

**AMENDED**

**INCORPORATED COUNTY OF LOS ALAMOS CODE ORDINANCE 02-360**

**AN ORDINANCE OF THE INCORPORATED COUNTY OF LOS ALAMOS  
AMENDING ARTICLE VII OF CHAPTER 14, AFFORDABLE HOUSING**

**WHEREAS**, the Incorporated County of Los Alamos, New Mexico ("County") is a home rule county possessing the full power of local self-government pursuant to Article X, Sections 5 and 6 of the New Mexico Constitution, NMSA 1978, Chapters 3, 4 and 5, and County's Home Rule Charter; and

**WHEREAS**, the State Legislature, in Chapter 6, Article 27 NMSA 1978, Sections 1 through 9, "The Affordable Housing Act," has granted counties or municipalities the power to provide housing assistance grants pursuant to Article 9, Section 14 of the constitution of New Mexico if the governing body enacts an ordinance authorizing such grants and stating the requirements and purposes of the grants; and

**WHEREAS**, County may donate, provide, or pay all or a portion of the costs of acquisitions, development, construction, financing, operating or owning affordable housing; and

**WHEREAS**, County has, through this Ordinance, adopted specific language authorizing County to provide housing assistance grants within the County pursuant to Chapter 14 of the Los Alamos County Code of Ordinances ("County Code") and pursuant to the Affordable Housing Act; and

**WHEREAS**, to create a thriving and vibrant community, the County Council desires to provide more diverse housing options, particularly to low or moderate income households; and

**WHEREAS**, updated analysis of the County's housing market indicates that the County continues to struggle to provide diverse affordable housing options to its residents and prospective residents under the current definition of "affordable" in Chapter 14 of the County Code; and

**WHEREAS**, on August 27, 2024, County Council of the Incorporated County of Los Alamos, New Mexico adopted an amended Affordable Housing Plan for the County that provides updated market analysis, as well as recommendations, and strategies that better reflect the character and needs of the housing market; and

**WHEREAS**, the County Council deems it to be in the best interest of the County, its residents and those who wish to be residents to amend Chapter 14 of the County Code to broaden the eligibility requirements and scope for affordable housing within the County to increase the current market supply and demand for affordable housing, and to update the means by which County can contribute and support the development of affordable housing.

[this section intentionally left blank]

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNTY COUNCIL OF THE COUNTY OF LOS ALAMOS, NEW MEXICO:**

**Section 1.** Article VII of Chapter 14 of the County Code of Ordinances is hereby amended as follows:

**DIVISION 1. GENERALLY**

**Sec. 14-251. Purpose; generally.**

There is hereby created a county affordable housing program which is to provide assistance to qualified recipients in acquiring, developing, managing, ~~or~~ improving, or otherwise providing affordable housing within the county and to:

- (a) Establish procedures to ensure that all housing assistance grantees are qualifying grantees as defined in this article and 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 county;
- (c) Create an evaluation process to determine:
  - (1) The financial and management stability of an applicant;
  - (2) The demonstrated commitment of the applicant to the community;
  - (3) A cost-benefit analysis of the project proposed by the applicant including how the contribution will reduce the housing costs to persons of low or moderate income;
  - (4) The benefits to the community of a proposed project;
  - (5) The type or amount of assistance to be provided;
  - (6) The scope of an affordable housing project;
  - (7) Any substantive or matching contribution by the applicant to the proposed project;
  - (8) A performance schedule for the qualifying grantee with performance criteria; and
  - (9) Any other rules or procedures which the county believes are necessary for a full review and evaluation of an applicant and the application or which the MFA believes is necessary for a full review of the county's evaluation of the applicant.
- (d) Require long-term affordability of the county's affordable housing projects so that a project cannot be sold shortly after completion and taken out of the affordable housing market;
- (e) Require that a grant or loan for a project must impose a contractual obligation on the qualifying grantee that all of the affordable housing units in any project be occupied by persons of low or moderate income;
- (f) Provide for adequate security against the loss of public funds or property in the event that the qualifying grantee abandons or otherwise fails to complete a project;
- (g) Require review and approval of a housing grant project budget by the county and/or the MFA before any expenditure of grant funds or transfer of granted property;
- (h) Require that a condition of grant or loan approval be proof of compliance with all applicable State and local laws, rules and ordinances;

- (i) Provide definitions for "affordable" and "affordable housing" and for "low-income" and "moderate-income" setting out requirements for verification of income levels;
- (j) Provide the county with a mechanism for implementing a valid affordable housing program;
- (k) Establish a procedure and associated application for the purpose of waiving applicable county permit fees that are directly connected to projects that will result in the provision of affordable housing as defined under this chapter and article and the Affordable Housing Act, NMSA 1978, §§ 6-27-1 through 6-27-9, or as may be amended; and
- (l) Require that the county enter into a contract with the qualifying grantee consistent with the Act, which contract shall include remedies and default provisions in the event of unsatisfactory performance, and that subject the recipient of a contribution 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 county.
- (m) Require that all housing programs and assistance 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.

#### **Sec. 14-252. Definitions.**

The following words, terms, and definitions shall have the following meanings with this article and division where applicable or otherwise specified:

- (a) *Act* or *AHA* shall mean the Affordable Housing Act, NMSA 1978, §§ 6-27-1 through 6-27-9, or as may be amended from time to time.
- (b) *Affordable* shall mean consistent with minimum rent and/or income limitations set forth in the Act and in guidelines established by MFA.
- (c) *Affordable housing* means residential housing primarily for persons or households of low or moderate income. ~~with incomes 80 percent per cent of the county median family income, adjusted for family size, as calculated annually by HUD.~~
- (d) *Affordable housing funds* shall mean any or all funds awarded or to be awarded, loaned or otherwise distributed under the Act.
- (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 county and/or the MFA establish pursuant to the Act.
- (g) *Affordable housing project* or *project* shall mean any work or undertaking, whether demolition or site preparation, new construction, acquisition of existing residential housing, remodeling, improvement, rehabilitation or conversion and resale, land donation, homeowner down payment or closing cost assistance, which may be undertaken in one or more phases, as part of an affordable housing plan, as approved by the county and/or the MFA for the primary purposes as allowed by the Act.
- (h) *Affordable housing provider* shall mean an individual or entity that satisfies the requirements of a qualifying grantee and has been approved by the county and/or the MFA to participate in an affordable housing program.
- ~~(h) *Affordability period* shall mean that amount of time represented by the term of a mortgage or other legal document during which only a qualified recipient or builder may~~

~~hold title to or lease of real property for the development of which the county has provided affordable housing assistance in the form of an award, loan, donation, or otherwise conveyed form. The affordability period shall increase incrementally with the fair market value amount of county assistance provided. For the purposes of this chapter and article, affordability period, unless otherwise provided, shall be:~~

- ~~(1) From \$1.00 to \$14,999.99, then the affordability period shall be not less than five years.~~
- ~~(2) From \$15,000.00 up to and including \$40,000.00, then the affordability period shall be not less than ten years.~~
- ~~(3) From \$40,000.00 up to and including \$100,000.00, then the affordability period shall be not less than 15 years.~~
- ~~(4) Greater than \$100,000.00, then the affordability period shall be not less than 20 years.~~

