

CITY OF HOBBS

ORDINANCE NO. 1050

AN ORDINANCE AMENDING THE CITY AFFORDABLE HOUSING PROGRAM PURSUANT TO THE NEW MEXICO AFFORDABLE HOUSING ACT.

WHEREAS, the City of Hobbs (the "City") is a municipal corporation duly organized and existing under the laws of the State of New Mexico (the "State"); and

WHEREAS, under an exception to the "anti-donation" clause as set forth in Article IX, § 14 of the New Mexico Constitution, the City is not prohibited from (i) donating or otherwise providing or paying a portion of the costs of land for the construction on it of affordable housing; (ii) donating or otherwise providing or paying a portion of the costs of construction or renovation of affordable housing or the costs of conversion or renovation of buildings into affordable housing; or (iii) providing or paying the costs of financing or infrastructure necessary to support affordable housing projects; and

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

WHEREAS, the City Commission (the "Commission"), the governing body of the City, adopted Ordinance #959 on February 5, 2007 to implement an affordable housing program for the City; and

WHEREAS, the Commission recently adopted an Affordable Housing Plan by Resolution #5662 on April 18, 2011 to develop specific affordable housing programs and to further implement affordable housing strategies within the City; and

WHEREAS, the Hobbs Affordable Housing Plan was adopted as an amendment to the Hobbs Comprehensive Community Development Plan, after review and recommendations on the Plan by the New Mexico Mortgage Finance Authority (the "MFA"); and

WHEREAS, the MFA has reviewed and approved the form and terms of this Ordinance prior to final adoption hereof.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF HOBBS, NEW MEXICO:

I. The City of Hobbs Affordable Ordinance adopted on February 5, 2007 pursuant to City Ordinance #959 is hereby amended by this new Revised Ordinance.

II. SHORT TITLE. This Chapter may be cited as the "Affordable Housing Ordinance."

III. PURPOSE. This ordinance is adopted to implement the City's Affordable Housing Program. In accordance with the N.M. Constitution, Art. IX § 14, the Affordable Housing Act, NMSA 1978, § 6-27-1 et seq. (the "Act"), and the MFA Affordable Housing Act Rules (the "Rules"), the purpose of the Affordable Housing Ordinance is to:

A. establish procedures to ensure that both State and local housing assistance grantees are Qualifying Grantees who meet the requirements of the Act and the Rules both at the time of the award and throughout the term of any grant or loan under the Program;

B. 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;

C. create an evaluation process to determine:

- (i) the financial and management stability of the Applicant;
- (ii) the demonstrated commitment of the Applicant to the community;
- (iii) a cost-benefit analysis of the project proposed by the Applicant;
- (iv) the benefits to the community of a proposed project;
- (v) the type or amount of assistance to be provided;
- (vi) the scope of the Affordable Housing Project;
- (vii) any substantive or matching contribution by the Applicant to the proposed project;
- (viii) a performance schedule for the Qualifying Grantee with performance criteria; and
- (ix) any other rules or procedures which the City believes are necessary for a full review and evaluation of the Applicant and the Application or which the MFA believes are necessary for a full review of the City's evaluation of the Applicant;

D. 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;

E. require that the City enter into a contract with the Qualifying Grantee consistent with the Act, which contract shall include remedies and default provisions in the event of the unsatisfactory performance and that said contract requires that the recipient of a contribution be subject to the jurisdiction of the New Mexico courts to enforce compliance with the Act, the Rules, and any agreement(s) between the recipient and the City, and which contract shall be subject to the review of the MFA in its discretion;

F. require that each contract with a Qualifying Grantee include an authorization by the Commission of the intended contribution;

G. 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 Project be occupied by Persons of Low or Moderate Income;

H. require that the recipient of a contribution execute all necessary documents to secure against the loss of public funds or property in the event of default, or in the event that the Qualifying Grantee abandons or otherwise fails to complete the Project, and imposing reimbursements by the recipient to be responsible to pay for all related attorney fees and costs for efforts by the City to enforce the Rules, the Act, and any agreements created pursuant to the ordinance.

