City of Las Cruces®
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Council Action and Executive Summary

Item # 23 **Ordinance/Resolution#** 2593 **Council District:** N/A

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

TITLE: AN ORDINANCE ENACTING A NEW SUBDIVISION X OF DIVISION 3 (NONSTANDARD BOARDS) OF ARTICLE IV (BOARDS, COMMISSIONS, AND COMMITTEES) OF CHAPTER 2 (ADMINISTRATION) OF THE LAS CRUCES MUNICIPAL CODE, 1997, AS AMENDED, WHEREBY CREATING THE AFFORDABLE HOUSING LAND BANK AND TRUST FUND ADVISORY COMMITTEE. THE ORDINANCE ALSO AMENDS SECTION 2-188 (A) (5) OF THE LAS CRUCES MUNICIPAL CODE TO ALLOW FOR MEMBERS OF CITY BOARDS, COMMISSIONS, AND COMMITTEES TO SERVE ON MORE THAN ONE BOARD, COMMISSION, OR COMMITTEE AS AUTHORIZED WITHIN THE BOARD'S ESTABLISHING ORDINANCE.

PURPOSE(S) OF ACTION: Amend various section of the City's Municipal Code to create the Affordable Housing Land Bank and Trust Fund Advisory Committee.

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 City of Las Cruces adopted the 2009 Affordable Housing Strategic Plan in August 2009 under Resolution 10-057. This Strategic Plan called for the creation of both an affordable housing land bank and an affordable housing trust fund. In general, the land bank would be used to accept land donations or purchases that can be disposed of through grants or low-interest loans for qualified affordable housing projects. The trust fund would be a restricted source of funds that is used to finance affordable housing projects through grants or loans. Under the proposed Ordinance that creates the Affordable Housing Land Bank and Trust Fund (which is being processed under a separate Ordinance at the same time), it calls for the creation of an advisory committee that would make recommendations to the City Council on the land bank disposals and use of trust fund monies.

The attached proposed Ordinance amends the City's Board Ordinance, which is Article IV (Boards, Commissions, and Committees) of Chapter 2 (Administration) of the Las Cruces Municipal Code, 1997, as amended. Under this proposed Ordinance, the Affordable Housing

Land Bank and Trust Fund Advisory Committee would be established as a Nonstandard Board that consists of representation from each of the following groups:

1) Building Industry,
2) Realty Industry,
3) Mortgage Brokerage Industry,
4) Land Title Industry,
5) Greater Las Cruces Chamber of Commerce (whose representatives don't represent items 1 through 4 above), and
6) Hispano Chamber of Commerce of Las Cruces (whose representatives don't represent items 1 through 4 above).

Additionally, three other members would be selected from the membership of the Planning and Zoning Commission (P&Z), the Health and Human Services Advisory Committee (HHSAC), and the Municipal Housing Authority Board of Commissioners (MHA).

As this is a nonstandard board, the members, excluding the other boards' appointees, would be made by the Mayor, with the advice and consent of the City Council. The Ordinance also requires the Mayor to appoint an alternate member from each of the six industries or associations listed above in the event that a standing appointee should have a conflict of interest with any future application or proposal that could be submitted to utilize the land bank or trust fund.

Also with the proposed Ordinance, is an amendment to Chapter 2 under the general membership requirements that would allow for the current appointees to the other boards (i.e. P&Z, HHSAC, and MHA) to serve on the advisory board for the affordable housing land bank and trust fund. Currently, the board ordinance membership requirements prevent appointees by the City from serving on more than one board at a time. The P&Z, HHSAC, and MHA represent a specialized section of the City's board structure and will provide expertise to the advisory committee related to land use, community, and housing needs throughout the City.

