3)
The costs of infrastructure necessary to support affordable housing.

HUD shall mean the United States Department of Housing and Urban Development.

Infrastructure shall mean infrastructure improvements and infrastructure purposes.

Infrastructure improvement includes, but is not limited to:

(1)
Sanitary sewage systems, including collection, transport, storage, treatment, dispersal, effluent use and discharge;
(2)
Drainage and flood control systems, including collection, transport, diversion, storage, detention, retention, dispersal, use and discharge;
(3)
Water systems for domestic purposes, including production, collection, storage, treatment, transport, delivery, connection 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)
Parks, recreational facilities and open space areas for the use of residents for entertainment, assembly and recreation;
(7)
Landscaping, including earthworks, structures, plants, trees and related water 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 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 shall mean the New Mexico Mortgage Finance Authority.

MFA Act shall mean the Mortgage Finance Authority Act, enacted as chapter 303 of the Laws of 1975 of the State of New Mexico, as amended, being sections 58-18-1 through 58-18-27, inclusive, NMSA 1978, as amended.

Mortgage shall mean a mortgage, mortgage deed, deed of trust or other instrument creating a lien, subject only to title exceptions as may be acceptable to the city and/or the MFA, on a fee interest in real property located within the state or on a leasehold interest that has a remaining term at the time of computation that exceeds or is renewable at the option of the lessee until after the maturity day of the mortgage loan or an instrument creating a lien on a mobile home.

Mortgage lender shall mean any bank or trust company, mortgage company, mortgage banker, national banking association, savings bank, savings and loan association, credit union, building and loan association and any other lending institution; provided that the mortgage lender maintains an office in the state, is authorized to make mortgage loans in the state and is approved by the city and/or the MFA and either the FHA, VA, FNMA (now known as Fannie Mae), or FHLMC (the Federal Home Loan Mortgage Corporation).

Mortgage loan shall mean a financial obligation secured by a mortgage, including a project mortgage loan.

Multiple family housing project shall mean residential housing that is designed for occupancy by more than four persons or families living independently of each other or living in a congregate housing facility, at least 60 percent of whom are persons of low or moderate income, including without limitation persons of low or moderate income who are elderly and handicapped, as determined by the city and/or the MFA, provided that the percentage of low-income persons and families shall be at least the minimum, if any, required by federal tax law.

Multi-family housing program shall mean a program involving a congregate housing facility, a multiple family housing project or a transitional housing facility.

Persons of low or moderate income shall mean one or more persons or a family who has a total annual gross income for the household that does not exceed 80 percent of the median annual income adjusted for family size for households within the Las Cruces Metropolitan Statistical Area (MSA), which include the city, as determined by HUD, on an annual basis. For purposes of this definition:

(1)
"Annual gross income" shall mean the annual anticipated income from assets, regular cash or non-cash contributions, and any other resources and benefits determined to be income by HUD, as defined in 24 CFR Section 5.609;
(2)
"Family" shall mean, but not be limited to, a single person, a group of persons consisting of the head of a household; his or her spouse, if any; and children, if any, as allowed under 24 CFR section 5.609; and
(3)
"Adjusted for family size" shall mean adjusted in a manner which results in an income eligibility level that is lower for households having fewer than four people, or higher for households that have more than four people, than the base income eligibility based upon a formula established by HUD for the Las Cruces MSA.

Qualifying grantee means:

(1)
An individual who is qualified to receive assistance pursuant to the Act and is approved by the city; and
(2)
A governmental housing agency; regional housing authority; tribal housing agency; corporation, limited liability company, partnership, joint venture, syndicate, association; or a nonprofit organization that:
a.
Is organized under state, local, or tribal laws and can provide proof of such organization;
b.
If a nonprofit organization, has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual; and
c.
Is approved by the city.

Recertification shall mean 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 shall mean the substantial renovation or reconstruction of an existing single-family residence or a multi-family housing project, which complies with requirements established by the MFA. 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 shall mean 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.

Responsible department shall mean the city's community development department.

Rules shall mean the rules promulgated by the MFA to implement that Affordable Housing Act.

State shall mean the State of New Mexico.

Transitional housing facility shall mean residential housing that is designed for temporary or transitional occupancy by persons of low or moderate income or having special needs.

(Ord. No. 2319, § I, 9-5-06)

Sec. 13-103. - General requirements.

The following requirements shall apply to all affordable housing projects made to and approved by the city under this article to a qualifying grantee.

(1)
Request for proposals. The city, in its discretion, may issue one or more requests for proposals (RFPs); to solicit applications; or shall otherwise identify a qualifying grantee for the use of any affordable housing funds or housing assistance grants to be awarded, loaned, or otherwise distributed under this article or the Act.
(2)
Applicant eligibility. The following individuals or entities (applicants) are eligible under the Act to apply for affordable housing funds or a housing assistance grant to provide housing or related services to persons of low or moderate income in their community:
a.
All individuals who are qualified to receive assistance pursuant to the Act and the Rules;
b.
All regional housing authorities, tribal governments, tribal housing agencies, and any governmental housing agencies;
c.
All for-profit organizations, including any corporation, limited liability company, partnership, joint venture, syndicate, or association or a nonprofit organization; or
d.
Nonprofit organizations are eligible to apply if the following requirements are met:
1.
A primary mission of the nonprofit organization must be to provide housing or housing-related services to persons of low or moderate income; and
2.
The nonprofit organization must have received its 501(c)(3) designation prior to submitting an application.
e.
For any non-individual applicant to be eligible, it must also:
1.
Be organized under state, local, or tribal laws and can provide proof of such organization;
2.
If a nonprofit organization, have no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual;
3.
Have a functioning accounting system that is operated in accordance with generally accepted accounting principles or has designated an entity that will maintain such an accounting system consistent with generally accepted accounting principles;
4.
Have among its purposes significant activities related to providing housing or services to persons or households of low or moderate income; and
5.
Have no significant outstanding or unresolved monitoring findings from the city, the MFA, 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.
(3)
Any eligible applicant may, at any time, submit to the city the information required by section 13-104(a) sub-paragraphs (4), (5), (6), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (20), (21), and (22) of this article and the rules, as applicable, in order to pre-qualify as a

potential qualifying grantee. The city will review the information provided by any eligible applicant and in its discretion, may certify in writing that the applicant is a potential qualifying grantee. The city shall provide a copy of the certification to the MFA upon its request. The city's certification shall be valid for up to one year, subject to the ability of the potential qualifying grantee to certify in writing, at the time of any application or response to any RFP, that there have been no material changes in any of the information or documentation provided by, or representations made by the potential qualifying grantee to the city and upon which information, documentation, and/or representations the city has based its decision to certify the applicant as a potential qualifying grantee. Notwithstanding the foregoing, simply because an applicant is certified by the city as a potential qualifying grantee does not mean that the potential qualifying grantee will be chosen by the city as a:

a.
Qualifying grantee, or

b.
That the MFA will determine that the potential qualifying grantee is a qualifying grantee, or

c.
That any application submitted by the potential qualifying grantee is complete or otherwise in compliance with this article, the Act and the rules, or

d.
That the potential qualifying grantee will be awarded any affordable housing funds or any housing assistance grants.