I. require that prior to any action of the Commission to authorize the transfer or disbursement of City funds to a recipient of a contribution an affordable housing project, a budget with a sufficient amount of appropriation to fund such a disbursement must have been submitted to the Commission and approved by the Commission prior to the approval of the disbursement, and/or the MFA before any expenditure of grant funds or transfer of granted property;

J. require the contract to include requirement that Qualifying Grantee abide by a reasonable performance schedule and performance criteria, which the City may establish, in its discretion.

K. require that the Contract must require Qualifying Grantee to open its books and records, and provide information requested, as City and/or MFA deem necessary to determine compliance with the Act, Rules, and any applicable contracts; and may require Qualifying Grantee to pay costs of such examinations.

L. require that all activities are in compliance with the Act and the Rules, as amended, and require compliance with the Act and the Rules in the provision of all contributions and by the recipients of contributions.

M. require, as a condition of grant approval, proof of compliance with all applicable state and local laws, rules and ordinances.

N. require that the contract contain a provision stating that the contribution authorized by the ordinance is consistent with the existing housing plan or housing elements in general plan.

O. require that the contract contain a provision stating that it goes into effect subject to local ordinance requirements for publication and filing.

P. require that any proposed amendment to the ordinance and or regulations shall be submitted to MFA for review.

Q. require that a condition of grant or loan approval be 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;

R. may provide for matching funds or using local, private or federal funds;

S. shall provide definitions for "low-income and moderate-income" and setting out requirements for verification of income levels; and

T. provide the City with a valid Affordable Housing Program.

IV. GENERAL DEFINITIONS. The following words and terms shall have the following meanings.

A. "**Act**" shall mean the Affordable Housing Act, NMSA 1978, §6-27-1 et seq., as amended.

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

C. "**Affordable Housing**" means residential housing primarily for Persons of Low or Moderate Income.

D. "**Affordable Housing Funds**" shall mean any or all funds awarded or to be awarded, loaned or otherwise distributed under the Act for payment of the costs of Infrastructure for Affordable Housing under an Affordable Housing Plan.

E. "**Affordable Housing Plan**" or "**Plan**" shall mean a plan pursuant to an Affordable Housing Program that contemplates one or more Affordable Housing Projects, which may be developed in one or more phases.

F. "**Affordable Housing Program**" or "**Program**" shall mean any programs the City and/or the MFA establish pursuant to the Act.

G. "**Affordable Housing Project**" or "**Project**" shall mean any work or undertaking, whether new construction, acquisition of existing Residential Housing, remodeling, improvement, Rehabilitation or conversion, which may be undertaken in one or more phases, as part of an Affordable Housing Plan, as approved by the City and/or the MFA for the primary purposes as allowed by the Act.

H. "**Affordability Period**" shall mean:

(1) if the fair market value of any Housing Assistance Grant or the total amount of Affordable Housing Funds that have been awarded, loaned, donated, or otherwise conveyed to the Qualifying Grantee is from \$1 to \$14,999, then the Affordability Period shall be not less than five (5) years.

(2) if the fair market value of any Housing Assistance Grant or the total amount of Affordable Housing Funds is from \$15,000 up to and including \$40,000, then the Affordability Period shall be not less than ten (10) years.

(3) if the fair market value of any Housing Assistance Grant or the total amount of Affordable Housing Funds is from \$40,000 up to and including \$100,000, then the Affordability Period shall be not less than fifteen (15) years.

(4) if the fair market value of any Housing Assistance Grant or the total amount of Affordable Housing Funds is greater than \$100,000, then the Affordability Period shall be not less than twenty (20) years.

I. **"Applicant"** shall mean, subject to further qualifications in Section 3.14.040(B), an individual, a governmental housing agency, a regional housing authority, a for-profit organization, including a corporation, limited liability company, partnership, joint venture, syndicate, or association or a nonprofit organization meeting the appropriate criteria of the City and/or the MFA.

J. **"Application"** shall mean an application to participate in one or more Affordable Housing Programs or Affordable Housing Plans under the Act submitted by an Applicant to the City and/or the MFA.

K. **"Area Median Income" or "AMI"** shall mean the household Area Median Income for various family sizes in Hobbs, with specific income levels defined below.