~~(i) Affordability period means that amount of time represented by the term of a mortgage during which only a qualified recipient or builder may hold title to or lease of real property conveyed by the county under authority of this chapter and article and shall not be less than the following time periods:~~

- ~~(1) With a donation or discount from \$1.00 to \$14,999.99, then the affordability period shall be five years;~~
- ~~(2) With a donation or discount from \$15,000.00 up to and including \$40,000.00, then the affordability period shall be ten years;~~
- ~~(3) With a donation or discount from \$40,001.00 up to and including \$100,000.00, then the affordability period shall be 15 years;~~
- ~~(4) With a donation or discount from \$100,001.00 up to and including \$200,000.00, then the affordability period shall be 20 years;~~
- ~~(5) With a donation or discount from \$200,001.00 up to and including \$300,000.00, then the affordability period shall be 25 years; and~~
- ~~(6) With a donation or discount greater than \$300,001.00, then the affordability period shall be 30 years.~~

~~(j) (i) Applicant shall mean, subject to further qualifications, an individual, a governmental housing agency, regional housing authority, a for-profit venture, syndicate, or association or a nonprofit organization meeting the appropriate criteria of the county and/or the MFA.~~

~~(j) (k) Application shall mean an application to participate in one or more affordable housing programs under the Act submitted by an applicant to the county.~~

~~(k) (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 county 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 county 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.~~

- ~~(h)~~(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.
- ~~(m)~~(n) *County permit fee waiver* shall mean the approval to waive certain county building, planning and utility permit fees when associated with an eligible affordable housing activity. Waivers shall be granted only after the project has been deemed eligible by application and can be documented as part of an approved county affordable housing program or a housing project meeting the definition of affordable housing. Individual homeowners can apply to the county for the waiver or proof of eligibility can also be determined through verification of income provided by an acceptable third party documentation, ~~including but not limited to income verification provided by Habitat for Humanity, the Los Alamos Housing Partnership, or other~~ or affordable housing providers that meets the criteria as an eligible entity under AHA rules.
- ~~(n)~~(o) *County* shall mean the Incorporated County of Los Alamos, New Mexico., ~~a New Mexico municipal corporation.~~
- ~~(o)~~(p) *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.
- ~~(p)~~(q) *Contribution* shall mean any provision of assistance for affordable housing, including and Affordable Housing Grant or affordable housing funds, made by a state, county, municipality or the MFA.
- (r) *Discount* is that amount of money equal to the difference between the fair market value of the property and the cash received by the county at the time of sale of the property, which difference is represented by the promissory note payable to the county by a builder or qualified recipient and which difference is intended to be forgiven by the county at the end of the affordability period in accordance with this chapter and article and the program rules and regulations in order to assist low or moderate income qualified recipients in obtaining affordable housing in the county.
- (s) *Donation* is that amount of money equal to the fair market value of the property as represented by the promissory note payable to the county by the builder or qualified recipient and which is intended to be forgiven by the county at the end of the affordability period in accordance this chapter and article and the program rules and regulations in order to assist qualified recipients of below 120 percent area median income as defined by HUD obtaining affordable housing in the county.
- ~~(q)~~(t) *Federal government* shall mean the United States of America and any agency or instrumentality, corporate or otherwise, of the United States of America.
- ~~(t)~~(u) *"Household"* shall mean one or more persons occupying a housing unit.
- ~~(s)~~(v) *Housing assistance grant* means the donation by the county of land for construction of affordable housing; an existing Building for conversion or renovation as affordable housing; the costs of acquisition, development, construction, financing and operating or owning affordable housing, infrastructure or the costs of infrastructure necessary to support affordable housing or interest rate write downs for affordable housing rehabilitation loans; the waiving of applicable building permit fees for housing development or rehabilitation activities that are determined by the county to low or

moderate income homeowners or renters upon submission and approval of a county-administered application.

~~(t)~~(w) HUD shall mean the United States Department of Housing and Urban Development.

~~(u)~~ ~~Infrastructure shall mean infrastructure improvements and infrastructure purposes.~~

~~(v)~~(x) 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 road access, ingress, egress and parking;
- (5) Trails and areas for pedestrian, equestrian, bicycle or other non-motor vehicle use for access, 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, internet 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; ~~or~~
- (14) Heating, air conditioning and weatherization facilities, systems or services, and energy efficiency improvements that are affixed to real property.

~~(w)~~(y) 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 construction, acquisition or installation of the infrastructure, provided the county may determine it appropriate to reduce or waive building and planning permit fees, sewer, water, electric and gas hookup 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 and the county's approved affordable housing plan;
- (2) Acquiring, converting, renovating or improving existing facilities for infrastructure, including facilities owned, leased or installed by the ~~owner~~ qualified grantee.

- (3) Acquiring interests in real property or water rights for infrastructure, including interests of the ~~owner~~ qualified grantee; or
- (4) Incurring expenses incident to and reasonably necessary to carry out the purposes specified in this subsection.
- ~~(x)(z)~~ Low income household means a household earning less than 80 percent of the county's area median income, as calculated by the United States Department of Housing and Urban Development or the actual AMI for Los Alamos County.
- ~~(y)(aa)~~ MFA shall mean the New Mexico Mortgage Finance Authority.
- ~~(z)(bb)~~ MFA Act shall mean the Affordable Housing Act, Affordable Housing Act, NMSA 1978, §§ 6-27-1 through 6-27-9, and as may be amended.
- ~~(aa)(cc)~~ Moderate income household means a household earning between 80 and 120 percent of the county's Area Median Income, as calculated by the United States Department of Housing and Urban Development or the actual AMI for Los Alamos County.
- ~~(bb)(dd)~~ 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 county and/or 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.
- ~~(cc)(ee)~~ 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 county 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.
- ~~(dd)(ff)~~ Mortgage loan shall mean a financial obligation secured by a mortgage, including a mortgage loan for a project.
- ~~(ee)(gg)~~ Multiple family housing project shall mean residential housing that is designed for occupancy by more than four persons or families living independently of each other or living in a congregate housing facility, at least 60 percent of whom are persons of low or moderate income, including without limitation persons of low or moderate income who are elderly and handicapped as determined by the county and/or MFA, provided that the percentage of low or moderate -income persons and families shall be at least the minimum, if any, required by Federal tax law.
- ~~(ff)(hh)~~ Multi-family housing program shall mean a program involving a congregate housing facility, a multiple family housing project or a transitional housing facility.
- ~~(gg)(ii)~~ Persons of low income shall mean persons and families within the State who earn ~~less than~~ 80 percent or less of the county area median income, as calculated by the United States Department of Housing and Urban Development or the actual AMI for Los Alamos County.
- ~~(hh)(jj)~~ Persons of moderate income shall mean person and families within the State who earn between 80 and 120 percent of the county area median income, as calculated by the United States Department of Housing and Urban Development or the actual AMI for Los Alamos County.