SUPPORT INFORMATION:

1. Ordinance
2. Exhibit "A" – amendment to Chapter 2, Article IV, Division 3, Subdivision X
3. Attachment "B" – existing Chapter 2-188 from the Municipal Code

SOURCE OF FUNDING:

Is this action already budgeted?			
	Yes	☐	See fund summary below
	N/A	☒	Not Applicable, no direct budgetary impact
	No	☐	If No, then check one below:
	Budget Adjustment Attached	☐	Expense reallocated from: _____
		☐	Proposed funding is from a new revenue source (i.e. grant; see details below)
		☐	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 $_____.
	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 amend Chapter 2 (Administration) of the Las Cruces Municipal Code, 1997, as amended, Article IV (Boards, Commissions, and Committees), Division 3 (Nonstandard Boards), by creating a new Subdivision X, entitled the Affordable Housing Land Bank and Trust Fund Advisory Committee. This nonstandard board would be appointed by the Mayor, with the advice and consent of the City Council, to make recommendations on the use of the proposed affordable housing land bank and trust fund in accordance with Chapter 13 (Housing) of the Municipal Code.

2. Vote "No"; this will not amend Chapter 2 (Administration) of the Las Cruces Municipal Code, 1997, as amended, Article IV (Boards, Commissions, and Committees), Division 3 (Nonstandard Boards), by not creating a new Subdivision X, entitled the Affordable Housing Land Bank and Trust Fund Advisory Committee. By not enacting this proposed Ordinance, this would be in conflict with proposed affordable housing land bank and trust fund ordinance for Chapter 13 (Housing) of the Municipal Code.

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

4. Vote to "Table"; this would not amend the Chapter 2 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. 11-013
COUNCIL BILL NO. 2593

AN ORDINANCE ENACTING A NEW SUBDIVISION X OF DIVISION 3 (NONSTANDARD BOARDS) OF ARTICLE IV (BOARDS, COMMISSIONS, AND COMMITTEES) OF CHAPTER 2 (ADMINISTRATION) OF THE LAS CRUCES MUNICIPAL CODE, 1997, AS AMENDED, WHEREBY CREATING THE AFFORDABLE HOUSING LAND BANK AND TRUST FUND ADVISORY COMMITTEE. THE ORDINANCE ALSO AMENDS SECTION 2-188 (A) (5) OF THE LAS CRUCES MUNICIPAL CODE TO ALLOW FOR MEMBERS OF CITY BOARDS, COMMISSIONS, AND COMMITTEES TO SERVE ON MORE THAN ONE BOARD, COMMISSION, OR COMMITTEE AS AUTHORIZED WITHIN THE BOARD'S ESTABLISHING 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 ordinance 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, the Chapter 13 of the Las Cruces Municipal Code has been proposed for re-codification, which including the addition of an Affordable Housing Land Bank and Trust Fund Ordinance, which calls for the creation of Affordable Housing Land Bank and Trust Fund Advisory Committee to be incorporated within the City's Board Ordinance, which is Article IV, Boards, Commissions, and Committees of Chapter 2, Administration of the Las Cruces Municipal Code.

WHEREAS, Chapter 2 of the Las Cruces Municipal Code, specifically Section 2-188 (a) Qualifications, (5) needs to be amended to allow for members of certain committees to serve on more than one committee, which is currently prohibited, so that members of the Planning and Zoning Commission, Health and Human Services Advisory Committee, and the Municipal Housing Authority Board, may also serve on the Affordable Housing Land Bank and Trust Fund Advisory Committee.

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

(I)

THAT a new Subdivision X. Affordable Housing Land Bank and Trust Fund Advisory Committee is created within Division 3, Nonstandard Boards of Article IV, Boards, Commissions, and Committees within Chapter 2, Administration, of the Las Cruces Municipal Code, 1997, as amended, as shown in Exhibit "A," attached hereto and made part of this Ordinance, is hereby approved and adopted.

(II)

THAT Section 2-188 Membership, (a) Qualifications, (5) of Article IV, Boards, Commissions, and Committees within Chapter 2, Administration, of the Las Cruces Municipal Code, 1997, as amended, is hereby approved and adopted, as follows:

(5) A member may not be appointed by the City to serve on more than one board at the same time except for the ethics ordinance enforcement

board **or as prescribed elsewhere within this Article.** This subsection does not apply to members of the city council, city staff or ex officio, ad hoc, or select committee members.

