

ARTICLE II. AFFORDABLE HOUSING*

***State law references:** Affordable Housing Act, NMSA 1978, § 6-27-1 et seq.; Mortgage Finance Authority, NMSA 1978, § 58-18-1 et seq.

DIVISION 1. GENERALLY

Sec. 30-19. Purpose.

This article is adopted to implement the city's affordable housing program. In accordance with N.M. Const. art. IX, § 14, the Affordable Housing Act (NMSA 1978, § 6-27-1 et seq.) (the "Act"), and the Rules promulgated pursuant to the Act, the purpose of this article is to:

- (1) Establish procedures to ensure that both state and local housing assistance grantees are qualifying grantees who meet the requirements of the Act and the Rules promulgated pursuant to the Act both at the time of the award and throughout the term of any grant or loan under the program;
- (2) Establish an application and award timetable for state housing assistance grants or loans to permit the selection of the qualifying grantee by the city;
- (3) Create an evaluation process to determine:
 - a. The financial and management stability of the applicant;
 - b. The demonstrated commitment of the applicant to the community;
 - c. A cost-benefit analysis of the project proposed by the applicant;
 - d. The benefits to the community of a proposed project;
 - e. The type or amount of assistance to be provided;
 - f. The scope of the affordable housing project;
 - g. Any substantive or matching contribution by the applicant to the proposed project;
 - h. A performance schedule for the qualifying grantee with performance criteria; and
 - i. Any other rules or procedures which the city believes are necessary for a full review and evaluation of the applicant and the application or which the MFA believes is necessary for a full review of the city's evaluation of the applicant;
- (4) Require longterm affordability of the city's affordable housing projects so that a project cannot be sold shortly after completion and taken out of the affordable housing market to ensure a quick profit for the qualifying grantee;
- (5) Require that the city enter into a contract with the qualifying grantee consistent with the Act, which contract shall include remedies and default provisions in the event of the unsatisfactory performance by the qualifying grantee and which contract shall be subject to the review of the MFA in its discretion;

- (6) Require that a grant or loan for a project must impose a contractual obligation on the qualifying grantee that the affordable housing units in any project be occupied by persons of low or moderate income;
- (7) 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 the project;
- (8) Require review and approval of a housing grant project budget by the city and/or the MFA before any expenditure of grant funds or transfer of granted property;
- (9) Require that a condition of grant or loan approval be proof of compliance with all applicable state and local laws, rules and ordinances;
- (10) Provide definitions for the terms "low-income and moderate-income" and setting out requirements for verification of income levels; and
- (11) Provide the city with a valid affordable housing program.

(Ord. No. 390, § 2, 9-27-2005)

Sec. 30-20. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Act means the Affordable Housing Act (NMSA 1978, § 6-27-1 et seq.).

Affordability period means:

- (1) If the fair market value of any housing assistance grant or the total affordable housing funds that have been awarded, loaned, donated, or otherwise conveyed to the qualifying grantee is from \$1.00 to \$14,999.00, then the affordability period shall be not less than five years.
- (2) If the fair market value of any housing assistance grant or the total amount of affordable housing funds is from \$15,000.00 up to and including \$40,000.00, then the affordability period shall be not less than ten years.
- (3) If the fair market value of any housing assistance grant or the total amount of affordable housing funds is from \$40,000.00 up to and including \$100,000.00, then the affordability period shall be not less than 15 years.
- (4) If the fair market value of any housing assistance grant or the total amount of affordable housing funds is greater than \$100,000.00, then the affordability period shall be not less than 20 years.

Affordable means consistent with minimum rent and/or income limitations set forth in the MFA Act, and in guidelines established by MFA.

Affordable housing means residential housing primarily for persons of low or moderate income.

Affordable housing funds means any or all funds awarded or to be awarded, loaned or otherwise distributed under the Act for payment of the costs of infrastructure for affordable housing under an affordable housing plan.

Affordable housing plan or *plan* means 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.

Affordable housing program or *program* means any programs the city and/or the MFA establish pursuant to the Act.