K1. **"Income Levels Qualifying For Affordable Housing Assistance"** shall mean those specific income limit definitions for various income groups are provided by HUD for HUD programs such as HOME and CDBG, which define low and moderate income households as follows:

K2. **"Low and Moderate Income Households"** shall mean those households earning below 80% of AMI.

K3. **"Moderate Income Households"** shall mean those households earning from 80% AMI and below to 50% AMI.

K4. **"Low Income Households"** shall mean those households with incomes of 50% AMI and below to 30% AMI.

K5. **"Extremely Low Income Households"** shall mean those households with incomes below 30% AMI.

K6. **"Maximum Household Income to Qualify for Housing Assistance"** shall mean 120% of AMI is the maximum household income allowed to qualify for affordable housing assistance.

L. **"Builder"** shall mean an individual or entity licensed as a general contractor to construct Residential Housing in the State that satisfies the requirements of a Qualifying Grantee and has been approved by the City and/or the MFA to participate in an Affordable Housing Program. The term "Builder" shall also include an individual or entity that satisfies the requirements of a Qualifying Grantee and has been approved by the City and/or the MFA to participate in an Affordable Housing Program, who is not licensed as a general contractor in the State, provided such individual or entity contracts with a general contractor licensed in the State to construct Residential Housing.

M. **"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.

N. **"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.

O. **"Eligible nonprofit organization"** shall mean an organization

(1) having the provision of housing or housing related services to low or moderate income persons as their primary mission;

(2) that is a recipient of a 501(c)(3) designation prior to submitting application;
and

(3) having no part of net earnings inuring to benefit of any member, founder, contributor, or individual.

P. **"Eligible non-individual applicant"** shall mean an organization:

(1) that is duly organized under state, local, or tribal laws and have proof of such organization;

(2) having a functioning accounting system operated in accordance with generally accepted accounting principles or has designated entity that will maintain such accounting system;

(3) having among its purposes significant activities related to providing housing or services to persons of low or moderate income;

(4) with evidence or certification that applicant has no significant outstanding or unresolved monitoring findings from the City or the MFA, or its most recent independent financial audit, or if it has such findings, it has certified letter from City, MFA, or auditor stating that findings in process of being resolved.

Q. **"Federal Government"** shall mean the United States of America and any agency or instrumentality, corporate or otherwise, of the United States of America.

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

S. **"Housing Assistance Grant"** means the donation by the City of:

(1) land for construction of a Project;

(2) a portion of the costs of land for construction of a Project;

(3) an existing Building for conversion or renovation as Affordable Housing;

(4) a portion of the costs of conversion or renovation of buildings into affordable housing; or

(5) the costs of financing or Infrastructure necessary to support Affordable Housing.

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

U. **"Infrastructure"** shall mean Infrastructure Improvements and Infrastructure Purposes.

V. **"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 subsection; and
- (14) heating, air conditioning and weatherization facilities, systems or services, and energy efficiency improvements, that are affixed to real property.

W. **"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, provided the City may determine it appropriate to reduce or waive building permit fees, sewer and water hook-up fees and other fees with respect to an Affordable Housing Project for which Affordable Housing Funds and/or Housing Assistance Grants are awarded, loaned, donated or otherwise distributed under the Act;
- (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 subsection.

X. **"MFA"** shall mean the New Mexico Mortgage Finance Authority.

Y. **"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, N.M.S.A. (1978), as amended).

Z. **"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.

AA. **"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 Federal Housing Authority, Veterans' Affairs, Federal National Mortgage Association (now known as Fannie Mae), or Federal Home Loan Mortgage Corporation.

BB. **"Mortgage Loan"** shall mean a financial obligation secured by a Mortgage, including a Mortgage Loan for a Project.

CC. **"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 sixty percent (60%) 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.

DD. **"Multi-Family Housing Program"** shall mean a program involving a Congregate Housing Facility, a Multiple Family Housing Project or a Transitional Housing Facility.