(Ord. No. 2319, § I, 9-5-06)

Sec. 13-104. - Applications.

(a)
Process for applying. Individual applicants and all other applicants wishing to apply for a housing assistance grant to participate in any affordable housing program are also required to submit to the city the following, as applicable:

(1)
One original application, together with all required schedules, documents, or such other information which may be required by the city or in any RFP which may have been issued by the city, must be included in the completed application;

(2)
A proposal describing the nature and scope of the affordable housing project proposed by the applicant and for which the applicant is applying for funds or a grant under the Act, and which describes the type and/or amount of assistance which the applicant proposes to provide to persons of low or moderate income;

(3)
Executive summary and project narrative(s) that address the evaluation criteria set forth in any RFP issued by the city for the affordable housing funds or the housing assistance grant for which the applicant is applying;

(4)
For nonprofit organizations, proof of 501(c)(3) tax status;*

(5)
For nonprofit organizations, documentation which confirms that no part of its net earnings inures to the benefit of any member, founder, contributor or individual;*

(6)
Current annual budget for the applicant, including all sources and uses of funds, not just those related to relevant programs and/or a current annual budget only for the program for which the applicant is applying for a housing assistance grant, or as otherwise may be required by the city and/or the MFA in its discretion;*

(7)
A proposed budget for the affordable housing project for which the applicant is applying for affordable housing funds or for a housing assistance grant;

(8)
Approved mission statement that has among its purposes significant activities related to providing housing or housing-related services to persons or households of low or moderate income;*

(9)
List of current board members, including designated homeless participation, where required by the city;*

(10)
Current independent financial audit;*

(11)
Evidence (or a certification as may be allowed by the city) that the applicant has a functioning accounting system that is operated in accordance with generally accepted accounting principals, or has a designated entity that will maintain such an accounting system consistent with generally accepted accounting principals;*

(12)
Evidence that the applicant has no significant outstanding or unresolved monitoring findings from the city, the MFA, or its most recent independent financial audit; or if it has any significant outstanding or unresolved monitoring findings from the city, the MFA, or its most recent independent financial audit, it has a certified letter from the city, the MFA, or the auditor stating that the findings are in the process of being resolved;*

(13)
Organizational chart, including job titles and qualifications for the applicant's employees or as otherwise may be required by the city and/or the MFA in its discretion. Job descriptions may be submitted as appropriate;*

(14)
Documentation that the applicant is duly organized under state or local law and is in good standing with any state authorities such as the

public regulation commission (e.g. articles, bylaws, and certificate of good standing for a corporation; articles, operating agreement, and certificate of good standing for a limited liability company; partnership agreement and certificate of limited partnership for a partnership);*
(15)
Certifications as may be required by the city signed by chief executive officer, board president or other authorized official of the applicant;*
(16)
Information as may be required by the city in order for it to determine the financial and management stability of the applicant;*
(17)
Information as may be required by the city in order for it to determine the demonstrated commitment of the applicant to the community;*
(18)
Applicant shall submit a completed cost-benefit analysis, as required by the city and/or the MFA, of the affordable housing project proposed by the applicant. Any cost-benefit analysis must include documentation which clearly evidences that there is or will be a direct benefit from the project proposed by the applicant to the community and/or to the purported beneficiaries of the project, consistent with the provisions of the Act;
(19)
Applicant shall submit information to the city supporting the benefits to the community of the affordable housing project proposed by the applicant;
(20)
The city may require that the applicant provide proof of substantive or matching funds or contributions and/or in-kind donations to the proposed affordable housing project in connection with the application for funds under the Act. Nothing contained herein shall prevent or preclude an applicant from matching or using local, private, or federal funds in connection with a specific housing assistance grant or a grant of affordable housing funds under the Act;*
(21)
Applicant shall provide the city with any certifications or other proof which it may require in order for the city to confirm that the applicant is in compliance with all applicable federal, state and local laws, rules and ordinances;*
(22)
For applicants who are submitting applications in connection with a multi-family housing program, the following additional information shall also be required to be submitted by the applicant to the city:*
a.
A verified certificate that, among other things:
1.
Identifies every multi-family housing program, including every assisted or insured project of HUD, RHS, FHA and any other state or local government housing finance agency in which such applicant has been or is a principal;
2.
Except as shown on such certificate, states that:
(i)
No mortgage on a project listed on such certificate has ever been in default, assigned to the United States government or foreclosed, nor has any mortgage relief by the mortgagee been given;
(ii)
There has not been a suspension or termination of payments under any HUD assistance contract in which the applicant has had a legal or beneficial interest;
(iii)
Such applicant has not been suspended, debarred or otherwise restricted by any department or agency of the federal government or any state government from doing business with such department or agency because of misconduct or alleged misconduct; and
(iv)
The applicant has not defaulted on an obligation covered by a surety or performance bond.
3.
If such applicant cannot certify to each of the above, such applicant shall submit a signed statement to explain the facts and circumstances which such applicant believes will explain the lack of certification. The city may then determine if such applicant is or is not qualified.
b.
The experience of the applicant in developing, financing and managing multiple-family housing projects.
c.
Whether the applicant has been found by the United States Equal Employment Opportunity Commission or the state human rights commission to be in noncompliance with any applicable civil rights laws.
(23)
If the applicant is a mortgage lender, the city shall consider, among other things:
a.
The financial condition of the applicant;
b.
The terms and conditions of any loans to be made;
c.
The aggregate principal balances of any loans to be made to each applicant compared with the aggregate principal balances of the loans to be made to all other applicants;
d.
The city's assessment of the ability of the applicant or its designated servicer to act as originator and servicer of mortgage loans for any multi-family housing programs or other programs to be financed; and
e.
Previous participation by the applicant in the MFA's programs and HUD, FHA, or RHS programs.
(24)

All applications shall contain a verification signed by the applicant before a notary public that the information provided, upon penalty of perjury, is true and correct to the best of the applicant's information, knowledge, and belief.

(b)

Submission procedures.

(1)

Time, place and method of submission delivery.

a.

If the city has issued an RFP, all applications must be received by the city no later than whatever deadline has been set forth in the RFP; otherwise, all applications must be received by the city by whatever deadline the city has established in connection with the respective award or grant. So that any qualifying grantees may be selected prior to January of the year in which any housing assistance grant would be made, the city shall issue any RFP's, solicit any applications, or otherwise identify any qualifying grantees no later than October 15 of any year in order to allow sufficient time for prospective applicants to respond to any such RFP, solicitation, or otherwise, and further to allow the MFA not less than 45 days in which to review any such applications or otherwise determine or confirm that an applicant is a qualifying grantee under the Act and consistent with the rules.

b.