Affordable housing project or *project* means any work or undertaking whether new construction, acquisition of existing residential housing, remodeling, improvement, rehabilitation or conversion, which may be undertaken in one or more phases, as part of an affordable housing plan, as approved by the city and/or the MFA for the primary purposes as allowed by the Act.

Applicant means, subject to further qualifications in section 30-46, an individual, a governmental housing agency, regional housing authority, a for-profit organization, including a corporation, limited liability company, partnership, joint venture, syndicate, or association or a nonprofit organization meeting the appropriate criteria of the city and/or the MFA.

Application means an application to participate in one or more affordable housing programs or affordable housing plans under the Act submitted by an applicant to the city and/or the MFA.

Builder means an individual or entity licensed as a general contractor to construct residential housing in the state that satisfies the requirements of a qualifying grantee and has been approved by the city and/or the MFA to participate in an affordable housing program. The term "builder" shall also include an individual or entity that satisfies the requirements of a qualifying grantee and has been approved by the city and/or the MFA to participate in an affordable housing program, who is not licensed as a general contractor in the state, provided such individual or entity contracts with a general contractor licensed in the state to construct residential housing.

Building means 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.

Congregate housing facility means 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.

Federal government means the United States of America and any agency or instrumentality, corporate or otherwise, of the United States of America.

Household means one or more persons occupying a housing unit.

Housing assistance grant means the donation by the city of:

- (1) Land for construction of a project;
- (2) An existing building for conversion or renovation as affordable housing;
- (3) The costs of infrastructure necessary to support affordable housing.

HUD means the United States Department of Housing and Urban Development.

Infrastructure means infrastructure improvements and infrastructure purposes.

Infrastructure improvement includes, but is not limited to:

- (1) Sanitary sewage systems, including collection, transport, storage, treatment, dispersal, effluent use and discharge;
- (2) Drainage and flood control systems, including collection, transport, diversion, storage, detention, retention, dispersal use and discharge;
- (3) Water systems for domestic purposes, including production, collection, storage, treatment, transport, delivery, connection and dispersal;
- (4) Areas for motor vehicle use for travel, ingress, egress and parking;
- (5) Trails and areas for pedestrian, equestrian, bicycle or other nonmotor vehicle used for travel, ingress, egress and parking;
- (6) Parks, recreational facilities and open space areas for the use of residents for entertainment, assembly and recreation;

- (7) Landscaping, including earthworks, structures, plants, trees and related water delivery systems;
- (8) Electrical transmission and distribution facilities;
- (9) Natural gas distribution facilities;
- (10) Lighting systems;
- (11) Cable or other telecommunications lines and related equipment;
- (12) Traffic control systems and devices, including signals, controls, markings and signs;
- (13) Inspection, construction management and related costs in connection with the furnishing of the items listed in this subsection; and
- (14) Heating, air conditioning and weatherization facilities, systems or services, and energy efficiency improvements that are affixed to real property.

Infrastructure purpose means:

- (1) Planning, design, engineering, construction, acquisition or installation of infrastructure, including the costs of applications, impact fees and other fees, permits and approvals related to the construction, acquisition or installation of the infrastructure, provided the city may determine it appropriate to reduce or waive building permit fees, sewer and water hook-up fees and other fees with respect to an affordable housing project for which affordable housing funds and/or housing assistance grants are awarded, loaned, donated or otherwise distributed under the Act;
- (2) Acquiring, converting, renovating or improving existing facilities for infrastructure, including facilities owned, leased or installed by the owner;
- (3) Acquiring interests in real property or water rights for infrastructure, including interests of the owner; and
- (4) Incurring expenses incidental to and reasonably necessary to carry out the purposes specified in this subsection.

MFA means the New Mexico Mortgage Finance Authority.

MFA Act means the Mortgage Finance Authority Act, enacted as Chapter 303 of the Laws of 1975 of the State of New Mexico, as amended (NMSA 1978, § 58-18-1 through 58-18-27).

Mortgage means a mortgage, mortgage deed, deed of trust or other instrument creating a lien, subject only to title exceptions as may be acceptable to the city and/or the MFA, on a fee interest in real property located within the state or on a leasehold interest that has a remaining term at the time of computation that exceeds or is renewable at the option of the lessee until after the maturity day of the mortgage loan.