EE. **"Persons of Low or Moderate Income"** shall mean persons and families within the State who are determined by the MFA to lack sufficient income to pay enough to cause private enterprise to build an adequate supply of decent, safe and sanitary residential housing in their locality or in an area reasonably accessible to their locality and whose incomes are below the income levels established by the MFA to be in need of the assistance made available by the Act, taking into consideration, without limitation, such factors as defined under the Act. For purposes of this definition, the word "families" shall mean a group of persons consisting of, but not limited to, the head of a household; his or her spouse, if any; and children, if any, who are allowable as personal exemptions for Federal income tax purposes.

FF. **"Ordinance"** or **"Revised Ordinance"** shall mean this Ordinance.

GG. **"Policies and Procedures"** shall mean Policies and Procedures of the MFA, including but not limited to, Mortgage Loan purchasing, selling, servicing and reservation procedures, which the MFA may update and revise from time to time as the MFA deems appropriate.

HH. **"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.

II. **"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, corporation, limited liability company, partnership, joint venture, syndicate, association or a nonprofit organization that:

(a) is organized under State or local laws and can provide proof of such organization;

(b) if a non-profit 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.

JJ. **"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.

KK. **"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.

- LL. **"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.
- MM. **"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.
- NN. **"RFP"** shall mean any request for proposal made by the City.
- OO. **"Rules"** shall mean the New Mexico Mortgage Finance Authority Affordable Housing Rules adopted pursuant to Section 6-27-8(B) NMSA 1978.
- PP. **"State"** shall mean the State of New Mexico.
- QQ. **"City"** shall mean the City of Hobbs, New Mexico, a New Mexico municipal corporation.
- RR. **"Transitional Housing Facility"** shall mean residential housing that is designed for temporary or transitional occupancy by Persons of Low or Moderate Income or special needs.
- SS. **"Potential Qualifying Grantee" or ("PQG")** shall mean an entity that the City is working with to attain Qualifying Grantee status approved by the MFA.

V. GENERAL REQUIREMENTS. With the exception of Housing Assistance Grants involving funding from the State which shall be governed by Section 3.14.040(L) below, the following requirements shall apply to all Housing Assistance Grants and/or Affordable Housing Funds awarded, loaned or otherwise distributed by the City under the Act to a Qualifying Grantee.

A. Pre-qualification of Applicants as Qualifying Grantees. The City, in its discretion, may from time to time permit pre-qualification of applicants as Qualifying Grantees, as follows:

(1) The City may review information submitted by eligible applicant and certify in writing that applicant is a "Potential Qualifying Grantee" ("PQG"). The City must then provide a copy of the certification to MFA, upon its request.

(2) The City's certification shall be valid for up to one year, subject to the ability of PQG to certify in writing at time of application or response to RFP that there have been no material changes in any of the information or documentation provided by, or representations made by PQG to the City and upon which the City has based its decision to certify the applicant as a PQG.

(3) Notwithstanding the foregoing, certification as PQG does not mean that the PQG will be chosen by the City as a Qualifying Grantee, or that MFA will determine that PQG is a Qualifying Grantee, or that any application submitted by PQG is complete or otherwise in compliance with the Act or Rules, or that PQG will be awarded any Affordable Housing Funds or Housing Assistance Grants

B. Request for Proposals.

(1) The City, in its discretion, may issue one or more RFP's to solicit applications from Applicants or shall otherwise identify a Qualifying Grantee for the use of any Affordable Housing Funds or Housing Assistance Grants to be awarded, loaned, donated or otherwise distributed under the Act.

(2) If an RFP process is permitted, the City must specify an application process, including requirements for the contents, submission, review by the City, certification to the MFA, and notification to the applicant, that are in accordance with the Rules. In responses to the City Request for Proposals, the applicant must attach the application and application shall include the following:

(i) One original application, with all required schedules, documents, or other such information that may be required by City and/or the MFA or in any RFP which may have been issued by the City, must be included in application;

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

(iii) Executive Summary and Project Narrative(s) that address evaluation criteria set forth in any RFP issued by City for the Affordable Housing Funds or assistance grant for which applicant is applying;

(iv) For nonprofit organization, proof of 501(c)(3) tax status and documentation confirming that no part of its net earnings inures to the benefit of any member, founder, contributor, or individual;

