City of Las Cruces®
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Council Action and Executive Summary

Item # 9 **Ordinance/Resolution#** 2627

For Meeting of July 5, 2011 (Ordinance First Reading Date) **For Meeting of** August 15, 2011 (Adoption Date)

TITLE: **AN ORDINANCE AMENDING SECTIONS 13-102, 13-105, AND 13-106 OF THE CITY'S AFFORDABLE HOUSING GENERAL OVERSIGHT ORDINANCE WITHIN THE LAS CRUCES MUNICIPAL CODE, 1997, AS AMENDED.**

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 / Neighborhood Services	**Phone:** 528-3060
City Manager Signature:		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The City of Las Cruces adopted Ordinance 2319 on September 5, 2006, whereby the City created the "Affordable Housing General Oversight Ordinance." This Affordable Housing General Oversight Ordinance ("Ordinance" henceforth) was created in order for the City to comply with the State's Affordable Housing Act. Under the Affordable Housing Act, the City may provide land, buildings, infrastructure, and/or financing for the creation of affordable housing, without violating the Anti-Donation Clause of the State Constitution; however, that is conditioned upon the adoption of an ordinance to ensure compliance with the State's Affordable Housing Act.

Upon subsequent review of another City Ordinance (Ordinance 2617) in May 2011 by staff, it was determined that minor clarifications and additions are needed to the ordinance. The proposed clarifications and additions only add to the City's current ability to provide affordable housing. It is worth noting that Ordinance 2592, which re-codified all of Chapter 13 of the Municipal Code and the proposed amendments to the Ordinance are reflective of the section numbers under the re-codified chapter.

The proposed ordinance provides additions to the Affordable Housing General Oversight Ordinance by amending various sections of Chapter 13, Housing of the Municipal Code and provides additional requirements as follows:

1. Adds within Section 13-102, Definitions, for what is:
   a. "contribution,"
   b. "market value," and
   c. Amends the existing definitions of:
      i. "housing assistance grant" to include demolition and reconstruction and costs of acquisition and financing as existing eligible uses available to the City,
      ii. "persons of low and moderate income" to allow for greater clientele and other requirements in order to serve more people under the City's programs.
2. Renames with Section 13-015 (5) from "Infrastructure cost reimbursement contract" to "Cost reimbursement contract," and
3. Adds within Section 13-106, Affordable Housing Requirements, the repayment and recapture provisions for those single-family, owner-occupied housing that are assisted through the City's programs.

SUPPORT INFORMATION:

1. Ordinance.
2. Exhibit "A", Proposed amendment to Sections 13-102, 13-105, and 13-106 of the Municipal Code.
3. Attachment "A", Section 13-102, 13-105, and 13-1106 shown in legislative format.

SOURCE OF FUNDING:

Is this action already budgeted?			
N/A	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 (i.e. grant; see details below)
		☐	Proposed funding is from fund balance in the _____ Fund.
Does this action create any revenue?			
N/A	Yes	☐	Funds will be deposited into this fund: _____ in the amount of $_____for FY__.
	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 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 ensure compliance with the State's Affordable Housing Act.
2. Vote "No"; this will not amend the City's Municipal Code, Chapter 13, to 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. N/A

COUNCIL BILL NO. 12-005
ORDINANCE NO. 2627

AN ORDINANCE AMENDING SECTIONS 13-102, 13-105, AND 13-106 OF THE CITY'S AFFORDABLE HOUSING GENERAL OVERSIGHT ORDINANCE WITHIN THE LAS CRUCES MUNICIPAL CODE, 1997, AS AMENDED.

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) 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 has amended various portions of the Affordable Housing Act which requires the City to update the City's Affordable Housing General Oversight Ordinance; and

WHEREAS, this Ordinance provides for new or amended definitions, renaming of the section on "cost reimbursement contracts," and adding repayment and recapture requirements for single-family, owner-occupied affordable housing requirements.

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

(I)

THAT Sections 13-102, 13-105, and 13-106 of Chapter 13 of the Las Cruces Municipal Code, 1997, as amended, as shown in 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)

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

Section 13-102. Definitions.