Mortgage lender means any bank or trust company, mortgage company, mortgage banker, national banking association, savings bank, savings and loan association, credit union, building and loan association and any other lending institution; provided that the mortgage lender maintains an office in the state, is authorized to make mortgage loans in the state and is approved by the city and/or the MFA and either the Federal Housing Authority, Veterans' Affairs, Federal National Mortgage Association (now known as Fannie Mae), or Federal Home Loan Mortgage Corporation.

Mortgage loan means a financial obligation secured by a mortgage, including a mortgage loan for a project.

Multifamily housing program means a program involving a congregate housing facility, a multiple-family housing project or a transitional housing facility.

Multiple-family housing project means 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 city and/or the MFA provided that the percentage of low-income persons and families shall be at least the minimum, if any, required by federal tax law.

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

Policies and procedures means 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.

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.

Qualifying grantee means:

- (1) An individual who is qualified to receive assistance pursuant to the Act and is approved by the city; and
- (2) A governmental housing agency, regional housing authority, corporation, a limited liability company, partnership, joint venture, syndicate, association or a nonprofit organization that:
 - a. Is organized under state or local laws and can provide proof of such organization;
 - b. If a nonprofit organization, has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual; and
 - c. Is approved by the city.

Recertification means the recertification of applicants and/or qualifying grantees participating in any affordable housing programs or in any programs under the Act as determined necessary from time to time by the city and/or the MFA.

Rehabilitation means the substantial renovation or reconstruction of an existing single-family residence or a multifamily housing project, which complies with requirements established by the MFA. Rehabilitation shall not include routine or ordinary repairs, improvements or maintenance, such as interior decorating, remodeling or exterior painting, except in conjunction with other substantial renovation or reconstruction.

Residential housing means 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.

Residential use means 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 and shall exclude vacation or recreational homes.

RFP means any request for proposal made by the city.

Rules means the New Mexico Finance Authority Affordable Housing Rules adopted pursuant to NMSA 1978, § 6-27-8(B).

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.

(Ord. No. 390, § 3, 9-27-2005)

Secs. 30-21--30-43. Reserved.

DIVISION 2. FUNDING REQUIREMENTS

Sec. 30-44. General requirements.

With the exception of housing assistance grants involving funding from the state which shall be governed by section 30-65, the requirements set forth in this division shall apply to all housing assistance grants and/or affordable housing funds awarded, loaned or otherwise distributed by the city under the Act to a qualifying grantee.

(Ord. No. 390, § 4, 9-27-2005)

Sec. 30-45. Request for proposals.

The city, in its discretion, may issue one or more requests for proposals (RFPs) to solicit applications from applicants or shall otherwise identify a qualifying grantee for the use of any affordable housing funds or housing assistance grants to be awarded, loaned, donated or otherwise distributed under the Act.

(Ord. No. 390, § 4A, 9-27-2005)

Sec. 30-46. Applicant eligibility.

The following applicants are eligible under the Act to apply for affordable housing funds or a housing assistance grant to provide housing or related services to persons of low or moderate income in their community:

- (1) All individuals who are qualified to receive assistance pursuant to the Act, the Rules, and this article that are approved by the city;
- (2) All regional housing authorities and any governmental housing agencies;
- (3) All for-profit organizations, including any corporation, limited liability company, partnership, joint venture, syndicate or association;
- (4) All nonprofit organizations meeting the following requirements:
 - a. A primary mission of the nonprofit organization must be to provide housing or housing-related services to persons of low or moderate income;
 - b. The non-profit organization must have received its 501(c)(3) designation prior to submitting an application; and

- c. The nonprofit organization must have no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual;
- (5) All nonindividual applicants must:
 - a. Be organized under state or local laws and be able to provide proof of such organization and be approved by the city;
 - b. Have a functioning accounting system that is operated in accordance with generally accepted accounting principles or has designated an entity that will maintain such an accounting system consistent with generally accepted accounting principles;
 - c. Have among its purposes significant activities related to providing housing or services to persons or households of low or moderate income; and
 - d. Have no significant outstanding or unresolved monitoring findings from the city, the MFA, or its most recent independent financial audit, or if it has any such findings, it has a certified letter from the city, the MFA, or auditor stating that the findings are in the process of being resolved.