- ~~(hh)~~(kk) *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.
- ~~(ii)~~(ll) *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.
- ~~(jj)~~(mm) *Qualifying grantee* means an individual who is qualified to receive assistance pursuant to the Act and is approved by the county and/or the MFA; or a governmental housing agency, regional housing authority, corporation, a limited liability company, partnership, joint venture, syndicate, association or a nonprofit organization that is organized under State or local laws and can provide proof of such organization; if a non-profit organization, has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual; and is approved by the county and/or the MFA.
- ~~(nn)~~ *Qualifying recipient* means a person or persons of low or moderate or very low income who is qualified to receive a deferred payment homebuyer assistance loan from the county pursuant to the Act, MFA Rules, this Code Ordinance, and is approved by the county and/or the MFA or designated party as a qualifying recipient.
- ~~(kk)~~(oo) *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 county and/or MFA.
- ~~(ll)~~(pp) *Rehabilitation* shall mean the substantial renovation, demolition or reconstruction of an existing single-family residence or a multi-family housing project, which complies with requirements established by county and/or 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.
- ~~(mm)~~(qq) *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.
- ~~(nn)~~(rr) *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.
- ~~(oo)~~(ss) *RFP* shall mean any request for proposal made by the county.
- ~~(pp)~~(tt) *Rules* shall mean the rules issued pursuant to NMSA 1978, §§ 58-18-1 through 58-18-27 (the "Mortgage Finance Authority Act") and pursuant to the Affordable Housing Act, NMSA 1978, §§ 6-27-1 through 6-27-9 (the "Act").
- ~~(qq)~~(uu) *State* shall mean the State of New Mexico.



~~(rr)~~(vv) *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.

**Sec. 14-253. Program solicitations, applications, review criteria, and awards.**

With the exception of housing assistance grants involving funding from the State which shall be governed as specified below, the following requirements shall apply to all housing assistance grants and/or affordable housing funds awarded, loaned, or otherwise distributed by the county under the Act and ~~the~~ any applicable county programs to a qualifying grantee:

- (a) *Request for proposals.* The county, in its discretion, may issue one or more RFPs to solicit applications from applicants or may 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.
- (b) *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 the community:
  - (1) All individuals who are qualified to receive assistance pursuant to the Act, the rules, and this chapter and article that are approved by the county and/or the MFA;
  - (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. Have no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual other than a person of low or moderate income.
  - (5) All non-individual applicants must:
    - a. Be organized under State or local laws and provide proof of such organization, be authorized to conduct business in New Mexico and be approved by the county and/or the MFA, including but not limited to having a current county business registration;
    - b. Have a functioning accounting system that is operated in accordance with generally accepted accounting principles or that has designated, and
    - c. Contracted with an entity that will maintain such an accounting system consistent with generally accepted accounting principles;
    - d. Have among its purposes significant activities related to providing housing or services to persons or households of low or moderate income; and
    - e. Have no significant outstanding or unresolved monitoring findings from the county, the MFA, or its most recent independent financial audit, or if it has any such findings, it has a letter certifying from the county, the MFA, or auditor stating that the findings are in the process of being resolved.

(c) *Applications.*

- (1) Applications. 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 county the following (as applicable):
  - a. One original application, together with all required schedules, documents, or such other information which may be required by the county or in any RFP which may have been issued by the county, 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. For proposed affordable housing projects to include land donation from the county, the applicant must indicate that all the housing units will be for households ~~below 60-AMI~~ of low or moderate income as defined by HUD;
  - c. Executive summary and project narrative(s) that address the evaluation criteria set forth in any RFP issued by the county 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. Current independent financial audit;
  - f. If the applicant is a non-profit organization:
    1. Proof of current IRS tax status such as 501(c)(3) status;
    2. Documentation that confirms that no part of applicants' net earnings inures to the benefit of any member, founder, contributor or individual;
  - g. If an applicant is a legal entity, including a non-profit organization:
    1. 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 county and/or the MFA in its discretion;
    2. An approved mission statement that the applicant has among its purposes significant activities related to providing housing or housing-related services to persons or households of low or moderate income;
    3. A list of members of the applicant's current board of directors or other governing body, including designated homeless participation, where required by the county;
    4. Evidence (or a certification as may be allowed by the county) that the applicant has a functioning accounting system that is operated in accordance with generally accepted accounting principles, or has a valid contract with a designated entity that will maintain such an

accounting system consistent with generally accepted accounting principles;

5. Evidence that the applicant has no significant outstanding or unresolved monitoring findings from the county, the MFA, or its most recent independent financial audit; or if it has any significant outstanding or unresolved monitoring findings from the county, the MFA, or its most recent independent financial audit, it has a certified letter from the county, the MFA, or the auditor stating that the findings are in the process of being resolved;
  6. An organizational chart, including job titles and qualifications for the applicant's employees or as otherwise may be required by the county and/or the MFA in its discretion. Job descriptions may be submitted as appropriate; and
  7. 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 New Mexico Public Regulation Commission and/or the Secretary of State.
- h. Information as may be required by the county and/or the MFA in order for it to determine the financial and management stability of the applicant;
  - i. Information as may be required by the county and/or the MFA 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. Adequate information, as required by the county, 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 affordable housing rules checklist 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;
  - l. Information supporting the benefits to the community of the affordable housing project proposed by the applicant;
  - m. If applicable, 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;
  - n. Any certifications or other proof which the county may require in order for the county to confirm that the applicant is in compliance with all applicable Federal, State and local laws, rules and ordinances;

- o. 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;
  - p. Certifications as may be required by the county and signed by chief executive officer, board president, or other authorized official of the applicant; ~~provided that the county at its discretion may waive any of the foregoing requirements if not deemed applicable.~~
  - q. ~~Applicant shall submit adequate information, as required by the county and/or MFA, of the Affordable Housing Project proposed by the Applicant. The information provided must clearly evidence the need for the subsidy, that the value of the housing assistance grant reduces the housing costs to Person of Low- or Moderate-income, and that there 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 provision of the Act.~~
- (2) Additional requirements for multi-family housing projects. For applicants who are submitting applications in connection with a multi-family housing program, the applicant must also submit to the county the following additional information:
- a. A verified certificate that, among other things:
    - 1. Identifies every multi-family housing program, including every assisted or insured project of HUD, Rural Housing Services (RHS), FHA and any other state or local government housing finance agency in which such applicant or its principals has been or is a principal;
    - 2. Except as shown on such certificate, states that:
      - i. No mortgage on a project listed on such certificate has ever been in default, assigned to the Federal 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 that such applicant believes will explain the lack of certification. The county or MFA may then determine if such applicant is or is not qualified.
  - b. The experience of the applicant in developing, financing and managing multi-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 non-compliance with any applicable civil rights laws.
- (3) Additional requirements for mortgage lenders. If the applicant is a mortgage lender, the county 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 county's or MFA's assessment of the ability of the applicant or its designated service 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.*
    - 1. If the county has issued an RFP, all applications must be received by the county no later than the deadline set forth in the RFP; otherwise, all applications must be received by the county by the deadline the county has established in connection with the respective award or grant. The county shall be allowed not less than 45 days in which to review any such applications or otherwise determine or confirm that an applicant is a qualifying grantee under the Act and consistent with the rules.
    - 2. Applications shall be submitted by applicants to the county in the form required by the county and shall contain all information which is required by this chapter, article, and division and any RFP which may have been issued.
  - b. *Additional factors.* The application procedures shall take into consideration:
    - 1. Timely completion and submission to the county of an application or other appropriate response to any solicitation by the county;
    - 2. Timely submission of all other information and documentation related to the program required by the county as set forth in this chapter and article or as set forth in the rules;
    - 3. Timely payment of any fees required to be paid to the county at the time of submission of the application; and
    - 4. Compliance with program eligibility requirements as set forth in the Act, the rules, and this article.
  - c. Submission format.
    - 1. County forms must be used when provided and no substitutions will be accepted; however, attachments may be provided as necessary.