Applications shall be submitted by applicants to the city in the form and by the time as required by the city and shall contain all information which is required by the Act, the rules, any RFP which may have been issued, and otherwise required by the city.

(2)

Additional factors. The application procedures shall take into consideration:

a.

Timely completion and submission to the city of an affordable housing program application or other appropriate response to any solicitation by the city;

b.

Timely submission of all other information and documentation related to the program required by the city or as set forth in the rules;

c.

Timely payment of any fees required to be paid to the city at the time of submission of the application; and

d.

Compliance with program eligibility requirements as set forth in the Act and the rules.

(3)

Submission format.

a.

City or MFA forms must be used when provided and no substitutions will be accepted; however attachments may be provided as necessary.

b.

An applicant's failure to provide or complete any element of an application, including all requirements of the city or as may be listed on any RFP, may result in the rejection of the application prior to review.

c.

Illegible information, information inconsistent with other information provided in the application, and/or incomplete forms will be treated as missing information and evaluated accordingly.

d.

The city and the MFA reserve the right to request further information from any applicant so long as the request is done fairly and does not provide any applicant an undue advantage over another.

e.

The city in its discretion may cancel any RFP or reject any or all proposals in whole or part submitted by any applicant.

f.

Neither the city nor the MFA shall be responsible for any expenses incurred by an applicant in preparing and submitting an application. However, the city or the MFA, as applicable, may establish and collect fees from applicants who file applications. Notice that fees will be charged and the amount of any such fees shall be included by the city or the MFA, as applicable, in any RFP or otherwise shall be advertised as part of the application solicitation process.

(c)

Review by the city. On receipt of an application, the city shall:

(1)

Determine whether the application submitted by the applicant is complete and responsive;

(2)

Determine whether the applicant is a qualifying grantee as defined herein and the Act;

(3)

Review and analyze whether the applicant has shown a demonstrated need for activities to promote and provide affordable housing and related services to persons of low or moderate income;

(4)

Determine whether the applicant has demonstrated experience related to providing housing or services to persons of low or moderate income, as well as experience and/or the capacity to administer the affordable housing program or project for which the applicant has applied;

(5)

Determine whether the applicant's proposal provides a plan for coordinating with other service providers in the community; whether the applicant's plan addresses how low income or moderate income individuals or families in need of housing and/or housing related supportive services can receive supportive services and referrals to federal, state and local resources; and, whether the applicant's plan addresses outreach efforts to reach the population to be served as identified by the city in any RFP or otherwise;

(6)

Determine whether the applicant has support from public service agencies, or such other support as may be required by the city and/or the MFA in its discretion, for its proposed services in the community. Public service agencies shall include, but are not limited to, any entities that support affordable housing and which believe that the program or project proposed by the applicant is worthy and advisable, but which are not involved, either directly or indirectly, in the affordable housing program or project for which the applicant is applying;

(7)

Ascertain the amount of any matching funds or in-kind services specific to the program which may be utilized by the applicant in connection with the program;

(8)

Ascertain whether any local, private, or federal funds will be used by the applicant in connection with the specific grant for which the applicant is applying;

(9)

Ascertain whether the applicant has and can demonstrate the capability to manage the implementation of the program for which the applicant is applying;

(10)

If applicant is a prior recipient of either a housing assistance grant, affordable housing funds and/or other program funds, confirm that the applicant had no outstanding findings or matters of noncompliance with program requirements from the city or the MFA, as applicable 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;

(11)

If applicant is a prior recipient of either a housing assistance grant, affordable housing funds and/or other program funds, confirm that the applicant reasonably committed and expended the funds under the prior program and/or met anticipated production levels as set forth in any contract with the city or the MFA, as applicable, for those prior program funds;

(12)

Evaluate the applicant's proposal in part based upon the applicant's current financial audit;

(13)

Evaluate the applicant's proposed budget for the project for which the applicant is applying for affordable housing funds or a housing assistance grant which proposed budget must be approved by the city before applicant can be approved as a qualifying grantee and any expenditure of grant funds under the Act or granted property is transferred to the applicant;

(14)

On receipt of an application from a builder, the city will analyze the builder's ability to construct and sell sufficient residential housing units to persons of low or moderate income within the time or times as may be required by the city.

(15)

The city may consider whatever factors it deems appropriate to ensure a reasonable geographic allocation for all affordable housing programs within the city.

(d)

Deadline for review of application. Unless the period is extended for good cause shown, the MFA shall act on applications within 45 days of the date of the MFA's receipt of an application that the MFA deems to be complete and, if not acted upon, the application shall be deemed approved.

(e)

Certification by the city to the MFA. The city shall so certify in writing to the MFA upon:

(1)

Completion of its review of the application;

(2)

Determination that the application is complete;

(3)

Determination that the requirements of the rules and the Act have been satisfied; and

(4)

Determination that the applicant is a qualifying grantee.

(f)

Review by the MFA. The MFA upon its receipt of the certification from the city may, in its discretion, review the application and any of the materials submitted by the applicant to the city. The MFA may also request any additional information from the applicant, which it may require in order to determine whether the applicant is a qualifying grantee under the Act and the application is complete. The MFA will then notify the city of its determination of whether or not the application is complete and that the requirements of the Act and the rules have been satisfied and the applicant is a qualifying grantee. Unless the period is extended for good cause shown, the MFA shall act on an application within 45 days of its receipt of any application, which the MFA deems to be complete, and, if not acted upon, the application shall be deemed to be approved.

(g)

Notification of acceptance. The city, upon completion of its review of the application and an evaluation of the criteria for approval of the application as set forth in the Act, in this article, the rules and in any RFP issued by the city and upon its determination that the applicant is a qualifying grantee, and upon its receipt of notification from the MFA that it agrees that the application is complete and that the Act and the rules have been satisfied and the applicant is a qualifying grantee, by written notice shall notify each applicant which has submitted an application of the approval or disapproval of its application. Upon approval of its application, the applicant shall be considered approved to participate in the affordable housing program. The city's and the MFA's determination of any application shall be conclusive.

(Ord. No. 2319, § I, 9-5-06)

Sec. 13-105. - Additional requirements.