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

(vi) A proposed budget for Affordable Housing Project for which applicant is applying for Affordable Housing Funds or for housing assistance grant;

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

(viii) List of current board members, including designated homeless participation, where required by the City;

(ix) Current independent financial audit;

(x) Evidence (or a certification as allowed by City) that 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;

(xi) Evidence or a certification that applicant has no significant outstanding or unresolved monitoring findings from City or MFA, or its most recent financial audit; or, if it has significant outstanding or

unresolved monitoring findings from the City or MFA, or its most recent independent financial audit, it has a certified letter from the City, MFA, or the auditor stating that the findings are in process of being resolved;

(xii) Organizational chart, including job titles and qualifications for applicant's employees or as otherwise may be required by City, and job descriptions may be submitted;

(xiii) Documentation that applicant is duly organized in accordance with the 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);

(xiv) Certifications as may be required by the City signed by Chief Executive Officer, Board President or authorized official of the applicant;

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

(xvi) Information as may be required by the City in order for it to determine the demonstrated commitment of the Applicant to the community;

(xvii) Adequate information, as required by the City regarding applicant's proposed Affordable Housing Project. The information provided must clearly evidence the need for the subsidy, that the value of the housing assistance grant reduces the housing costs to persons of low or moderate income, and 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;

(xviii) Information supporting the benefits to the community of the Affordable Housing Project proposed by the applicant;

(xix) 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;

(xx) Any certifications or other proof which City may require in order for the City and/or the MFA to confirm that the Applicant is in compliance with all applicable federal, state and local laws, rules and ordinances;

(xxi) Applications submitted in connection with a Multi-Family Housing Project, 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 (i) 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; (ii) 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. 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 and/or the MFA 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 New Mexico Human Rights Commission to be in noncompliance with any applicable civil rights laws.

(xxii) 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 and/or the MFA'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.

(xxiii) 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.

C. **Applicant Eligibility.** The following 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:

- (1) all individuals who are qualified to receive assistance pursuant to the Act, the Rules, and this Ordinance that are approved by the City;
- (2) all regional housing authorities and any governmental housing agencies;
- (3) all for-profit organizations, including any corporation, limited liability company, partnership, joint venture, syndicate or association;
- (4) all non-profit organizations meeting the following requirements:
 - (a) a primary mission of the nonprofit organization must be to provide housing or housing-related services to Persons of Low or Moderate Income;
 - (b) the non-profit organization must have received its 501(c) (3) designation prior to submitting an Application; and
 - (c) the non-profit organization must have no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual;
- (5) all non-individual Applicants must
 - (a) be organized under State or local laws and can provide proof of such organization and be approved by the City;
 - (b) 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;
 - (c) have among its purposes significant activities related to providing housing or services to Persons or Households of Low or Moderate Income; and
 - (d) 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.

D. **Applications.**

(1) **Process for Applying.** From time to time, the City in its discretion, may also receive periodic applications, not necessarily based on response to a specific RFP, from applicants for Affordable Housing Projects. Applicants wishing to apply for a Housing Assistance Grant, including the use of any Affordable Housing Funds, or to participate in any Affordable Housing Program are required to submit to the City the following (as applicable):

- (a) 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;
- (b) 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;
- (c) 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;

- (d) a proposed budget for the Affordable Housing Project for which the Applicant is applying for Affordable Housing Funds or for a Housing Assistance Grant;
 - (e) a current independent financial audit;
 - (f) if the Applicant is a non-profit organization: proof of 501(c)(3) tax status;
 - (ii) documentation that confirms that no part of its net earnings inures to the benefit of any member, founder, contributor or individual;
- if the Applicant is a legal entity, including a non-profit organization:
- a 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;
 - an 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;
 - a list of members of the Applicant's current board of directors or other governing body, including designated homeless participation, where required by the City;
 - 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;
 - 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;
 - an 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;
 - documentation that the Applicant is duly organized under State or local law and certification that the Applicant is in good standing with any State authorities, including the Public Regulation Commission and the Secretary of State;
- (h) information as may be required by the City in order for it to determine the financial and management stability of the Applicant;
 - (i) information as may be required by the City in order for it to determine the demonstrated commitment of the Applicant to the community;
 - (j) a completed cost-benefit analysis of the Affordable Housing Project proposed by the Applicant. Any cost-benefit analysis must include documentation that 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;
 - (k) information to the City supporting the benefits to the community of the Affordable Housing Project proposed by the Applicant;
 - (l) 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;