2. An applicant's failure to provide or complete any element of an application, including all requirements of the county or as may be listed on any RFP may result in the rejection of the application prior to review.
  3. Illegible information, information inconsistent with other information provided in the application, and/or incomplete forms will be treated as missing information and evaluated accordingly.
  4. The county reserves 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.
  5. The county, in its discretion, may cancel any RFP or reject any or all proposals in whole or part submitted by any applicant.
  6. The county shall not be responsible for any expenses incurred by an applicant in preparing and submitting an application. However, the county and/or the MFA 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 county and/or the MFA in any RFP or otherwise shall be advertised as part of the application solicitation process.
- (5) Review by the county. On receipt of an application, the county 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 in this article 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 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 county 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 county 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 county or the MFA, as applicable or if it has any such findings, it has a certified letter from the county, 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 county 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 county and/or the MFA 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 county 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 county; and
  - o. Consider other factors it deems appropriate to ensure a reasonable geographic allocation for all affordable housing programs.
- (6) Certification by the county to the MFA. The county 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 requirement 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 county may, in its discretion, review the Application and any of the materials submitted by the Applicant to the county. 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 notify the county 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 county, upon completion of its review of the application and an evaluation of the criteria for approval of the application as set forth in this chapter or article and in any RFP issued by the county and upon its determination that 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 county's and/or the MFA's determination of any application shall be conclusive.
- (9) The county may permit pre-qualification of applicants as qualifying grantees, as follows:
- a. The county may review information submitted by eligible applicant and certify in writing that applicant is a Potential qualifying grantee (PQG);
  - b. The county must then provide copy of certification to MFA, upon its request;
  - c. The county'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 county and upon which the county based its decision to certify the applicant as a PQG; and
  - d. Notwithstanding the foregoing, certification as PQG does not mean that the PQG will be chosen by the county 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.
- (d) *Additional requirements.* Upon acceptance, the following additional requirements shall apply to any applicant, who is a qualifying grantee:
- (1) Contracted requirements. The qualifying grantee shall enter into one or more contracts with the county, which contract(s) shall be consistent with the Act and subject to the review of the MFA, in its discretion, and which contract(s) shall include remedies and default provisions in the event of the unsatisfactory performance by the qualifying grantee.
  - (2) Security provisions; collateral requirements. In accordance with the Act, the rules and this chapter and article, the county 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 attorney's fees and costs which the county and/or the MFA may incur in enforcing the provisions of this article, the rules, the Act and/or any agreement entered into by the county 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 county 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 county and the MFA to ensure that such funds shall be utilized by the qualifying grantee in accordance with the Act, the rules and this chapter and article.

- (3) Performance schedule and criteria. The qualifying grantee shall be required in the contract to abide by a reasonable performance schedule and performance criteria that the county, in its discretion, may establish.
- (4) Examination of books and records. The qualifying grantee shall submit to and the county shall cause to be made such examinations of the books and records of each qualifying grantee as the county and/or the MFA deems necessary or appropriate to determine the qualifying grantee's compliance with the terms of the Act, the rules, this chapter and article and any contracts between the qualifying grantee and the county. The county 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 county'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 county.
  - b. Cost reimbursements for units of service. Payment under any unit cost contract provisions shall be made upon the county'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 county. If the county determines that the qualifying grantee is underspending or overspending, then the county 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 county. Failure to submit invoices within 20 days of the close of the month for which payment is sought may result in the non-availability of funds for reimbursement.
  - e. No dual application of costs. The qualifying grantee shall certify that any direct or indirect costs claimed by the qualifying guarantee 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 county and/or the MFA 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 county.

- (6) Additional information. Qualifying grantees shall provide the county with any and all information which the county 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 chapter and article throughout the term of any contract and/or any affordability period or otherwise as may be required by the county or the MFA in its discretion. At a minimum, on an annual basis, the county 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 chapter and article.
- (e) *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 the affordability period, whichever is longer.
  - (2) Multi-family property.
    - a. Single apartment within a multi-family property. qualifying grantees shall agree that, if any single apartments are to be rehabilitated, weatherized, converted, leased, repaired, constructed, or otherwise are to benefit from affordable housing funds, those apartments shall be leased to persons of low or moderate income at the time of any such award. Qualifying grantees, who are the landlords and/or owners of such properties, shall further agree to contribute at least 60 percent of the cost of the rehabilitation, weatherization, conversion, lease, repair, and/or construction. Qualifying grantees also shall agree that the persons of low or moderate income, who are tenants of those apartments, shall be allowed to remain tenants for so long as there are no uncured defaults by those tenants under their respective leases and provided that there is no just cause for the landlord to terminate any lease agreement with those tenants.
    - b. Multiple apartments. Qualifying grantees shall agree that, if multiple apartments or an entire multi-family property are to be acquired, rehabilitated, weatherized, converted, leased, repaired, constructed, or otherwise are to benefit from affordable housing funds, including but not limited to any loans which have been repaid with affordable housing funds and which loans previously were secured by such properties, they shall maintain not less than 60 percent of the housing units total occupancy 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, whichever 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 benefitted from affordable housing funds, including but not limited to any loans which have been repaid with affordable housing funds and which loans previously were secured by such properties, as a facility which provides housing related-services to persons of low or moderate income for so long as any or all of the affordable housing funds which have been awarded, loaned, or otherwise conveyed to the qualifying grantee are unpaid and outstanding or the affordability period, whichever 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 single-family or multi-family affordable housing in accordance with this chapter and article or as a facility which provides housing related-services to persons of low or moderate income in accordance with **Section 3.e.(3) Section 14-253(c)(5)(c)** (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 or received other costs of construction and/or development as a housing assistance grant either as 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 the county shall apply.
- (5) Affordability period. The county, 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 county 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 2 Section 14-252** of this chapter and article. Notwithstanding the foregoing, in the discretion of the MFA, weatherization funds conveyed by 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 **Section 3(e) Section 14-253(e)**; but nevertheless, any such conveyances may be subject to recapture on some prorated basis as determined by the county and/or the MFA.
- (f) *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 chapter and article and any agreement between the qualifying grantee and the county and/or the MFA.
- (g) *Recertification procedures.*
  - (1) The qualifying grantee must meet the requirements of the Act, the rules and this chapter and article both at the time of any award and throughout the term of any grant and contract related thereto.
  - (2) The county may establish procedures for certifying 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 county and the MFA are satisfied.
- (h) *Compliance with the law.* Qualifying grantee shall provide the county with any certifications or other proof that it may require in order for the county 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. At a minimum, on an annual basis, the Qualifying Grantee shall provide the county with certifications and proof of compliance, and the county shall certify to the MFA in writing that the Qualifying Grantee is still in compliance with the Act and the rules.
- (i) *County grant requirements.*
  - (1) 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.
  - (2) The county is authorized to make housing assistance grants under the Act. Upon determination that the county will make a housing assistance grant, including the use of any affordable housing funds, the county shall provide the MFA with the following:
    - a. Documentation that confirms that the county has an existing valid affordable housing plan;
    - b. In the event the county determines that an ordinance will be required for the authorization of a housing assistance grant may be provided to MFA for review and approval.
  - (3) Prior to the submission of the ordinance to the council, the council must approve the budget submitted by the applicant.
  - (4) An ordinance authorizing the county 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;
    - c. Must authorize the transfer or disbursement to the qualifying grantee only after a budget is submitted to and approved by the council;
    - d. Must require, as a condition of grant approval, proof of compliance with all applicable state and local laws, rules and ordinances;
    - e. Must contain provision stating that the contribution authorized by the ordinance is consistent with the county affordable housing plan or housing elements in the county strategic leadership plan; and
    - f. 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.
  - (5) The county, in its discretion, may also hold any award of affordable housing funds or any housing assistance grant made by the county in suspense pending the issuance by the county of any RFP or pending the award of the affordable housing funds or of the housing assistance grant by the county to the qualifying grantee without the issuance of an RFP by the county. Any award of affordable housing funds or a housing assistance grant by the county shall subject the qualifying