New Language – to be incorporated alphabetically within the existing list of words,

Contribution shall mean any provision of assistance for affordable housing including an affordable housing grant or affordable housing funds, made by the state, the city, or the MFA.

Market value shall mean the price at which buyers and sellers trade similar items in an open marketplace. In the absence of a marketplace, it is the estimated highest price a buyer would be warranted in paying and a seller justified in accepting, provided both parties were fully informed and acted intelligently and voluntary.

Changed Language – to be made to the existing list of words:

Housing assistance grant means the donation by the city of:

(1) Land for construction for an affordable housing project;
(2) An existing building for conversion, renovation, or demolition and reconstruction of as affordable housing;
(3) The costs of financing infrastructure necessary to support affordable housing; or
(4) The costs of acquisition, development, construction, financing, and operation or owning affordable housing.

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 of location thereon of such a building, structure or portion thereon. Residential housing includes congregate housing, manufactured homes and housing intended to provide or providing transitional or temporary housing for homeless persons **and common health care for supportive housing, kitchen, dining, recreational and other facilities primarily for use by residents of a residential housing project or a single room occupancy 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 120 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 bases, and with the following conditions. 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 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, who are allowable as personal exemption for federal income tax provisions and/or 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.

(4) For affordable housing projects that involve homeownership opportunities, is limited to qualified families that pay no more than forty percent (40%) of the families' annual gross income for their housing expenses, including principal, interest, taxes, and insurance.

(5) For affordable housing projects that involve rental or multi-family housing are:

a. limited by rents that do not exceed the established fair markets rent or other rental program subsidy rent limitations; AND

b. projects that serve special needs populations in which at least fifty-one percent (51%) or more of all available units are rented to those specific populations intended to be served by the project (i.e. homeless, victims of domestic violence, disabled adults, homeless, homeless or disabled veterans, migrant workers, or any other CDBG qualified presumed benefit clientele); OR

c. limits the maximum percent of a person's annual gross income spent on rent and utilities in accordance with a rent subsidy program or limits the maximum percent of a person's annual gross income that may be paid for housing expenses, including allowed utility allowances, as prescribed by the following chart:

		Maximum % of Income from clients toward affordable rents based on the % of maximum investment from City and/or State funds toward the projects total development cost		
		% of Total Investment		
Clients % of Median Income		**< = 30%**	**31-55%**	**56% +**
0 – 30.00% AMI		30%	30%	25%
30.01- 50.00% AMI		40%	35%	30%
50.01- 80.00% AMI		50%	45%	35%
80.01 – 120% AMI		N/A		

(6) As part of any affordable housing grant agreement, the City Council may waive or amend the income, housing and/or rent limits established under this Section, provided that other criteria are established and installed to insure that the project qualifies as affordable housing. Such waivers and amendments may be accomplished within the affordable housing grant agreement.

Section 13-105. Additional requirements.

Changed Language – struck language is shown in ~~strikethrough~~:

Renames *"(5) ~~Infrastructure~~ cost reimbursement contracts."* to *"(5) Cost reimbursement contracts."*

Sec. 13-106. Affordable Housing Requirements.

Added Language:

(a)(1) *Single-family property.* Qualifying grantees shall agree that they shall maintain any owner-occupied 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 less.

a. *Repayment, Recapture and Preservation of Affordable Housing Funds.* Affordable housing funds which are used for the benefit of any owner-occupied single-family property shall be repaid to the grantor or lender of the Affordable Housing funds in the event the property is no longer used primarily as an owner-occupied single-family property or the property is leased, sold, exchanged or otherwise transferred to a person who is not a Qualifying grantee. The grantor or lender that receives the repayment of Affordable Housing funds shall recapture and preserve the Affordable Housing Funds solely for the purpose of providing Affordable Housing. If the grantor or lender of Affordable Housing Funds is unable or unwilling to receive, recapture, preserve and re-use such funds for affordable housing for any reason, including the liquidation or cessation of the business of the grantor or lender, the Affordable Housing Funds shall be paid to the MFA and deposited in the MFA's Housing Trust Fund or such other funds as the MFA may designate.

b. *Amount of Repayment and Recapture.* The Affordable Housing Funds required to be repaid under (a)(1) a. of this Section is at least equal to the principal amount of the grant or loan, plus interest, if any, accrued on the loan or grant and any fees or cost for collection.

