City of Las Cruces®

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Council Action and Executive Summary

Item # 10 **Ordinance/Resolution#** 2617

For Meeting of May 2, 2011 (Ordinance First Reading Date) **For Meeting of** June 6, 2011 (Adoption Date)

TITLE: **AN ORDINANCE AMENDING SECTIONS 13-103, 13-104, AND 13-106 OF THE CITY'S AFFORDABLE HOUSING GENERAL OVERSIGHT ORDINANCE WITHIN THE LAS CRUCES MUNICIPAL CODE, 1997, AS AMENDED. THE AMENDMENT IS TO ADD LANGUAGE TO ENSURE COMPLIANCE WITH THE STATE'S AFFORDABLE HOUSING ACT REQUIREMENTS.**

PURPOSE(S) OF ACTION:

Amend sections of the City's Housing Chapter of the Municipal Code to ensure continued compliance with the State's Affordable Housing Act.

COUNCIL DISTRICT: N/A		
Drafter/Staff Contact: David Dollahon	**Department/Section:** Community Development	**Phone:** 528-3060
City Manager Signature:		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The City of Las Cruces adopted Ordinance #2319 on September 5, 2006, and created the "Affordable Housing General Oversight Ordinance." This ordinance was created for the City to comply with the State's Affordable Housing Act. The Affordable Housing Act allows the City to provide land, buildings, infrastructure, and/or financing for the creation of affordable housing without violating the Anti-Donation Clause of the New Mexico State Constitution once the City has adopted a local ordinance ensuring compliance with the Affordable Housing Act.

The New Mexico Finance Authority (MFA) is responsible for the enforcement of and compliance with the Affordable Housing Act. MFA has adopted a rule that requires MFA review of local affordable housing ordinances prior to adoption by a locality. The City's Ordinance #2319 was one of the first affordable housing ordinances to be reviewed by MFA.

MFA subsequently reviewed another City Ordinance related to the Housing section of the Las Cruces Municipal Code in September 2010 and realized that Ordinance #2319 does not include all the current MFA requirements related to the Affordable Housing Act. Therefore, MFA has requested the City to update its Ordinance to reflect the current affordable housing provisions.

The proposed ordinance provides additions, as follows:

1. Requires within Section 13-103, General Requirements, that any ordinance or amendments to existing and future ordinance must be reviewed by the MFA for compliance.
2. Requires within Section 13-104, Applications, that all applicants provide proof that:
   a. the contribution made by the City to any affordable housing project, using non-federal funds, will reduce the housing costs of low- and moderate-income persons,
   b. there is either a direct benefit to the community or the purported beneficiaries,
   c. document clear evidence for the need for the City's contribution to the project, and
   d. the value of the City's contribution will reduce the housing costs to the eligible clients.
3. Requires within Section 13-106, Affordable Housing Requirements, that verification of income levels are made for both single and multi-family project recipients.

SUPPORT INFORMATION:

1. Ordinance.
2. Exhibit "A," proposed amendment to Section 13-103, 13-104, and 13-106 of the Municipal Code.
3. Attachment "B," copy of September 27, 2010 letter from Marjorie Martin, Attorney for the MFA, requesting amendments to City Ordinance 2319 (codified in Section 13-100, et. seq. in the Municipal Code).

SOURCE OF FUNDING:

Is this action already budgeted?			
	Yes	☐	See fund summary below
	No	☐	If No, then check one below:
N/A	*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 $_____ for FY__.
N/A	No	☐	There is no new revenue generated by this action.

BUDGET NARRATIVE

N/A

FUND EXPENDITURE 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 the City's Municipal Code, Chapter 13, to amend sections of the Affordable Housing General Oversight Ordinance to comply with MFA's request and to ensure compliance with the State's Affordable Housing Act.
2. Vote "No"; this will not amend the City's Municipal Code, Chapter 13, to comply with MFA's request and will not ensure compliance with the State's Affordable Housing Act.
3. Vote to "Amend" and vote "Yes"; this may allow Council to modify the Ordinance by adding conditions as they deem appropriate.
4. Vote to "Table"; Council may table/postpone the Ordinance and direct staff accordingly.