grantee of the award or grant to the oversight of the county and the MFA under applicable state laws, rules, or county ordinances.

- (j) School District and Public Post-Secondary Educational Institution Donations for Housing Projects. If a school district or a public post-secondary education institution intends to transfer land to the county to be further granted to a Qualifying Grantee as part or all of an Affordable Housing project, this transfer shall be subject to the limitation contained in the Act that the school district and the Commission enter into a contract that provides the school negotiated number of affordable housing units that will be reserved for employees of the school district. Any transfer of land by a public post-secondary education institution shall be subject to the additional limitations contained in the Act that:

a. The property transferred shall be granted to a Qualifying Grantee by the county and part of a grant for an Affordable Housing project; and

b. The governing board of the public post-secondary educational institution and the Commission enter into a contract that provides the public post-secondary educational institution with Affordable Housing units.

As used in this Section, "public post-secondary educational institution" means a state university or a public community college. The county, in its discretion, may also hold any Housing Assistance Grant made by any school district or public post-secondary educational institution in suspense pending the issuance by the county of any RFP or pending the award of the Housing Assistance Grant by the county to the Qualifying Grantee without the issuance of an RFP by the county. Any award of a Housing Assistance Grant by a school district or public post-secondary educational institution shall subject the Qualifying Grantee of the grant to the oversight of the county and the MFA under the Rules.

- (k) *State housing assistance grants.* All housing assistance grants from the State pursuant to the Act shall be appropriated to the Department of Finance and Administration for disbursement by the MFA to a qualifying grantee consistent with the rules adopted by the MFA for whatever program to which the grant is applicable and consistent with the Act. In the event that the MFA does not currently have a program in place which is consistent with the terms of any grant being made by the State, then the MFA, in its discretion may create a program to fulfill the terms of the grant and shall adopt rules consistent with the Act. Such rules may include provisions for matching or using local, private, or Federal funds in connection with a specific grant, but matching or using Federal funds shall not be prohibited.

#### **Sec. 14-254. Discrimination prohibited.**

The development, construction, occupancy and operation of an affordable housing program or an affordable housing project financed or assisted under the Act shall be undertaken in a manner consistent with principles of nondiscrimination and equal opportunity and the county 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.

#### **Sec. 14-255. Administration and Participation**

The county shall administer any affordable housing programs in accordance with provisions of the Act, the rules, this chapter and articles, any applicable state and Federal laws and regulations as each of which may be amended or supplemented from time to time. The county, 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.

#### **Sec. 14-256. Termination**

~~The Commission may repeal this Ordinance and terminate the county 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 contract is repealed or terminated, all contract provisions of the contract regarding termination shall be satisfied.~~

#### **Sec. 14-257. Repealer**

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

#### **Sec. 14-258. Severability**

~~If any section, paragraph, clause or provision of this Ordinance shall for any reason be held to invalid or unenforceable, the invalidity or unenforceability of that section, paragraph, clause or provision shall not affect any of the remaining provisions of the Ordinance.~~

#### **Sec. 14-259. Effective Date**

~~This Ordinance shall be in full force and effect thirty (30) days after it is recorded with the County Clerk in accordance with Section 4-37-9 NMSA, 1978.~~

### **DIVISION 2. HOUSING REHABILITATION PROGRAM**

#### **Sec. 14-256. Authority.**

- ~~(a) *Loan origination.* The county is authorized to originate deferred payment loans directly to low or moderate income households and very low income households in accordance with the requirements of this county ordinance and those of any program rules, regulations and construction standards programs, projects, or partnerships approved by the council and the New Mexico Mortgage Finance Authority in furtherance of the Act and this ordinance. The deferred payment loans shall be made to income-qualified households under any qualifying housing rehabilitation programs, projects or partnerships.~~
- ~~(b) *Qualifying housing rehabilitation programs.*~~
- ~~(1) *Emergency repair program.* Origination of deferred payment loans to income-qualified households to fund improvements of urgent need which directly correct immediate health, safety or sanitation hazards to owner-occupied homes is authorized.~~

- ~~(2) General housing repair program.~~ Origination of deferred payment loans to income qualified households to fund improvements necessary to bring owner-occupied homes into compliance with county building codes and rehabilitation standards is authorized. Aging-in-place improvements are allowable improvements under this program.
- ~~(3) Energy conservation program.~~ Origination of deferred payment loans to income qualified households to fund improvements which will substantially reduce energy consumption and operating costs of owner-occupied homes is authorized.

#### **Sec. 14-257. Definitions.**

~~Affordability period~~ means that amount of time represented by the term of a mortgage which secures a deferred payment loan made from county funds to a very low income household, or low income household holding title to a home they occupy and which shall equal the following time periods:

- ~~(1) With a deferred payment loan from \$1,500.00 to \$14,999.00, then the affordability period shall be ten years;~~
- ~~(2) With a deferred payment loan from \$15,000.00 to \$45,000.00, then the affordability period shall be fifteen years.~~

~~Aging-in-place improvement~~ means a home modification which allows seniors to live in their homes independently regardless of age or ability.

~~Deferred payment loan~~ is a non-amortizing loan, meaning that no payments are due during the loan term until the property is sold, vacated or where the title is otherwise transferred to a household who does not qualify for the program.

~~Emergency repair~~ is an improvement determined to be necessary by the county building official to remove an immediate threat to the health, safety and welfare of the owner-occupants of the home.

~~Energy conservation improvement~~ means an improvement which reduces the amount of gas and electric consumed in the owner-occupied home, thereby lowering the home's operating costs.

~~General repair~~ means an improvement determined to be necessary by the county building official to bring a home into compliance with the county building code, and an aging-in-place improvement.

~~Loan review committee~~ is an advisory committee appointed by the county manager to work on the review and analysis of loan applications and to provide recommendations on deferred payment loan approvals to the county manager, who will make the final approvals.