(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

Article IV. Boards, Commissions and Committees

Division 3. Nonstandard Boards

Subdivision X. - Affordable Housing Land Bank and Trust Fund Advisory Committee

Sec. 2-736. - Established.
Sec. 2-737. - Composition; appointment.
Sec. 2-738. - Duties.
Sec. 2-739. - Exceptions.
Secs. 2-740—2-765. - Reserved.

Sec. 2-736. - Established.

There is established the affordable housing land bank and trust fund advisory committee.

Sec. 2-737. - Composition; appointment.

The affordable housing land bank and trust fund advisory committee shall consist of nine members appointed by the mayor with the advice and consent of the city councillors, one from each of the following industries and/or associations:

a) Building Industry,
b) Realty Industry,
c) Banking and/or mortgage brokerage Industry,
d) Land title industry,
e) Greater Las Cruces Chamber of Commerce, provided such representation is not from items a) through d) immediately above, and
f) Hispano Chamber of Commerce of Las Cruces, provided such representation is not from items a) through d) immediately above.

Plus, one representative of the following existing boards and commission of the City of Las Cruces:

g) Planning and Zoning Commission,
h) Health and Human Services Advisory Committee, and
i) Municipal Housing Authority.

The mayor shall also appoint an alternate member for each of those represented in items a) through f) in the event that the regular appointee should have a conflict of interest with an application that is before the committee. The appointees from the Planning and Zoning Commission, the Health and Human Services Advisory Committee, and Municipal Housing Authority shall be selected by the respective board, commission, or committee from within their own membership and shall also appoint an alternate member in the event that the regular appointee should have a conflict of interest with an application that is before the committee.

Sec. 2-738. - Duties.

The affordable housing land bank and trust fund advisory committee shall evaluate proposals and/or applications for land acquisition and disposition and funding using City-established guidelines in accordance with Chapter 13 of this Code under the affordable housing land bank and trust fund ordinance.

Sec. 2-739. - Exemptions.

The members appointed to the affordable housing land bank and trust fund advisory committee from the Planning and Zoning Commission, the Health and Human Services Advisory Committee, and Municipal Housing Authority Board are exempt from the provision of serving on more than one board at a time under Section 2-188 (a) (5) of this Chapter.

Secs. 2-740—2-765. - Reserved.

Sec. 2-188. - Membership.

(a) *Qualifications.* Qualifications of members of boards shall be as follows:

(1) Every person appointed to any board shall be a resident of the city, unless stated otherwise. This subsection does not apply to city staff who are appointed to fill city staff positions on boards.

(2) No person regularly employed on a full-time basis by the city shall be appointed to any board, unless stated otherwise.

(3) The mayor, councillors or administrative officers of the city, not appointed as regular members, may be appointed as ex officio nonvoting members.

(4) No member of the immediate family of any elected city councillor shall be appointed to any board.

(5) A member may not be appointed by the City to serve on more than one board at the same time except for the ethics ordinance enforcement board. This subsection does not apply to members of the city council, city staff or ex officio, ad hoc, or select committee members.

(b) *Appointments.* Except for the ethics ordinance enforcement board, Appointments to boards shall be made as follows:

(1) The mayor, with the advice and the consent of the city council, shall appoint all members of the other than standard boards, including the nonstandard, joint, operational (except for the board of commissioners for the City of Las Cruces Utilities), and ad hoc boards. Board members shall select their own chair.

(2) The mayor and each city councillor shall appoint one member of every standard board. Each councillor's appointee shall be a resident of the councillor's district. The mayor's appointee may be from any district.

(3) The mayor, with the advice and consent of the city council, may appoint an eighth member to a standard board. Said member shall serve only as an alternate in the event of one of the seven individual appointees being absent.

(4) Each member appointed to a board by the city shall be given notice of appointment by a certificate, which shall state the appointment, date, position number, and date of expiration, and shall bear the signature of the mayor, attestation of the city clerk and the city seal.