(Ord. No. 390, § 4B, 9-27-2005)

Sec. 30-47. Process for applying.

Applicants wishing to apply for a housing assistance grant, including the use of any affordable housing funds, or to participate in any affordable housing program are required to submit to the city the following as applicable:

- (1) One original application, together with all required schedules, documents, or such other information which may be required by the city or in any request for proposal (RFP) which may have been issued by the city, must be included in the completed application;
- (2) 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;
- (3) Executive summary and project narratives that address the evaluation criteria set forth in any RFP issued by the city for the affordable housing funds or the housing assistance grant for which the applicant is applying;
- (4) A proposed budget for the affordable housing project for which the applicant is applying for affordable housing funds or for a housing assistance grant;
- (5) Current independent financial audit;

(Ord. No. 390, § 4C(1)(a)--(e), 9-27-2005)

Sec. 30-48. Additional application requirements.

- (a) If the applicant is a nonprofit organization:
 - (1) Proof of 501(c)(3) tax status;
 - (2) Documentation that confirms that no part of its net earnings inures to the benefit of any member, founder, contributor or individual;

- (b) If an applicant is a legal entity, including a nonprofit 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 city 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 city;
 - (4) Evidence (or a certification as may be allowed by the city) that the applicant has a functioning accounting system that is operated in accordance with generally accepted accounting principals, or has a designated entity that will maintain such an accounting system consistent with generally accepted accounting principals;
 - (5) Evidence that the applicant has no significant outstanding or unresolved monitoring findings from the city, the MFA, or its most recent independent financial audit; or if it has any significant outstanding or unresolved monitoring findings from the city, the MFA, or its most recent independent financial audit, it has a certified letter from the city, the MFA or the auditor stating that the findings are in the process of being resolved;
 - (6) An organizational chart, including job titles and qualifications for the applicant's employees or as otherwise may be required by the city and/or the MFA in its discretion. Job descriptions may be submitted as appropriate;
 - (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 public regulation commission and the secretary of state.
- (c) Information as may be required by the city in order for it to determine the financial and management stability of the applicant.
- (d) Information as may be required by the city in order for it to determine the demonstrated commitment of the applicant to the community.
- (e) 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.
- (f) Information to the city supporting the benefits to the community of the affordable housing project proposed by the applicant.
- (g) Proof of substantive or matching funds or contributions and/or in-kind donations to the proposed affordable housing project in connection with the applicant 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.
- (h) Any certifications or other proof which the city may require in order for it to confirm that the applicant is in compliance with all applicable federal, state and local laws, rules and ordinances.
- (i) 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.
- (j) Certifications as may be required by the city and signed by the chief executive officer, board president, mayor or other authorized official of the applicant, provided that the city at its discretion may waive any of the foregoing requirements if not deemed applicable.

(Ord. No. 390, § 4C(1)(f)--(o), 9-27-2005)

Sec. 30-49. Additional requirements for multifamily housing projects.

Applicants who are submitting applications in connection with a multifamily housing program must also submit to the city following additional information:

- (1) A verified certificate that, among other things:
 - a. Identifies every multifamily housing program, including every assisted or insured project of HUD, RHS, FHA and any other state or local government housing finance agency in which such applicant has been or is a principal;
 - b. Except as shown on such certificate, states that:
 1. 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;
 2. 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;
 3. 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
 4. The applicant has not defaulted on an obligation covered by a surety or performance bond. If such applicant cannot certify to each of the above, such applicant shall submit a signed statement to explain the facts and circumstances that such applicant believes will explain the lack of certification. The city may then determine if such applicant is or is not qualified.
- (2) The experience of the applicant in developing, financing and managing multiple-family housing projects; and
- (3) Whether the applicant has been found by the United States Equal Employment Opportunity Commission or the New Mexico Human Rights Commission to be in noncompliance with any applicable civil rights laws.

(Ord. No. 390, § 4C(2), 9-27-2005)

Sec. 30-50. Additional requirements for mortgage lenders.