(m) 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;

(n) 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;

(o) certifications as may be required by the City and signed by chief executive officer, board president, mayor or other authorized official of the Applicant, provided that the City at its discretion may waive any of the foregoing requirements if not deemed applicable;

(2) Additional Requirements for Multi-Family Housing Projects. Applicants who are submitting Applications in connection with a Multi-Family Housing Program must also submit to the City the following additional information:

(a) a verified certificate that, among other things:

(i) 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;

(ii) except as shown on such certificate, states that:

(A) no mortgage on a project listed on such certificate has ever been in default, assigned to the Federal Government or foreclosed, nor has any mortgage relief by the mortgagee been given;

(B) 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;

(C) 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

(D) the Applicant has not defaulted on an obligation covered by a surety or performance bond.

If such Applicant cannot certify to each of the above, such Applicant shall submit a signed statement to explain the facts and circumstances that 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; and

(c) whether the Applicant has been found by the United States Equal Employment Opportunity Commission or the New Mexico Human Rights Commission to be in noncompliance with any applicable civil rights laws.

(3) Additional Requirements for Mortgage Lenders. 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, Federal Housing Authority, or Rural Housing Service programs.

(4) Submission Procedure.

(a) Time, Place and Method of Submission Delivery.

(i) If the City has issued an RFP, all Applications must be received by the City no later than the deadline set forth in the RFP; otherwise, all Applications must be received by the City by the 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 forty-five (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.

(ii) Applications shall be submitted by Applicants to the City in the form required by the City and shall contain all information which is required by this Ordinance and any RFP which may have been issued.

(b) Additional Factors. The Application procedures shall take into consideration:

(i) timely completion and submission to the City of an Application or other appropriate response to any solicitation by the City;

(ii) timely submission of all other information and documentation related to the program required by the City as set forth in this Ordinance or as set forth in the Rules;

(iii) timely payment of any fees required to be paid to the City at the time of submission of the Application; and

(iv) compliance with program eligibility requirements as set forth in the Act, the Rules and this Ordinance.

(c) Submission Format.

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

(ii) 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.

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

(iv) 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 Applicant.

(v) The City in its discretion may cancel any RFP or reject any or all proposals in whole or part submitted by any Applicant.

(vi) 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.

(5) Review by the City. On receipt of an Application, the City shall:

(a) determine whether the Application submitted by the Applicant is complete and responsive;

(b) determine whether the Applicant is a Qualifying Grantee as defined herein and in the Act;

(c) 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;

(d) 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;

(e) 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 Persons of Low Income or Moderate Income 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;

(f) 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;

(g) ascertain the amount of any matching funds or in-kind services specific to the program that may be utilized by the Applicant in connection with the program;

(h) 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;

(i) ascertain whether the Applicant has and can demonstrate the capability to manage the implementation of the Program for which the Applicant is applying;

(j) 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 non-compliance 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;

(k) 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;

(l) evaluate the Applicant's proposal in part based upon the Applicant's current financial audit;

(m) 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;

(n) 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.

(o) consider other factors it deems appropriate to ensure a reasonable geographic allocation for all Affordable Housing Programs.

(6) Certification by the City to the MFA. The City shall certify an Application to the MFA in writing upon:

(a) completion of its review of the Application;

(b) determination that the Application is complete;

(c) determination that the requirements of the Act, the Rules and this Ordinance have been satisfied; and

(d) determination that the Applicant is a Qualifying Grantee.

(7) 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 forty-five (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.

(8) 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 this Ordinance 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 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.

E. 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 both the Act and the Rules, 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, the Rules and this Ordinance, 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 this Ordinance, 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 or Affordable Housing Funds 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, the Rules and this Ordinance.

(3) Performance Schedule and Criteria. The Qualifying Grantee shall be required to abide by a reasonable performance schedule and performance criteria that the City, in its discretion, may establish.