~~Low income household~~ means a household earning less than 80 percent of the Los Alamos County Area Median Income, as calculated by the United States Department of Housing and Urban Development, prior to its downward cap adjustment to the national low income limit.

~~MFA~~ is the New Mexico Mortgage Finance Authority.

~~Program~~ means the Los Alamos County Housing Rehabilitation Program.

~~Seniors~~ refers to individuals at or over the age of 65 years old.

~~Total subsidy~~ is the combination of financial assistance received by a recipient from the county, the MFA and Federal funding sources.

~~Very low income household means a household earning less than 50 percent of Los Alamos County Area Median Income, as defined by the United States Department of Housing and Urban Development.~~

**~~Sec. 14-258. Total subsidy available by program.~~**

- ~~(a) Emergency repair program provides zero percent deferred payment loans from county funds to very low income households and provides interest bearing deferred payment loans to low income households, up to a maximum program subsidy of \$24,999.00.~~
- ~~(b) General repair program provides zero percent deferred payment loans from county funds to very low income households and provides interest bearing deferred payment loans to low income households, up to a maximum program subsidy of \$45,000.00.~~
- ~~(c) Energy conservation program provides zero percent deferred payment loans from county funds to very low income households and provides interest bearing deferred payment loans to low income households, up to a maximum program subsidy of \$14,999.00.~~

**~~Sec. 14-259. Long term affordability controls.~~**

- ~~(a) County subsidy is provided in the form of a deferred payment loan, secured by a mortgage and note in the amount of the subsidy, which mortgage shall include restrictive covenants that require the recipient to maintain residency of the property during the affordability period.~~
- ~~(b) The terms of the promissory note and associated requirements will be detailed within program approved policies and procedures and will conform to all requirements of the New Mexico Affordable Housing Act and other applicable state laws.~~
- ~~(c) The mortgage securing the deferred payment loan is subordinate to all existing mortgages on the property, provided that the loan to value ratio of all the mortgages secured by the property is equal to or less than 100 percent, as determined by county assessor's most recent valuation of the property.~~

**~~Sec. 14-260. Applicant and property eligibility requirements.~~**

- ~~(a) County subsidy is only provided to residents of the county who are owner-occupants of the home, who are current with existing mortgage(s), all county property taxes and utility bills, and who have a homeowners insurance policy with coverages acceptable to the county.~~
- ~~(b) County subsidy is only provided to owners of homes whose value is less than the New Mexico Mortgage Finance Authority First Home purchase price limit for Los Alamos County. Value shall be established by county assessor's most recent valuation of the property.~~
- ~~(c) County subsidy is only provided to an applicant who has not received a county subsidy during the past ten years.~~

**~~Sec. 14-261. Establishment of loan review committee and loan approval.~~**

~~A loan review committee is established to serve as an advisory committee to the program. This committee shall consist of three or five members with knowledge of housing rehabilitation, construction and finance and shall provide review and analysis to the county manager for all proposed deferred payment loan approvals which use county funds. All loan applications will be reviewed against the standards mandated under the housing rehabilitation program policies and procedures, as approved by MFA, and other applicable Federal or state lending eligibility criteria. All loan reviews by the loan committee will be conducted with the assistance and oversight of county staff and/or contracted third party staff.~~



**~~Sec. 14-262. County and homeowner responsibility for program execution.~~**

- ~~(a) County is responsible for the following tasks: Accepting applications; maintaining a waiting list; making a preliminary determination of recipient eligibility for county, MFA and Federal assistance programs; recommending a total financing plan for the work; preparing and submitting applications for assistance under county, MFA and Federal assistance programs; evaluating and approving loan applications for county subsidy; preparing work write-ups and bid packages for distribution to contractors; preparing cost estimates and determining cost reasonableness of received bids; preparing a construction agreement between the selected contractor and the homeowner; and inspecting work and approving draw requests.~~
- ~~(b) Homeowner is responsible for the following: Making preliminary and final determination of work to be performed; selection of contractors from county approved subcontractor list to whom bid packages will be sent; selecting the contractor to perform the work; executing a construction agreement with selected contractor; and complying with the terms of any notes, mortgages and restrictive covenants executed as a condition of receiving subsidies from the county and/or other sources.~~

**~~Sec. 14-263. Funds available and received under program.~~**

- ~~(a) Total subsidy offered under this program is subject to the availability of county, MFA and Federal funds. Nothing in this article shall be construed as a promise or an obligation for the county to provide subsidy for any income qualifying household.~~
- ~~(b) Any funds received under this program shall be retained for the purpose of providing additional loans for housing rehabilitation under this program unless otherwise directed by council.~~

**~~Secs. 14-264—14-265. Reserved.~~**

**DIVISION 3. HOMEBUYER ASSISTANCE PROGRAM**

**~~Sec. 14-266. Authority.~~**

- ~~(a) *Loan origination.* The county is authorized to originate deferred payment loans directly to low income households and very low income households in accordance with the requirements of this division and the program rules and regulations approved by the council and the MFA. The deferred payment loans shall be made to income qualified residential households under this homebuyer assistance program.~~
- ~~(b) *Qualifying homebuyer assistance program.*~~
- ~~(1) *Downpayment and closing costs assistance program.* Origination of loans to income qualified residential households to assist with downpayment and closing costs.~~

**~~Sec. 14-267. Definitions.~~**

~~The following definitions apply to this division unless otherwise provided.~~

~~*Affordable housing and affordable housing unit* means residential housing located within the county for households of low and very low income.~~

~~*Affordability period* means that amount of time represented by the term of a mortgage which secures a deferred payment loan made from county funds to a very low income household or low income household holding title to a home they will purchase and occupy as their primary residence and which shall equal the following time periods:~~

- ~~(1) With a deferred payment loan up to \$14,999.00 then the affordability period shall be ten years;~~

~~(2) With a deferred payment loan from \$15,000.00 to \$25,000.00, then the affordability period shall be 15 years.~~

~~Deferred payment loan is a non-amortizing loan, meaning that no payments are due during the loan term until the property is sold, vacated, or where the title is otherwise transferred to another residential household who does not qualify for the program.~~

~~Eligible buyer means a household earning less than 80 percent of the Los Alamos County Area Median Income as calculated by the United States Department of Housing and Urban Development, prior to its downward cap adjustment to the national low income limit.~~

~~Loan review committee is a committee appointed by the county manager to work on the review and analysis of loan applications, provide recommendations on deferred payment loan approvals to the county manager who will make the final approvals, and to receive appeals from loan applicants regarding loan decisions.~~

~~Low income household means a household earning less than 80 percent of the Los Alamos County Area Median Income, as calculated by the United States Department of Housing and Urban Development, prior to its downward cap adjustment to the national low income limit.~~

~~MFA is the New Mexico Mortgage Finance Authority.~~

~~Program means the Los Alamos County Homebuyer Assistance Program.~~

~~Qualifying recipient means a person or persons of low or very low income who is qualified to receive a deferred payment homebuyer assistance loan from the county pursuant to the Act, MFA Rules, this Code Ordinance, and is approved by the county or designated party as a qualifying recipient.~~

~~Total subsidy is the combination of financial assistance received by a recipient in the home buyer assistance program only in the form of a deferred payment loan from the county and from other funding sources which may be in various forms.~~