Upon acceptance, the following additional requirements shall apply to any applicant, who is a qualifying grantee:

(1)
Contractual requirements. The qualifying grantee shall enter into one or more contracts with the city, which contract(s) shall be consistent with the Act and subject to the review of the MFA, in its discretion, and which contract(s) shall include remedies and default provisions in the event of the unsatisfactory performance by the qualifying grantee;
(2)
Security provisions; collateral requirements. In accordance with the Act and the rules, the city shall require the qualifying grantee to execute documents, which will provide adequate security against the loss of public funds or property in the event the qualifying grantee abandons or fails to complete the affordable housing project, and which shall further provide, as may be permitted by law, for the recovery of any attorneys' fees and costs which the city and/or the MFA may incur in enforcing the provisions of the rules, the Act and/or any agreement entered into by the city and the qualifying grantee, and which documents may include, but are not limited to the following: note, mortgage, loan agreement, land use restriction agreement, restrictive covenant agreements and/or any other agreement which the city may require in order to allow for any funds which the qualifying grantee may receive under a housing assistance grant to be adequately secured and to allow the city and the MFA to ensure that such funds shall be utilized by the qualifying grantee in accordance with the Act and the rules;
(3)
Performance schedule and criteria. The qualifying grantee shall be required to abide by a reasonable performance schedule and performance criteria which the city, in its discretion, may establish; and
(4)
Examination of books and records. The qualifying grantee shall submit to and the city shall cause to be made such examinations of the books and records of each qualifying grantee as the city and/or the MFA deems necessary or appropriate to determine the qualifying grantee's compliance with the terms of the Act, the rules and any contracts between the qualifying grantee and the city. The city and/or the MFA may require each qualifying grantee to pay the costs of any such examination.
(5)
Infrastructure cost reimbursement contracts.
a.
Cost reimbursements. Payment to a qualifying grantee under cost reimbursable contract provisions shall be made upon the city's receipt from the qualifying grantee of certified and documented invoices for actual expenditures allowable under the terms of any agreement between the qualifying grantee and the city.
b.
Cost reimbursements for units of service. Payment under any unit cost contract provisions shall be made upon the city's receipt from the qualifying grantee of a certified and documented invoice showing the number of units of service provided during the billing period.
c.
Rate at which costs incurred. Under unit cost or cost reimbursable contracts, it is anticipated that costs will be incurred by the qualifying grantee at an approximate level rate during the term of any agreement between the qualifying grantee and the city. If the city determines that the qualifying grantee is under-spending or overspending, then the city may reduce the budget and/or exercise such other budgetary fiscal controls it deems appropriate.
d.
Invoices. Qualifying grantees shall not submit invoices more than once a month, unless written approval is obtained in advance from the city. Failure to submit invoices within 20 days of the close of the month for which payment is sought may result in the non-availability of funds for reimbursement.
e.
No dual application of costs. The qualifying grantee shall certify that any direct or indirect costs claimed by the qualifying grantee will not be allocable to or included as a cost of any other program, project, contract, or activity operated by the qualifying grantee and which has not been approved by the city in advance in writing.
f.
Prohibition of substitution of funds. Any affordable housing funds or other amounts received by qualifying grantee may not be used by qualifying grantee to replace other amounts made available or designated by state or local governments through appropriations for use for the purposes of the Act.
g.
Cost allocation. If required by the city, the qualifying grantee shall clearly identify and distribute all costs incurred pertaining to the affordable housing project by a methodology and cost allocation plan at times and in a manner prescribed by, or acceptable to the city.
(6)
Additional information. Qualifying grantees shall provide the city with any and all information which the city reasonably may require in order for it to confirm that the qualifying grantees continue to satisfy the requirements of the Act and the rules throughout the term of any contract and/or any affordability period (defined below) or otherwise as may be required by the city or the MFA in its discretion. At a minimum, on an annual basis, the city shall certify to the MFA in writing that the qualifying grantee is still in compliance with the Act and the rules.

(Ord. No. 2319, § I, 9-5-06)

Sec. 13-106. - Affordable housing requirements.

(a)
All affordable housing funds or housing assistance grants awarded under the Act are to be used by qualifying grantees for the benefit of persons of low or moderate income subject to the provisions of the Act 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, weatherized, 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 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 (defined below), which ever is longer.

(2)

Multi-family property.

a.

Single apartment within a multi-family property. Qualifying grantees shall agree that, if any single apartments are to be rehabilitated, weatherized, converted, leased, repaired, constructed, or otherwise are to benefit from affordable housing funds, those apartments shall be leased to persons of low or moderate income at the time of any such award. Qualifying grantees, who are the landlords and/or owners of such properties, shall further agree to contribute at least 60 percent of the cost of the rehabilitation, weatherization, conversion, lease, repair, and/or construction. 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 uncured 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.

b.

Multiple apartments. Qualifying grantees shall agree that, if multiple apartments or an entire multi-family property are to be acquired, rehabilitated, weatherized, 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, they shall maintain not less than 60 percent of the housing units 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, which ever is longer.

(3)

Nonresidential property. Qualifying grantees shall agree that they shall maintain any nonresidential property which has been acquired, rehabilitated, weatherized, 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 a facility which provides housing related-services to persons of low or 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 or the affordability period, which ever is longer.

(b)

Housing assistance grant affordability requirements. Qualifying grantees shall agree that they shall maintain any land or buildings received as a housing assistance grant either as either single-family or multi-family affordable housing in accordance with paragraphs (a)(1) and (a)(2) of this section or as a facility which provides housing related-services to persons of low or moderate income in accordance with paragraph (a)(3) of this section, as applicable, for the duration of the affordability period. Qualifying grantees shall agree that they shall maintain any land or buildings for which they have received the costs of infrastructure as a housing assistance grant either as either single-family or multi-family affordable housing or as a facility which provides housing related-services to persons of low or moderate income, as applicable, 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, county or municipality shall apply.

(c)

Affordability period defined. If the fair market value of any housing assistance grant or the total amount of affordable housing funds that have been or will be awarded, loaned, donated, or otherwise conveyed to the qualifying grantee is from:

(1)

$1.00 to $14,999.99, then the affordability period shall be not less than five years;

(2)

$15,000.00 up to and including $40,000.00, then the affordability period shall be not less than ten years;

(3)

$40,000.01 up to and including $100,000.00, then the affordability period shall be not less than 15 years;

(4)

Greater than $100,000.01, then the affordability period shall be not less than 20 years.

(d)

Affordablity period extension. 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. Notwithstanding the foregoing, at the discretion of the MFA, weatherization funds conveyed from the state to the MFA and/or any other similar conveyances where an affordability period is not practical, shall not be subject to the affordability period requirements of this section; but nevertheless, any such conveyances may be subject to recapture on some pro-rated basis as determined by the city and/or the MFA.

(Ord. No. 2319, § I, 9-5-06)

Sec. 13-107. - Consent to jurisdiction.

Each qualifying grantee shall consent to the jurisdiction of the courts of the state over any proceeding to enforce compliance with the terms of the Act, the rules, this article, and any agreement between the qualifying grantee and the city and/or the MFA.

(Ord. No. 2319, § I, 9-5-06)

Sec. 13-108. - Recertification.

The qualifying grantee must meet the requirements of the Act, the rules, this article, and any applicable ordinance both at the time of any award and through out the term of any grant and contract related thereto. The city may establish procedures for re-certifying qualifying grantees from time to time. Qualifying grantees which 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.

(Ord. No. 2319, § I, 9-5-06)

Sec. 13-109. - Compliance with the law.

Qualifying grantee shall provide the city with any certifications or other proof which 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.