(5) All appointments shall clearly state that such appointment is made subject to all the provisions outlined in this article.

(6) All appointments shall be accepted in writing by the appointee, confirming that such appointee accepts the policies outlined in this article as a condition precedent to such appointee's appointment and holding office.

(7) All boards shall consist of seven members, unless stated otherwise.

(8) Every member, unless removed as provided in this section, shall hold office until a successor has been duly qualified and appointed.

(9) Unless stated otherwise, the other than standard board members shall serve staggered terms of four years, so there will be an overlapping of initial tenure. The terms of three members will expire at the end of one two-year period and the terms of four members will expire at the end of one four-year term. Thereafter the terms shall be fixed. The expiration date of all ordinary terms shall be March 31, or until the member is replaced.

(10) Standard board members' terms of office shall turn concurrently with the term of the appointing mayor or councillor, and shall expire on March 31 at the end of the appointer's term of office, or until the member is replaced.

(11) No member shall be appointed by the city to serve on a particular board for more than eight consecutive years, unless stated otherwise. An appointment to complete an unexpired term and an appointment to an initial two-year term for purposes of staggering a term does not apply toward the eight-year limitation. However, time served prior to the effective date of the ordinance from which this section derives shall apply.

(12) All members shall file a disclosure statement as a condition of appointment. This statement shall substantially conform with section 10.10 of the Charter.

(13) The mayor, with the advice and consent of the city council, shall appoint the public members of the board of commissioners for the City of Las Cruces Utilities from one or more names submitted by each city council member who is being replaced with a public member. If a public member voluntarily or involuntarily vacates the utilities board, the vacancy shall be filled by the city council from one or more names submitted by the utilities board. Additional provisions for membership for the utilities board are set forth in the board's by-laws.

(c) *Attendance and removal.* The policy for attendance and removal of board members is as follows:

(1) Attendance is required at all board meetings.

(2)

a. If a member of a board, other than the planning and zoning commission, appointed by the city fails to attend 75 percent of the meetings, including work sessions, in any twelve-month period, beginning April 1 through March 31, or is absent from three consecutive meetings, his or her membership shall be terminated automatically by the affected board.

b. If a member of the planning and zoning commission appointed by the city fails to attend 75 percent of the regular meetings, and at least 55 percent of the work sessions, in any twelve-month period, beginning April 1 through March 31, or is absent from three consecutive regular meetings, his or her membership shall be terminated automatically from the planning and zoning commission.

(3) If a board member vacates office by nonattendance of official meetings, the board's chair shall give written notice to the city council. A replacement member shall then be appointed within 30 days of written notice of a vacancy to the city council. If the board member who has vacated by nonattendance is the board's chair, the removal process shall be conducted by the vice-chair, or if the vice-chair is unable to participate, by any other board member. The board member may appeal removal personally, in writing, or both to the city council within 30 days of receiving written notice of removal.

(4) Any board member appointed by the city may be removed or reprimanded for malfeasance, nonfeasance of office, violation of any section of this article, or for any reason, with five affirmative votes of the city council. A board member may only be reprimanded or removed from office pursuant to this subsection by a request in writing made by a city councillor or the mayor. The request shall specify the reason for the requested removal and shall be delivered to the city manager with copies to all other members of the city council. The city manager shall forward the request for removal to the affected board member. The board member shall be given 30 days' written notice and an opportunity to present testimony at a regular or special meeting of the city council. The decision of the city council shall be final.

(5) Any member who is removed cannot reapply for membership on any board for one year.

(6) Upon the written request from a member of a board, the city council may grant a leave of absence for a member. Said leave of absence shall not exceed three months.

(Code 1988, § 2-178; Ord. No. 1666, § I, 4-6-98; Ord. No. 1719, §§ I—III, 1-4-99; Ord. No. 2113, § III, 7-6-04; Ord. No. 2400, §§ II, III, 9-17-07)