~~Very low income household means a household earning less than 50 percent of Los Alamos County Area Median Income, as defined by the United States Department of Housing and Urban Development.~~

#### **~~Sec. 14-268. Total subsidy available by program.~~**

~~(a) The program provides zero percent deferred payment loans from county funds to very low income households and provides interest bearing deferred payment loans to low income households up to a maximum program subsidy per property of \$25,000.00. Sec. 14-269. Long term affordability controls.~~

~~(a) County subsidy is provided in the form of a deferred payment loan, secured by a mortgage and promissory note in the amount of the subsidy, and/or any other agreement(s) which the county may require.~~

~~(b) The covenants which the county may require include but are not limited to:~~

~~(i) Require the qualifying recipient or recipients to occupy the affordable housing unit as a primary residence.~~

~~(ii) Provide adequate security against the loss of public funds or property in the event the qualifying recipient fails to occupy affordable housing unit as a primary residence.~~

~~(c) The terms of the promissory note and associated affordability requirements will be detailed within the homebuyer assistance program approved policies and procedures and will~~

~~conform to all requirements of the New Mexico Affordable Housing Act and other applicable local, state, or Federal laws and ordinances.~~

- ~~(d) The mortgage securing the deferred payment loan will be, generally, subordinate to all pre-existing mortgages on the affordable housing unit, provided that the loan to value ratio of all the mortgages secured by the affordable housing unit is equal to 100 percent, as determined by the mortgage lender's appraisal.~~

**~~Sec. 14-269. Long term affordability controls.~~**

- ~~(a) County subsidy is provided in the form of a deferred payment loan, secured by a mortgage and promissory note in the amount of the subsidy, and/or any other agreement(s) which the county may require.~~
- ~~(b) The covenants which the county may require include but are not limited to:~~
- ~~(i) Require the qualifying recipient or recipients to occupy the affordable housing unit as a primary residence.~~
  - ~~(ii) Provide adequate security against the loss of public funds or property in the event the qualifying recipient fails to occupy affordable housing unit as a primary residence.~~
- ~~(c) The terms of the promissory note and associated affordability requirements will be detailed within the homebuyer assistance program approved policies and procedures and will conform to all requirements of the New Mexico Affordable Housing Act and other applicable local, state, or Federal laws and ordinances.~~
- ~~(d) The mortgage securing the deferred payment loan will be, generally, subordinate to all pre-existing mortgages on the affordable housing unit, provided that the loan to value ratio of all the mortgages secured by the affordable housing unit is equal to 100 percent, as determined by the mortgage lender's appraisal.~~

**~~Sec. 14-270. Applicant and property eligibility requirements.~~**

- ~~(a) County subsidy is only provided to residents of the county who are qualified recipients and who have applied, been screened, and subsequently selected to participate in the program.~~
- ~~(b) County subsidy is only provided within the county to qualified recipients who intend to purchase a home whose value is less than the maximum value established in the program rules and regulations. Value shall be established by mortgage lender's appraisal of the property.~~

**~~Sec. 14-271. Establishment of loan review committee, loan approval, and budget.~~**

- ~~(a) A loan review committee is established to serve as an advisory committee to the program. This committee shall consist of three to five members with knowledge of affordable housing, homeownership programs, and finance and shall provide review and analysis to the county manager for all proposed deferred payment loan applications selected for approval and which use county funds. All loan applications will be reviewed against the standards mandated under the homebuyer assistance program policies and procedures, as approved by MFA, and other applicable Federal or state lending eligibility criteria. All loan reviews by the loan committee will be conducted with the assistance and oversight of county staff or designated agent.~~
- ~~(b) The loan review committee shall also receive and review appeals from applicants about the loan review committee's decisions against the homebuyer assistance program policies and procedures. All loan appeal reviews by the loan committee will be conducted with the assistance and oversight of county staff or designated agent.~~

- ~~(c) From time to time, and at least annually, staff who are designated to administer the homebuyer assistance program shall submit a budget to the county council for consideration and approval.~~

**~~Sec. 14-272. County and homeowner responsibility for program execution.~~**

~~The following are the minimal responsibilities of the parties in program execution:~~

- ~~(a) The county or designated agent is responsible for the following tasks: Accepting applications; maintaining a waiting list; making a preliminary determination of recipient eligibility for county and other assistance programs; recommending a total financing plan for the homebuyer; preparing and submitting applications for assistance under county and other assistance programs; evaluating and recommending loan applications for county subsidy; and preparing a mortgage note and other required agreements between the selected applicant and the county. Only the county manager may approve a loan application.~~
- ~~(b) Homeowner is responsible for the following: Completing the homebuyer assistance application; obtaining first mortgage private financing; completing any required homebuyer training program; selecting a home and securing a contract to purchase the home; and in coordination with the county or its agent, executing all required program documents and complying with the terms of any mortgage and promissory note, which mortgage shall include any other agreement(s) which the county may require. Sec. 14-273. Funds available under program.~~
- ~~(a) Total subsidy offered under this program is subject to the availability of county and other funding sources. Nothing in this division shall be construed as a promise or an obligation of the county to provide any subsidy for any income qualifying household, individual, or property.~~
- ~~(b) Any funds received by the county under this program for home buyer assistance program loan repayments shall be retained for the purpose of providing additional loans for homebuyer assistance under this program unless otherwise directed by council.~~

**~~Sec. 14-273. Funds available under program.~~**

- ~~(a) Total subsidy offered under this program is subject to the availability of county and other funding sources. Nothing in this division shall be construed as a promise or an obligation of the county to provide any subsidy for any income qualifying household, individual, or property.~~
- ~~(b) Any funds received by the county under this program for home buyer assistance program loan repayments shall be retained for the purpose of providing additional loans for homebuyer assistance under this program unless otherwise directed by council.~~

**~~Secs. 14-274 14-256—14-279. Reserved.~~**

**DIVISION 4 2. PUBLIC LAND DISCOUNT OR  
DONATION FOR AFFORDABLE HOUSING**

**Sec. 14-280. Authority.**

- (a) *Conveyance.* The county is authorized to convey improved or unimproved real property directly to qualified recipients or to a builder for subsequent resale or lease to a qualified recipient in accordance with the requirements of this chapter and article and the program rules and regulations approved by the county council . The county council shall adopt an ordinance authorizing a property conveyance to a builder for resale or lease to a qualified recipient or a property conveyance to a qualified recipient directly.

(b) *Donation and discount.*

- (1) A donation of the fair market value of the real property is only authorized under a sale to a builder for resale or lease to a qualified recipient whose income is below ~~60-~~ 120 percent area median income as defined by HUD, adjusted for household size, or under a sale directly to the qualified recipient whose income is below ~~60-~~ 120 percent area median income as defined by HUD adjusted for household size.
- (2) A discount of the fair market value of the real property is only authorized under a sale to a builder for resale or lease to a qualified recipient whose income is defined by HUD as low or moderate income, adjusted for household size, or under a sale directly to the qualified recipient whose income is defined by HUD as low or moderate income, adjusted for household size.
- (3) A donation of the fair market value of the real property is only authorized under a sale to a builder for lease to a qualified recipient whose income is defined by HUD below ~~60~~ 120 percent area median income, adjusted for household size.