(Ord. No. 2319, § I, 9-5-06)

Sec. 13-110. - Extension of affordable housing programs.

The city and/or MFA shall have the power to create variations or extensions of such affordable housing programs created under this article or the MFA shall have the power to create additional programs that comply with the Act and the rules.

(Ord. No. 2319, § I, 9-5-06)

Sec. 13-111. - County, municipality, school district, or post secondary educational institution grant requirements.

(a)
If a county or a municipality makes a housing assistance grant under the Act, it shall provide the MFA with documentation, which confirms that it has an existing valid affordable housing plan or housing elements contained in its general or comprehensive plan. The county or municipality shall also provide the MFA with a copy of the proposed ordinance and with a written certification that the proposed grantee is in compliance with Act and the rules so that the MFA may confirm both that the ordinance is in compliance with the Act, that the application is complete, and that the proposed grantee is a qualifying grantee under the Act and the rules. The proposed ordinance must authorize the grant, state the requirements and purpose of the grant, and authorize the transfer or disbursement to the qualifying grantee only after a budget is submitted to and approved by the governing body of the county or municipality. The ordinance may provide for matching or using local, private or federal funds either through direct participation with a federal agency pursuant to federal law or through indirect participation through the MFA. The proposed ordinance shall comply with the Act and the rules, as amended. The proposed ordinance shall be effective subject to local ordinance requirements for publication and filing. The city, in its discretion, may also hold any award of affordable housing funds or any housing assistance grant made by any county or municipality in suspense pending the issuance by the city of any RFP or pending the award of the affordable housing funds or of the housing assistance grant by the city to the qualifying grantee without the issuance of an RFP by the city. Any award of affordable housing funds or a housing assistance grant by a county or a municipality shall subject the qualifying grantee of the award or grant to the oversight of the city and the MFA under this article, the Act, and the rules.
(b)
If a school district or a post-secondary educational institution intends to make a housing assistance grant, then it shall provide the MFA with a written certification that the proposed grantee is in compliance with the Act and the rules so that the MFA may confirm that the application is complete and the proposed grantee is a qualifying grantee under the Act and the rules. Any transfer of land by a school district to a county or municipality to be further granted as part or all of an affordable housing grant shall be subject to the additional limitations contained in the Act that the school district and the governing body of the city enter into a contract that provides the school district with a negotiated number of affordable housing units that will be reserved for employees of the school district. Any transfer of land by a post-secondary educational institution shall be subject to the additional limitations contained in the Act that:
(1)
The property transferred shall be granted by the county, municipality or tribal government as part of all of an affordable housing grant; and
(2)
The governing board of the post-secondary educational institution and the governing body of the county, municipality or tribal government enter into a contract that provides the post-secondary educational institution with affordable housing units.

As used in this section, post-secondary educational institution means a state university or a public community college. The city, in its discretion, may also hold any housing assistance grant made by any school district or post-secondary educational institution in suspense pending the issuance by the city of any RFP or pending the award of the housing assistance grant by the city to the qualifying grantee without the issuance of an RFP by the city. Any award of a housing assistance grant by a school district or a postsecondary educational institution shall subject the qualifying grantee of the grant to the oversight of the city and the MFA under this article, the Act, and the rules.

(Ord. No. 2319, § I, 9-5-06)

Sec. 13-112. - 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 nondiscrimination and equal opportunity, and the city and the MFA shall require compliance by all qualifying grantees with all applicable federal and state laws and regulations relating to affirmative action, nondiscrimination and equal opportunity.

(Ord. No. 2319, § I, 9-5-06)

Sec. 13-113. - Administration.

The city and the MFA shall administer any affordable housing programs in accordance with provisions of the Act, the rules, any applicable state and federal laws and regulations as each of which may be amended or supplemented from time to time. The city and the MFA, in establishing, funding and administering the affordable housing programs and by making, executing, delivering and performing any award, contract, grant or any other activity or transaction contemplated by the Act, shall not violate any provision of law, rule or regulation or any decree, writ, order, injunction, judgment, determination or award and will not contravene the provisions of or otherwise cause a default under any of its agreements, indentures, or other instruments to which it may be bound.

(Ord. No. 2319, § I, 9-5-06)

Secs. 13-114—13-130. - Reserved.

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ARTICLE V. - AFFORDABLE HOUSING IMPACT FEE WAIVER

Sec. 13-131. - Title.
Sec. 13-132. - Authority and purpose.
Sec. 13-133. - Definitions.
Sec. 13-134. - Administration.
Sec. 13-135. - Program established.
Sec. 13-136. - Qualified affordable housing.
Sec. 13-137. - Process established.
Sec. 13-138. - Affordability restrictions; recapture of funds.
Sec. 13-139. - Funding.
Sec. 13-140. - Appeals.

Sec. 13-131. - Title.

This article is hereby titled the "Affordable Housing Impact Fee Waiver Ordinance for the City of Las Cruces."

(Ord. No. 2442, § I, 5-5-08)

Sec. 13-132. - Authority and purpose.

This article is established pursuant to:

(1)
The Development Fee Act, NMSA 1978 § 5-8-1 et seq. (the Development Fee Act);
(2)
The Affordable Housing Act, NMSA 1978, § 6-27-1 et seq. (the Affordable Housing Act);
(3)
The city's Municipal and Development Codes, 1997, (LCMC 1997), as amended, chapter 13, housing, and more specifically articles III (fair

housing) and IV (affordable housing general oversight) of said chapter, and chapter 33 (development impact fee) et seq.

The purpose of this article is to implement a development fee waiver or alternative payment program for qualifying entities, developers, and owners of and for the development of affordable housing projects in the city, in accordance with the Development Fees Act, and to further ensure compliance with both the Affordable Housing Act and the city's affordable housing general oversight and fair housing articles, LCMC 1997, as amended, § 13-61 et seq.

(Ord. No. 2442, § I, 5-5-08)

Sec. 13-133. - Definitions.

Affordable Housing Act shall mean the New Mexico Affordable Housing Act, NMSA 1978, § 6-27-1 et seq., as amended.

Administering city department means the community development department.

Affordable housing means any housing development built to benefit those whose income is at or below 80 percent of the area median income; and who will pay no more than 30 percent of their gross monthly income towards such housing or as may be defined in accordance with New Mexico State Statute, § 5-8-2, NMSA, 1978, as may be amended in the future.

Affordable housing projects shall mean any work or undertaking, whether new construction, acquisition and expansion of existing residential housing, or conversion approved by the city and subject to the application of required development impact fees and/or the city or the MFA for the primary purposes as allowed by the Affordable Housing Act.

Alternative payment means the assessment of any established and eligible development impact fee, and the payment of said development impact fee from any identified city source, fund, or other source than by the qualifying entities, developers or owners for the creation or conversion of affordable housing and affordable housing projects. Other city fund does not include existing city utility department development impact fee or rate-based funds.