REFERENCE INFORMATION:

The resolution(s) and/or ordinance(s) listed below are only for reference and are not included as attachments or exhibits.

1. Ordinance No. 2319
2. Ordinance No. 2592

COUNCIL BILL NO. 11-037
ORDINANCE NO. 2617

AN ORDINANCE AMENDING SECTIONS 13-103, 13-104, AND 13-106 OF THE CITY'S AFFORDABLE HOUSING GENERAL OVERSIGHT ORDINANCE WITHIN THE LAS CRUCES MUNICIPAL CODE, 1997, AS AMENDED. THE AMENDMENT IS TO ADD LANGUAGE TO ENSURE COMPLIANCE WITH THE STATE'S AFFORDABLE HOUSING ACT REQUIREMENTS.

The City Council is informed that:

WHEREAS, the City of Las Cruces adopted the Affordable Housing General Oversight Ordinance on September 5, 2006, under Council Bill No. 07-001, Ordinance #2319; and

WHEREAS, the Affordable Housing General Oversight Ordinance is codified within Article II, Division 2 of the Las Cruces Municipal Code, 1997, as amended; and

WHEREAS, the General Oversight Ordinance is a requirement of the State of New Mexico Constitution and the State's Affordable Housing Act whereby the City may provide land, buildings, infrastructure, or financing to the creation of affordable housing without violating the Anti-Donation Clause to the State Constitution; and

WHEREAS, the New Mexico Mortgage Finance Authority (MFA), which is the quasi-independent agency in New Mexico responsible for ensuring that local government's affordable housing programs comply with the Affordable Housing Act; and

WHEREAS, the MFA, in review of previous City Ordinances #2592 and #2593, realized that their initial review of the City's Affordable Housing General Oversight Ordinance #2319 did not contain certain provisions currently required under the New Mexico Affordable Housing Act and the MFA has requested that we amend our Municipal Code to include these provisions; and

WHEREAS, these additional provisions deal with ensuring that future ordinances

or ordinance amendments are reviewed by the MFA, that all City affordable housing programs require income verification of clients, and that any proposed City programs or assistance are necessary to the project's implementation and financing, as well as provide a clear benefit to the client's housing expenses.

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

(I)

THAT Sections 13-103, 13-104, and 13-106 of Chapter 13 of the Las Cruces Municipal Code, 1997, as amended, as shown in the Exhibit "A," attached hereto and made part of this Ordinance, are hereby amended.

(II)

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

DONE AND APPROVED this_____ day of _____ 2011.

APPROVED:

_____
Mayor

ATTEST:

_____
City Clerk

(SEAL)

Moved by: _____

Seconded by: _____

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

APPROVED AS TO FORM:

City Attorney

Sec. 13-103. General Requirements.

New Language

(4) Any ordinance creating a program or making affordable housing funds or housing assistance grants direct to projects under this Division shall be submitted to MFA for review along with any other necessary documentation. This provision shall also apply to any amendments to this Division and any ordinance amendments for funds or grants direct to project made under this Division.

Sec. 13-104. Applications.

New Language

(a) (25) All applicants shall provide proof of the need for the contribution, that the contribution will reduce the housing costs to persons of low or moderate income, and that there will be a direct benefit from the proposed project to the community or purported beneficiaries.

(a) (26) All applicants seeking affordable housing funds or housing assistance grants must provide clear evidence of the need for the funds or grant and that the value of the assistance requested will reduce the housing costs of persons of low or moderate income.

Sec. 13-106. Affordable Housing Requirements.