Section 13-102. Definitions.

New Language – to be incorporated alphabetically within the existing list of words, shown in **bold** and **underline**:

***Contribution* shall mean any provision of assistance for affordable housing including an affordable housing grant or affordable housing funds, made by the state, the city, or the MFA.**

***Market value* shall mean the price at which buyers and sellers trade similar items in an open marketplace. In the absence of a marketplace, it is the estimated highest price a buyer would be warranted in paying and a seller justified in accepting, provided both parties were fully informed and acted intelligently and voluntary.**

Changed Language – to be made to the existing list of words:

Housing assistance grant means the donation by the city of:

(1) Land for construction for an affordable housing project;
(2) An existing building for conversion, renovation, **or demolition and reconstruction of** as affordable housing;
(3) The costs of financing infrastructure necessary to support affordable housing; or
(4) The costs of acquisition, development, construction, financing, and operation or owning affordable housing.

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 of location thereon of such a building, structure or portion thereon. Residential housing includes congregate housing, manufactured homes and housing intended to provide or providing transitional or temporary housing for homeless persons **and common health care for supportive housing, kitchen, dining, recreational and other facilities primarily for use by residents of a residential housing project or a single room occupancy 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 **120** 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 bases, and with the following conditions. 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 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, **who are allowable as personal exemption for federal income tax provisions and/or** 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.

(4) For affordable housing projects that involve homeownership opportunities, is limited to qualified families that pay no more than forty percent (40%) of the families' annual gross income for their housing expenses, including principal, interest, taxes, and insurance.

(5) For affordable housing projects that involve rental or multi-family housing are:

a. limited by rents that do not exceed the established fair markets rent or other rental program subsidy rent limitations; AND

b. projects that serve special needs populations in which at least fifty-one percent (51%) or more of all available units are rented to those specific populations intended to be served by the project (i.e. homeless, victims of domestic violence, disabled adults, homeless, homeless or disabled veterans, migrant workers, or any other CDBG qualified presumed benefit clientele); OR

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(6) As part of any affordable housing grant agreement, the City Council may waive or amend the income, housing and/or rent limits established under this Section, provided that other criteria are established and installed to insure that the project qualifies as affordable housing. Such waivers and amendments may be accomplished within the affordable housing grant agreement.

Section 13-105. Additional requirements.

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Renames *"(5) ~~Infrastructure~~ cost reimbursement contracts."* to *"(5) Cost reimbursement contracts."*

Sec. 13-106. Affordable Housing Requirements.

New Language – shown in **bold** and **underlined**

(a)(1) *Single-family property.* Qualifying grantees shall agree that they shall maintain any **owner-occupied** 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~~**less**.

a. *Repayment, Recapture and Preservation of Affordable Housing Funds.* Affordable housing funds which are used for the benefit of any owner-occupied single-family property shall be repaid to the grantor or lender of the Affordable Housing funds in the event the property is no longer used primarily as an owner-occupied single-family property or the property is leased, sold, exchanged or otherwise transferred to a person who is not a Qualifying grantee. The grantor or lender that receives the repayment of Affordable Housing funds shall recapture and preserve the Affordable Housing Funds solely for the purpose of providing Affordable Housing. If the grantor or lender of Affordable Housing Funds is unable or unwilling to receive, recapture, preserve and re-use such funds for affordable housing for any reason, including the liquidation or cessation of the business of the grantor or lender, the Affordable Housing Funds shall be paid to the MFA and deposited in the MFA's Housing Trust Fund or such other funds as the MFA may designate.

b. *Amount of Repayment and Recapture.* The Affordable Housing Funds required to be repaid under (a)(1) a. of this Section is at least equal to the principal amount of the grant or loan, plus interest, if any, accrued on the loan or grant and any fees or cost for collection.