Development Impact Fee Act shall mean the New Mexico Development Fee Act, NMSA 1978, § 5-8-1 et seq., as amended.

Fee affected department means any department affected by the fee waiver or alternative payment of development impact fees, including but not limited to the utilities department for water and wastewater, and the facilities department for parks, and any other future departments affected by the adoption of new development impact fees.

Fee waiver means the assessment of any established and eligible development impact fee, without requiring the payment of said development impact fee at the time of building permit issuance for the creation or conversion of affordable housing and affordable housing projects. For waived fees related to enterprise funds, such as water and wastewater development impact fees, these fees will be paid from other non-utility funding sources.

(Ord. No. 2442, § I, 5-5-08)

Sec. 13-134. - Administration.

The administering city department shall be responsible for the administration of this article in cooperation with the fee affected departments and the city's financial services department.

(Ord. No. 2442, § I, 5-5-08)

Sec. 13-135. - Program established.

There is to be created and established a voluntary program to be known as the affordable housing impact fee waiver program for the waiver of or the alternative payment of city-established development impact fees for all types of new affordable housing types created in the city on a fiscal year basis. This impact fee waiver program is an established affordable housing program in accordance with and as defined by the New Mexico Affordable Housing Act and the city's affordable housing general oversight article, and shall be prescribed in a handbook to be adopted by separate resolution by the city council.

(Ord. No. 2442, § I, 5-5-08)

Sec. 13-136. - Qualified affordable housing.

(a)
For purposes of providing fee waivers or alternative payment for qualifying affordable housing projects, the definition of affordable housing,

as contained in section 13-133 of this article shall govern.

(b)

Nothing within this article or within the established program shall prevent the use of the fee waiver or alternative payment for mixed-use or mixed-market (both market-rate and affordable housing) projects; however, the fee waiver or alternative payment shall be limited to only those eligible and restricted affordable housing projects and/or units of the mixed-use or mixed-market projects.

(Ord. No. 2442, § I, 5-5-08)

Sec. 13-137. - Process established.

(a)

Each year, as part of the city's annual budget adoption resolution and in accordance with § 13-139, the city council shall establish a maximum funding or limitation amount for the fee waiver and/or alternative payment amount for each type of development impact fee assessed by the city.

(b)

The administering department shall establish procedures in accordance with article IV and section 13-135 of this chapter for qualifying, specific affordable housing projects (i.e. residential, transitional housing facility, and multiple housing projects); qualifying grantees, recertification, and other program requirements. Generally, the qualifying grantee and projects shall be accomplished through an annual application or proposal process by the administering department.

(c)

Following the established procedures, the administering department shall grant either fee waiver and/or alternative payment allocations to individual projects each fiscal year, until such time as all funds or allocations have been allocated and in consultation with the fee affected department.

(1)

Should the allocations be exhausted in and prior to the end of the fiscal year, then qualifying grantees and projects may either pay the full applicable development impact fee or wait until the next fiscal year or a special allocation by the city council during the most current fiscal year.

(2)

The waiver or alternative payment shall not be retroactive to a project in which a building permit has been issued in a prior allocation period or prior fiscal year.

(d)

Provided funds remain within the fee waiver or alternative payment fund, the administering department shall provide the qualifying project with a voucher equal to the full amount of all development impact fees. However, due to limitations in funds, the administering department may issue a voucher for an amount less than the full development impact fee for any one development fee category for any given project. For any voucher less than the full development impact fee, the remaining impact fee balance shall be the responsibility of the qualifying grantee, developer, or owner.

(1)

The voucher shall serve as verification of eligibility to the qualifying grantee and project.

(2)

The qualifying grantee shall submit the voucher to the permitting department, along with all other permit requirements to serve as payment for the development fees.

(3)

The permitting department will provide the administering department with the corresponding permit information, along with the used voucher, so that the fee affected and finance departments, will be provide necessary reporting information, including tracking of available allocations and allocation reductions. This action shall authorize appropriate transfer from the fee waiver and/or alternative fund to the appropriate development impact fee fund.

(4)

The administering department shall also provide necessary reporting requirements to the city council and the mortgage finance authority in accordance with the Affordable Housing Act.

(Ord. No. 2442, § I, 5-5-08)

Sec. 13-138. - Affordability restrictions; recapture of funds.

(a)

For those qualifying grantees and projects, whereby development impact fee waivers or alternative payments have been made, the affordability restriction shall be based on cumulative value of the combined fee waiver and/or alternative payment for that specific project.

(b)

The affordability restriction period shall be established based on § 13-106 of this Code. The affordability restriction period shall be established through the securing and recording of a restrictive covenant against the property within the records of the clerk of the county or other acceptable method that ensures the preservation of the affordable housing project or units.

(c)

Recapture and re-use of the funds/allocations shall be in accordance with § 13-106 and § 13-139 of this Code.

(Ord. No. 2442, § I, 5-5-08)

Sec. 13-139. - Funding.

(a)
The city council may, under its powers, appropriate necessary funds and or fee waiver limitations and adopt necessary and appropriate rules and regulations to implement this article. Utility funds shall not be used as a funding source for waived fees.
(b)
Any appropriated non-utility funds, including those from the general fund, other federal, state, or other city funds, shall be used and maintained by the administering department to carry out the development impact fee waiver program.
(1)
With exception provided for development impact fees that have restrictions due to bond obligations, any monies received in such fee waiver or alternative payment fund shall be available for making and administering future fee waivers for the all impact fees or as mandated by the state or federal agency or funding restrictions, where applicable.
(2)
Should monies be recaptured, prior to the qualified affordable housing unit's full affordability period, due to conversion or loss of the affordable housing unit, then such recaptured funds shall be credited to the appropriate fee waiver for which it was originally waived or the funding source of the waived fees. Said recaptured funds shall be used for future development impact fee payment, unless other restrictions from the original funding source restrict their use, then such restriction shall apply.
(3)
Recaptured monies may, as determined by city council and provided the fee waiver was not provided using non-city funds, be deposited in a local affordable housing trust or similar fund, should one exist.

(Ord. No. 2442, § I, 5-5-08)

Sec. 13-140. - Appeals.

(a)
Grounds for appeals. Any aggrieved qualifying grantee or party, owner, tenant or other person affected by a decision of the program staff in the administration or enforcement of this article may appeal such decision to the community development director, excluding any federal or state requirements for determining income eligibility.
(b)
Authority of the community development director. When an appeal alleges that there is an error in any requirement, decision, or determination by the staff in the enforcement of this article, the community development director may, after all other procedures established by the provision of this article have been exhausted, reverse, or affirm any requirement, decision or determination of the staff or make any change in a requirement, decision or determination of the staff.
(c)
Appeal of the community development director. Any aggrieved qualifying grantee or party, owner, tenant, or other person affected by a decision of the community development director, may appeal such decision to the city council. Such appeal must be initiated in writing within 30 days after all other procedures established by this article have been exhausted.
(d)
Stay of proceedings. An appeal shall stay all proceedings in furtherance of the action appealed unless the community development director, from whom the appeal is taken, certifies that by reason of facts a stay would cause imminent peril of life and property.
(e)
Appellant responsibility in appeals. All appellants under this section are required to submit in writing to the city council a detailed statement of the grounds of their appeal, no later than 30 days after the decision is appealed. The written appeal shall state specifically the objections of the decision and the reasons for the appeal.
(f)
Notice of decisions. A notice of the decision of the city council shall be sent by mail to all applicants no later than ten days after the decision is made. Said notice of decision shall be placed in the applicant's file.