**Sec. 14-281. Definitions.**

~~In addition to the other definitions in this article or chapter, the following definitions apply to this division unless otherwise provided.~~

- ~~(a) *Affordability period* means that amount of time represented by the term of a mortgage during which only a qualified recipient or builder may hold title to or lease of real property conveyed by the county under authority of this chapter and article and shall not be less than the following time periods:~~
- ~~(1) With a donation or discount from \$1.00 to \$14,999.99, then the affordability period shall be five years;~~
  - ~~(2) With a donation or discount from \$15,000.00 up to and including \$40,000.00, then the affordability period shall be ten years;~~
  - ~~(3) With a donation or discount from \$40,001.00 up to and including \$100,000.00, then the affordability period shall be 15 years;~~
  - ~~(4) With a donation or discount from \$100,001.00 up to and including \$200,000.00, then the affordability period shall be 20 years;~~
  - ~~(5) With a donation or discount from \$200,001.00 up to and including \$300,000.00, then the affordability period shall be 25 years; and~~
  - ~~(6) With a donation or discount greater than \$300,001.00, then the affordability period shall be 30 years.~~
- ~~(b) *Builder* shall mean an individual or entity licensed by the State of New Mexico Construction Industries Division as a general contractor to construct residential housing. The term "builder" shall also include an individual that satisfies the requirements of a qualified recipient or a non-profit or for-profit organization that agrees to sell or rent to a household(s) that satisfies the requirements of a qualified recipient, provided that such individual or organization contracts with a general contractor licensed in the State to construct residential housing.~~
- ~~(c) *Discount* is that amount of money equal to the difference between the fair market value of the property and the cash received by the county at the time of sale of the property, which difference is represented by the promissory note payable to the county by a builder or qualified recipient and which difference is intended to be forgiven by the~~

~~county at the end of the affordability period in accordance with this chapter and article and the program rules and regulations in order to assist low income qualified recipients in obtaining affordable housing in the county.~~

- ~~(d) *Donation* is that amount of money equal to the fair market value of the property as represented by the promissory note payable to the county by the builder or qualified recipient and which is intended to be forgiven by the county at the end of the affordability period in accordance this chapter and article and the program rules and regulations in order to assist qualified recipients of below 60 percent area median income as defined by HUD obtaining affordable housing in the county.~~
- ~~(e) *Program* is the land donation and land discount program authorized in this chapter and article.~~
- ~~(f) *Qualified recipient* is an individual or group of individuals who qualify as a household under HUD regulations whose income is less than 80 percent of the area median income, adjusted for household size, as defined by HUD in the granting of a discount by the county or whose income is less than 60 percent of the area median income, adjusted for household size, as defined by HUD in the granting of a donation by the county.~~

**Sec. 14-282. 14-281. Conveyance to builder.**

- (a) A sale conveyance of real property may be made by a quit claim deed to a builder upon payment to the county of the appraised value of the property less the donation or discount amount determined by the county. The builder shall execute a promissory note and a mortgage on the property securing the promissory note for the donation or discount amount. The builder shall pay in cash or certified funds for the appraised value of the property not included in the promissory note.
- (b) The mortgage will include restrictive covenants that the property will only be resold or leased to a qualified recipient during the affordability period.
- (c) If the real property is conveyed with improvements such improvements shall qualify as a fixture under New Mexico law.
- (d) A mortgage on the property being conveyed may only be subordinate to a mortgage securing a construction loan or remodel loan.
- (e) Before a conveyance may be made, the builder shall comply with all contractual and pre-approval requirements of the program to the county's satisfaction.
- (f) The builder shall resell or lease the property conveyed by the county under this program to qualified recipients in accordance with the program's rules and regulations.
- (g) Satisfaction of the promissory note and a release of the mortgage on the property shall only be made upon: i) payment in full of the promissory note payable to the county and conveyance of the property from the builder to a qualified recipient in accordance with the restrictive covenants and the program's rules and regulations; ii) acceptance by the county of a new promissory note and mortgage from the qualified recipient covering the donation or discount amount; and, iii) receipt by the county of any difference between the donation or discount amount granted to builder and the amount of the new promissory note granted to the qualified recipient. If the property was legally subdivided by the builder and conveyance of a subdivided lot is made to a qualified recipient, the county may issue a partial satisfaction of the promissory note and a partial release of the mortgage in accordance with the program's rules and regulations.

- (h) When the mortgage term expires and the builder is not otherwise in default of any provision of the note, mortgage or program contract with the county, the county shall indicate full satisfaction of the promissory note by forgiveness of the amount owed and release the mortgage on the property.

**Sec. 14-283. 14-282 Conveyance to qualified recipient.**

**(a) *Sale to qualified recipient.***

- (1) A sale of real property may be made by a quit claim deed to a qualified recipient upon payment to the county of the appraised value of the property less the donation or discount amount determined by the county. The qualified recipient shall execute a promissory note and a mortgage on the property securing the promissory note for the donation or discount amount. The qualified recipient shall pay in cash or certified funds for the appraised value of the property not included in the promissory note.
- (2) The mortgage shall include restrictive covenants that the property shall only be resold or leased to a qualified recipient and that only a qualified recipient shall maintain residency on the property during the affordability period.
- (3) If the real property is conveyed with improvements such improvements shall qualify as a fixture under New Mexico law.
- (4) A mortgage on the property being conveyed may only be subordinate to a first purchase money mortgage.
- (5) Before a conveyance may be made, the qualified recipient shall have complied with all requirements of the program to the county's satisfaction as provided in the program's approved rules and regulations.
- (6) A promissory note is assumable by and mortgage is assignable to another qualified recipient during the term of the affordability period provided as the term in the mortgage with prior approval of the county.
- (7) When the mortgage term expires and the qualified recipient is not otherwise in default of any provision of the note or mortgage, the county shall indicate full satisfaction of the promissory note by forgiveness of the amount owed and release the mortgage on the property.

- (b) *Lease to qualified recipient.* A builder may lease or rent for one or more years the property only to a qualified recipient during the affordability period provided as the term of the mortgage. The lease or rental agreement may charge a monthly rental fee of no more than the affordable rent amount as determined in the program's rules and regulations.

**Sec. 14-284. 14-283. Funds received under program.**

Any funds received under this program shall be retained for the purpose of providing additional affordable housing under this program unless otherwise directed by council.

**Secs. 14-285 14-284.—14-299. Reserved.**

**Section 2. Severability.** Should any section, paragraph, clause or provision of this Ordinance, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this ordinance.

**Section 3. Effective Date.** This Code Ordinance shall become effective thirty (30) days after publication of notice of its adoption.

**Section 4. Repealer.** All other ordinances or resolutions, or parts thereof, inconsistent herewith are hereby repealed only to the extent of such inconsistency. This repealer shall not be construed to revive any ordinance or resolution, or part thereof, heretofore repealed.

**PASSED AND ADOPTED** this 10th day of September 2024.

**INCORPORATED COUNTY OF LOS ALAMOS**

---

**Denise Derkacs,  
Council Chair**

**ATTEST:**

---

**Naomi D. Maestas,  
Los Alamos County Clerk**