(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, this Ordinance 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 twenty (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 the State or local governments through appropriations for use for the purposes of the Act.

(g) **Cost Allocation.** 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.

(9) **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, the Rules and this Ordinance throughout the term of any contract and/or any Affordability Period 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 to the best of its knowledge the Qualifying Grantee is in compliance with applicable provisions of the Act, the Rules and this Ordinance.

F. Affordable Housing Requirements. 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 for the duration of the Affordability Period, 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 sixty percent (60%) 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 sixty percent (60%) 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) Non-Residential Property. Qualifying Grantees shall agree that they shall maintain any non-residential 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 for the duration of the Affordability Period, which ever is longer.

(4) 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 Sections 3.14.040(E)(1) and (2) or as a facility which provides housing related-services to Persons of Low or Moderate Income in accordance with Section 3.14.040(E)(3) (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 or City shall apply.

(5) Affordability Period. The City, in its discretion, may increase the Affordability Period in any contract, note, Mortgage, loan agreement, land use restriction agreement, restrictive covenant agreements and/or any other agreement which the City may enter into with any Qualifying Grantee or beneficiary of the Affordable Housing Funds or of the Housing Assistance Grant. See definition of Affordability Period in Section 3.14.030(H) of this Ordinance. Notwithstanding the foregoing, in 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 3.14.040(E); but nevertheless, any such conveyances may be subject to recapture on some pro-rated basis as determined by the City and/or the MFA.

G. 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 and this ordinance and any agreement between the Qualifying Grantee and the City and/or the MFA.

H. Recertification Procedures.

- (1) The Qualifying Grantee must meet the requirements of the Act, the Rules and this Ordinance both at the time of any award and throughout the term of any grant and contract related thereto.
- (2) The City may establish procedures for recertifying Qualifying Grantees from time to time.
- (3) Qualifying Grantees that fail to satisfy the requirements for Recertification shall cease to be eligible and shall be denied further participation in Affordable Housing programs until the requirements of the City and the MFA are satisfied.

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

J. Extension of Affordable Housing Programs. The MFA shall have the power to create variations or extensions of Affordable Housing Programs, or additional Programs that comply with the Act and the Rules.

K. City Grant Requirements.

- (1) The City is authorized to make Housing Assistance Grants under the Act. Upon determination that the City will make a Housing Assistance Grant, including the use of any Affordable Housing Funds, the City will provide the MFA with the following:
 - (a) documentation that confirms that the City has an existing valid Affordable Housing Plan;

(b) a copy of the proposed ordinance which provides for the authorization of the Housing Assistance Grant, including the use of any Affordable Housing Funds, together with a written certification that the proposed grantee is in compliance with Act and the Rules so that the MFA may confirm 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.

(2) Prior to the submission of the ordinance to the Commission, the Commission must approve the budget submitted by the Applicant.

(3) An ordinance authorizing the City to make a Housing Assistance Grant and/or distribute Affordable Housing Funds:

(a) must authorize the grant, including use of Affordable Housing Funds, if any;

(b) must state the requirements and purpose of the grant; and

(c) must authorize the transfer or disbursement to the Qualifying Grantee only after a budget is submitted to and approved by the Commission;

(d) must comply with the Rules, as amended.

(e) 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.

(4) The MFA shall act to approve the proposed Housing Assistance Grant authorized by the City within forty-five (45) days of its receipt of the documentation required above in this Section 3.14.040(J) (1), (2) and (3).

(5) The City, in its discretion, may also hold any award of Affordable Housing Funds or any Housing Assistance Grant made by the City 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 the City shall subject the Qualifying Grantee of the award or grant to the oversight of the City and the MFA under this Ordinance and the Rules.

L. This Revised Ordinance has been submitted to MFA for review, along with necessary documentation, as provided in Rule 5.3, as applicable. MFA has reviewed and approved the form and terms of this Ordinance prior to adoption by the Commission.