(Ord. No. 2442, § I, 5-5-08)

Article II. Housing Programs
Division II. Affordable Housing General Oversight
Subdivision 2.

AFFORDABLE HOUSING LAND BANK AND TRUST FUND ORDINANCE FOR THE CITY OF LAS CRUCES

13-200. Title.

This Ordinance is hereby titled the Affordable Housing Land Bank and Trust Fund Ordinance for the City of Las Cruces.

13-201. Authority.

This Ordinance is established pursuant to the express statutory authority conferred upon municipalities to enact or provide:

(a) ordinances pursuant to its police power, Section 3-17-1B NMSA 1978;
(b) a housing code pursuant to Section 3-17-6A(8) NMSA 1978;
(c) affordable housing pursuant to subsections E and F of Article 9, Section 14 of the New Mexico Constitution;
(d) the Affordable Housing Act, NMSA 1978, §6-27-1 et seq. (the Affordable Housing Act);
(e) The City of Las Cruces Municipal Codes, 1997, (LCMC 1997), as amended, Chapter 13, Housing, specifically Article IV (Affordable Housing General Oversight) of said chapter; and

in particular to provide land for or a portion of the cost of financing and/or authorizing housing assistance grants for the purpose of affordable housing pursuant to Section 6-27-5 NMSA 1978 (2007), and pursuant to any and all such other authority as may be applicable including but not limited to the City's recognized authority to protect the general welfare of its citizens. This ordinance is adopted pursuant to the City of Las Cruces' power under its municipal charter which was adopted effective March 5, 1985, pursuant to the Municipal Charter Act Section 3-15-1 to 3-15-16 NMSA 1978 and Article 10, Section 6 of the Constitution of the State of New Mexico.

13-202. Legislative Findings.

The governing body has determined that:

a. The City has the authority to and should actively participate in the creation of a comprehensive housing services delivery system that addresses the full continuum of housing needs from the homeless to the homebuyer, especially in the area of affordable housing;

b. The City has identified the need for all types of affordable housing as part of the City's most recent Consolidated Plan (i.e. 2006-2010 HUD Consolidated Plan adopted by Resolution 06-317 on May 1, 2006), and the City's Affordable Housing Strategic Plan adopted by Resolution 10-057 on August 17, 2009;

c. The cost of land is an important factor in the total cost of developing affordable housing;

d. The cost of financing and the lack of affordable capital can be significant barriers to the creation and preservation of affordable housing and can be an obstacle in providing housing that addresses multiple community housing needs and priorities; and

e. It is in the public interest to create both an Affordable Housing Land Bank and Affordable Housing Trust Fund that can work together or singularly in the creation and/or preservation of affordable housing.

13-203. Purpose.

The purpose of this Ordinance is to develop both a land bank and housing trust fund for the development of affordable housing projects in the City of Las Cruces, in accordance with both the Affordable Housing Act and the City of Las Cruces Affordable Housing General Oversight Ordinance, LCMC 1997, as amended, §13-100 to 13-113. Further, this ordinance is to:

a. identify methods to allow for the dedication of land to the Affordable Housing Land Bank (AHLB) for the City of Las Cruces from City and other sources;

b. identify the initial source of funds which shall either be dedicated to qualified affordable housing projects, either through loans or grants and of which the proceeds from said loans shall be the Affordable Housing Trust Fund (AHTF) for the City of Las Cruces; and

c. restrict allowable uses of AHLB and AHTF to provide or pay all or a portion of the costs of acquisition, development, construction, renovation or conversion, financing, operation or purchase of affordable housing or infrastructure to support affordable housing which meets agreed upon community housing goals and objectives.

The AHLB and AHTF are not intended to be the sole sources of land or funding for affordable housing eligible activities or projects and support or contributions from the AHLB or AHTF are expected to develop additional sources of funds.

13-204. Definitions.

AHLB means the affordable housing land bank of the City of Las Cruces, NM.

AHTF means the affordable housing trust fund of the City of Las Cruces, NM.

Affordable Housing Act shall mean the New Mexico Affordable Housing Act, NMSA 1978, §6-27-1 et seq., as amended.

Administering city department means the community development department.

Affordable housing means residential housing primarily for persons or households of low, moderate, or middle income.

Affordable Housing Projects shall mean the same as defined within the City's Affordable Housing General Oversight Ordinance or as defined with Article IV Section 13-102, of this Municipal Code, as amended.

Allowable uses means those uses for the AHLB or AHTF which are set forth in Section 13-203, 13-206, and 13-207.

Committee means the City's Affordable Housing Trust Fund and Land Bank Advisory Committee, who shall serve the City Council.

Community housing priorities means priorities established from time to time by the City Council of the City of Las Cruces to guide the allocations of funds from the AHTF or selling, leasing, or granting of land from the AHLB.

13-205. Administration.

The administering city department shall be responsible for the administration of this article.

13-206. Land Bank Established.

a. There is hereby established a land bank, to be known as the City of Las Cruces Affordable Housing Land Bank (AHLB). The AHLB is a part of the City of Las Cruces, to be managed and operated by the administering department or through another entity established through City procurement processes, by which land can be donated or sold to or disposed from for the purpose of developing qualified affordable housing.

b. Land disposal may be done by grant or through loan, and should the land be sold, the proceeds are to be placed in the Affordable Housing Trust for use in accordance with the AHTF policies and procedures established under this Ordinance.

c. The City shall, through resolution, establish the policies and procedures for the operation of the AHLB.

d. At a minimum, the AHLB shall limit the land for disposal by the following amounts:

    1. Grants: Not to exceed 40% of the land bank holdings based on the number of lots, tracts, or parcels, and

2. Sells: Not less than 50% of the land bank holdings shall be sold for the development through the issuance of Affordable Housing Project Loans.

e. The City shall follow the affordability restrictions and recapture of fund procedures established in Section 13-106 of the Las Cruces Municipal Code, 1997, as amended.

f. The administering department shall establish procedures in accordance with Article IV, Sections 13-102 through 13-106, and Section 13-110 of this chapter for qualifying, specific affordable housing projects (i.e. residential, transitional housing facility, and multiple housing projects); qualifying grantees, recertification, and other program requirements.