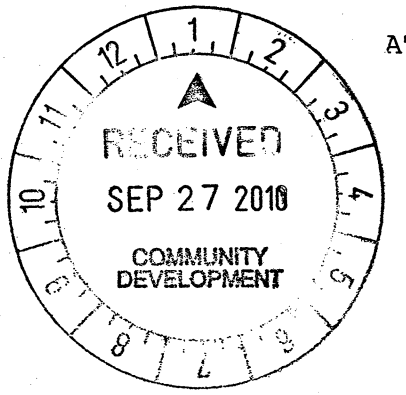
New Language

(e) *Verification of income levels.* For all developments assisted under this Division:

(1) Income verification for client eligibility shall occur at the time of initial eligibility for single-family property developed under (a)(1) of this Division at the time of contract between the developer and the end user client.

(2) Income verification for client eligibility shall occur at the time of initial lease-up and/or occupancy for multi-family and nonresidential properties developed under (a)(2) or (a)(3) of this Division. Continued leasing and/or occupancy shall require verification of client income on a period of not less than once per year throughout the affordability period.

ATTACHMENT "B"



MFA | *Housing New Mexico*

David Dollahon, AICP
Neighborhood Services Administrator
P.O. Box 20000
Las Cruces, New Mexico 88004-9002

Re: Review of City of Las Cruces Proposed Ordinances 2592 and 2593 Pursuant to the New Mexico Affordable Housing Act and Affordable Housing Act Rules

Dear Mr. Dollahon:

We are in receipt of the City of Las Cruces proposed Ordinance 2592, to establish an Affordable Housing Land Bank and Trust Fund; and proposed Ordinance 2593, to establish an Affordable Housing Land Bank and Trust Fund Advisory Committee. In accordance with the Affordable Housing Act, Sections 6-27-1 to 6-27-8 NMSA 1978 (hereinafter, "the Act"), and the Affordable Housing Act Rules (hereinafter, "the Rules"), we have reviewed the draft proposed ordinances to assess their degree of compliance with the requirements of the Act and the Rules. Our determination is as follows:

1. Proposed Ordinance 2592 is in compliance with the Act and the Rules.
2. It is in MFA's opinion that proposed Ordinance 2593 does not require MFA's review pursuant to the Act and the Rules because the ordinance deals strictly with an administrative function of the municipality, is governed by municipal law, and only indirectly relates to the Affordable Housing Act and Rules. MFA nevertheless finds the proposed Ordinance 2593 does not violate any provision of the Act and the Rules.

Mr. Dollahon, though MFA has approved Ordinance 2592, and finds no fault with Ordinance 2593, it has come to our attention that there are certain deficiencies that were overlooked in the 2006 review of Ordinance No. 07-001, Council Bill 2319. I must note by way of explanation that, at the time Council Bill 2319 was reviewed, ordinances submitted to MFA were not reviewed by MFA legal counsel. We therefore recommend that the City of Las Cruces endeavor to amend Council Bill 2319 to include the following:

1. a provision stating that ordinances shall be submitted to MFA for review, along with any other necessary documentation.
2. a provision requiring proof of the need for the contribution, that the contribution will reduce the housing costs to persons of low or moderate income, and that there will be a direct benefit from the proposed project to the community or purported beneficiaries.
3. a provision setting out requirements for verification of income levels.
4. a provision requiring an applicant for a subsidy to provide clear evidence of the need for the subsidy, and that the value of the assistance requested will reduce the housing costs to persons of low or moderate income.

5. a provision stating that any proposed amendment to an ordinance and/or regulations shall be submitted to the MFA for review.

Inclusion of the above-listed provisions will ensure that the City of Las Cruces' affordable housing ordinances and programs are and remain fully in compliance with New Mexico law.

In closing, the MFA would like to express its appreciation for the City of Las Cruces' admirable efforts to promote affordable housing.

Sincerely yours,

By: Marjorie A. Martin
Marjorie A. Martin
MFA Attorney

MFA