VI. ADOPTION OF CITY AFFORDABLE HOUSING PLAN.

A. The City of Hobbs recently adopted an Affordable Housing Plan by Resolution #5662 on April 18, 2011 to develop specific affordable housing programs and to further implement affordable housing strategies within the City, following review and approval of the Plan by the MFA. The City's Affordable Housing Plan is therefore adopted herein by reference, and a summary of the goals, objectives and programs, programs from the Plan follows herein:

City Affordable Housing Plan Programs.

Priority 1 Programs:

Land Banking

Weatherization

Income-restricted subsidized multi-family rental units.

City Housing Committee.

Monitoring of programs goals and housing conditions.

Housing Programs – City Budget Funding.

Waivers of fees

Infrastructure assistance.

Waiver/Infrastructure Combined Programs.

Affordable Housing Incentive- New Subdivisions...Minimum 20 lots.

Priority 2 Programs:

Moderate income rental housing projects.

Weatherization & Rehabilitation Owner Occupied Housing.

Down payment assistance.

Priority 3 Programs:

Senior Housing Rental Projects.

Annexation policies.

Owner Occupied Home Rehab. grants and low interest loans.

First time homebuyer education.

Priority 4 Programs:

Consider Developing a housing code.

Diversify the rental product mix – private sector accessory units.

B. The City is therefore hereby authorized by this revised Ordinance to create a budget for housing activities, to fund, carry out, develop agreements, operate programs and/or to do any other actions necessary to implement any and all activities as specified in the adopted City Plan, as determined in the best interests of the City of Hobbs.

C. From time to time following the adoption of this Revised Ordinance, the Commission may determine that it is necessary in order to further improve affordable housing programs to create a new housing assistance program, not previously addressed in the adopted City Affordable Housing Plan, and to create a budget for such a new housing program(s), and to fund, carry out, develop agreements, operate programs and/or to do any other actions necessary to implement such new programs, as determined in the best interests of the City of Hobbs. The City is therefore hereby authorized by this Revised Ordinance to revise the City's Affordable Housing Plan and implement such new programs, pursuant to the New Mexico Affordable Housing Act.

VII. DISCRIMINATION PROHIBITED. The development, construction, occupancy and operation of an Affordable Housing Program or an Affordable Housing Project financed or assisted under the Act shall be undertaken in a manner consistent with principles of non-discrimination and equal opportunity, and the City shall require

compliance by all Qualifying Grantees with all applicable federal and State laws and regulations relating to affirmative action, non-discrimination and equal opportunity.

VIII. ADMINISTRATION. The City shall administer any Affordable Housing programs in accordance with provisions of the Act, the Rules, this Ordinance, any applicable state and federal laws and regulations as each of which may be amended or supplemented from time to time. The City, 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.

IX. TERMINATION. The Commission may repeal this Ordinance and terminate the City's Affordable Housing Program and any or all contracts undertaken in its authority. Termination shall be by ordinance at a public hearing or in accordance with the terms of the contract. If an ordinance or a contract is repealed or terminated, all contract provisions of the contract regarding termination shall be satisfied.


BE IT FURTHER ORDAINED BY THE CITY COMMISSION FOR THE CITY OF HOBBS, NEW MEXICO in relation to this Revised Chapter, Affordable Housing Ordinance, the following:

X. REPEALER. All resolutions and ordinances, or parts thereof, inconsistent with this Ordinance are repealed by this Ordinance but only to the extent of that inconsistency. This repealer shall not be construed to revive any resolution or ordinance, or part thereof, previously repealed.


XI. SEVERABILITY. If any section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of that section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance. Any section, paragraph, clause or provision of this Ordinance not in accordance with either the Affordable Housing Act or the Affordable Housing Act Rules is null and unenforceable.

XII. RECORDING; AUTHENTICATION; PUBLICATION; EFFECTIVE DATE. This Ordinance, immediately upon its final passage and approval, shall be recorded in the ordinance book of the City, kept for that purpose, and shall be there authenticated by the signature of the Mayor or Mayor Pro Tem and attested to by the City Clerk. This Ordinance shall be in full force and effect five (5) days after publication in accordance with Section 3-17-5 NMSA, 1978.

PASSED, ADOPTED AND APPROVED this 5th day of December 2011.


GARY DON REAGAN, Mayor

ATTEST:


JAN FLETCHER, City Clerk



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