13-207. Affordable Housing Trust Fund Established.

a. There is hereby established a trust fund to be known as the City of Las Cruces Affordable Housing Trust Fund (AHTF). The AHTF is a part of the City of Las Cruces, to be managed and operated by the administering department or through another entity established through City procurement processes, by which trust funds can be granted or loaned for the purposes of developing qualified affordable housing.

1. The AHTF shall consist of all distributions and appropriations made to the fund. Earnings of the fund shall be credited to the fund, and unexpended and unencumbered balances in the fund shall not revert to any other funds. The City Council shall serve as both the trustee and investment agent for the fund.

2. The fund shall consist of revenue from the following sources, recurring or not:
   a. Proceeds from the use of bond funds to develop affordable housing projects,
   b. Appropriations and transfers from the general fund,
   c. Donations or any private contributions to the fund,
   d. Special revenue streams from other Local, State, Federal and philanthropic sources,
   e. Sale of Land from the land bank,
   f. Any other money appropriated or distributed to the fund, and
   g. 10% of all proceeds from City-owned land sales or other city-established land development projects, as of the effective date of this ordinance, excluding those lands purchased or sold from such sources that have certain restrictions or limitations from the original land purchase source (i.e. properties purchased with restrictions or restricted funding sources that require re-payment or rededication to a limiting use) and those properties sold from the AHLB.

b. The City shall, through resolution, establish the policies and procedures for the operation of the AHTF. At a minimum, in any given fiscal year, the AHTF shall restrict the use of fund proceeds in the following amounts:
   1. Affordable Housing Project Grants – not more than 39%,
   2. Affordable Housing Project Loans – not less than 50%, and
   3. Program Administration – not more than 10%.

c. The City shall follow the affordability restrictions and recapture of fund procedures established in Section 13-106 of the Las Cruces Municipal Code, 1997, as amended.

d. The administering department shall establish procedures in accordance with Article IV, Sections 13-102 through 13-106, and Section 13-110 of this chapter for qualifying, specific affordable housing projects (i.e. residential, transitional housing facility, and multiple housing projects); qualifying grantees, recertification, and other program requirements. Generally, the qualifying grantee and projects shall be accomplished through an annual application or proposal process by the administering department.

13-208. Advisory Committee created.

a. The Affordable Housing Trust Fund and Land Bank Advisory Committee is hereby created, in accordance with and as established in Article IV, Division 3, Subdivision X, of Chapter 2 of this Municipal Code, as amended.

b. The Committee shall review all project applications and make recommendations to the City Council for funding them.

c. The Committee shall not be involved in or advisory to the Council in matters relating to the investment of the Fund.

d. The Committee shall adopt rules and/or procedures for the review of and standards for recommending applications for loans or grant projects, which shall be adopted by Resolution of the City Council.

13-209. Award of Trust Funds or Land Bank disposals and accountability.

a. Trust funds and land bank dispositions shall be awarded on a competitive basis. The administering department shall work with the Advisory Committee to develop an application and applicant scoring mechanism that encourages applicants to develop solutions that are responsive to local needs and are consistent with sound housing policy.

b. The City Council shall be responsible for ensuring that on an annual basis the total funds awarded for housing activities, including the value of the land disposed from the Land Bank, attract at least two times as much funding from other sources.

13-210. Use of Funds and Land for eligible activities, Matching funds, Conflict with Federal Requirements

a. Money from the trust fund and lands disposed from the land bank and any matching funds from other sources may be used to finance in whole or in part any loans or grant projects that will provide affordable housing. Money from the trust fund may also be used to reimburse the City administering department for actual expenses incurred in administering the fund in an amount not exceed limits established elsewhere within this Article.
b. Money from the fund may be used to match federal, local, state, or private money to be used for projects authorized under this Article.
c. If any part of the Trust Fund or Land Bank is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state and/or the City, the conflicting part of that act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of that act in its application to the agencies concerned. The rules adopted pursuant to the provisions of this Article shall meet those federal requirements that are a necessary condition to the receipt of federal funds by the City.

13-211. Bond Projects; Bond Proceeds as part of Housing Trust Fund.

a. The City, at its discretion and within established authorities, may issue bonds for the creation of affordable housing projects. Bonds may be from General Obligation, Gross Receipts Tax Bond Recycling, or other eligible bond opportunities available to the City. Said bonds are to be used for qualified affordable housing projects, as outlined within Article IV, Sections 13-102 through 13-106, and Section 13-110 of this chapter.
b. The original issuance and use of the bond funds are not part of the AHTF.
c. Bond funds are to be awarded through the processes established within this ordinance and loaned to qualified projects and uses, and said loan proceeds are to be repaid to the AHTF, including all principal amounts and interest earned.

13-212. Interconnection, Severability, and Consent of Jurisdiction.

a. *Interconnection.* The AHLB and AHTF are interconnected; however, their interconnection is not exclusive to their use with other affordable housing programs or projects, either through the City of Las Cruces or other entities, and the existence of either the AHLB or the AHTF is not dependent on the existence of each other or the use with other affordable housing programs or projects.

b. *Severability.* If any article, section, paragraph, sentence, phrase, or part hereof is declared unconstitutional or invalid by a court of competent jurisdiction, all remaining portions shall not be affected.

c. *Consent of Jurisdiction.* Affordable Housing Projects completed under this Article shall consent to the jurisdiction of the courts of the state over any proceeding to enforce compliance with the terms of the Act, the rules, this article, and any agreement between the qualifying grantee and the city and/or the MFA.

13-213. Appeals.

(a) *Grounds for appeals.* Any aggrieved qualifying grantee or party, owner, tenant or other person affected by a decision of the program staff in the administration or enforcement of this article may appeal such decision to the community development director, excluding any federal or state requirements for determining income eligibility.

(b) *Authority of the community development director.* When an appeal alleges that there is an error in any requirement, decision, or determination by the staff in the enforcement of this article, the community development director may, after all other procedures established by the provision of this article have been exhausted, reverse, or affirm any requirement, decision or determination of the staff or make any change in a requirement, decision or determination of the staff.

(c) *Appeal of the community development director.* Any aggrieved qualifying grantee or party, owner, tenant, or other person affected by a decision of the community development director, may appeal such decision to the city council. Such appeal must be initiated in writing within 30 days after all other procedures established by this article have been exhausted.

(d) *Stay of proceedings.* An appeal shall stay all proceedings in furtherance of the action appealed unless the community development director, from whom the appeal is taken, certifies that by reason of facts a stay would cause imminent peril of life and property.

(e) *Appellant responsibility in appeals.* All appellants under this section are required to submit in writing to the city council a detailed statement of the grounds of their appeal, no later than 30 days after the decision is appealed. The written appeal shall state specifically the objections of the decision and the reasons for the appeal.

(f) *Notice of decisions.* A notice of the decision of the city council shall be sent by mail to all applicants no later than ten days after the decision is made. Said notice of decision shall be placed in the applicant's file.

13-214. to 13-249. Reserved.