If the applicant is a mortgage lender, the city shall consider among other things:

- (1) The financial condition of the applicant;
- (2) The terms and conditions of any loans to be made;
- (3) 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;
- (4) The city's assessment of the ability of the applicant or its designated servicer to act as originator and service of mortgage loans for any multifamily housing programs or other programs to be financed; and

(5) Previous participation by the applicant in the MFA's programs and HUD, federal housing authority or rural housing service programs.

(Ord. No. 390, § 4C(3), 9-27-2005)

Sec. 30-51. Submission procedure.

(a) *Time, place and method of submission delivery.*

(1) If the city has issued a request for proposal (RFP), all applications must be received by the city no later than the deadline set forth in the RFP; otherwise, all applications must be received by the city by the deadline the city has established in connection with the respective award or grant. So that any qualifying grantees may be selected prior to January of the year in which any housing assistance grant would be made, the city shall issue any RFPs, solicit any applications, or otherwise identify any qualifying grantees no later than October 15 of any year in order to allow sufficient time for prospective applicants to respond to any such RFP, solicitation, or otherwise, and further to allow the MFA not less than 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 city in the form required by the city and shall contain all information which is required by this article 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 city of an application or other appropriate response to any solicitation by the city;

(2) Timely submission of all other information and documentation related to the program required by the city as set forth in this article or as set forth in the Rules;

(3) Timely payment of any fees required to be paid to the city 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) City forms or MFA forms (if available) must be used when provided and no substitutions will be accepted; however attachments may be provided as necessary.

(2) An applicant's failure to provide or complete any element of an application, including all requirements of the city or as may be listed on any RFP, may result in the rejection of the application prior to review.

(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 city and the MFA reserve the right to request further information from any applicant so long as the request is done fairly and does not provide any applicant an undue advantage over another applicant.

(5) The city in its discretion may cancel any RFP or reject any or all proposals in whole or part submitted by any applicant.

(6) Neither the city nor the MFA shall be responsible for any expenses incurred by an applicant in preparing and submitting an application. However, the city or the MFA, as applicable, may establish and collect fees from applicants who file applications. Notice

that fees will be charged and the amount of any such fees shall be included by the city or the MFA, as applicable, in any RFP or otherwise shall be advertised as part of the applicant solicitation process.

(Ord. No. 390, § 4C(4), 9-27-2005)

Sec. 30-52. Review by the city.

On receipt of an application, the city shall:

- (1) Determine whether the application submitted by the applicant is complete and responsive;
- (2) Determine whether the applicant is a qualifying grantee as defined herein and in the Act;
- (3) 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;
- (4) 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;
- (5) Determine whether the applicant's proposal provides a plan for coordinating with other service providers in the community; whether the applicant's plan addresses how persons of low income or moderate income in need of housing and/or housing-related supportive services can receive supportive services and referrals to federal, state and local resources; and whether the applicant's plan addresses outreach efforts to reach the population to be served as identified by the city in any request for proposal (RFP) or otherwise;
- (6) Determine whether the applicant has support from public service agencies, or such other support as may be required by the city and/or the MFA in its discretion, for its proposed services in the community;
- (7) 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;
- (8) 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;
- (9) Ascertain whether the applicant has and can demonstrate the capability to manage the implementation of the program for which the applicant is applying;
- (10) If the 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 noncompliance with program requirements from the city or the MFA, as applicable, or if it has any such findings, it has a certified letter from the city, the MFA, or auditor stating that the findings are in the process of being resolved;
- (11) If the applicant is a prior recipient of either a housing assistance grant, affordable housing funds and/or other program funds, confirm that the applicant reasonably committed and expended the funds under the prior program and/or met anticipated production levels as set forth in any contract with the city or the MFA, as applicable, for those prior program funds;
- (12) Evaluate the applicant's proposal in part based upon the applicant's current financial audit;

(13) Evaluate the applicant's proposed budget for the project for which the applicant is applying for affordable housing funds or a housing assistance grant which proposed budget must be approved by the city before the 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;

(14) On receipt of an application from a builder, the city will analyze the builder's ability to construct and sell sufficient residential housing units to persons of low or moderate income within the time as may be required by the city;

(15) Consider other factors it deems appropriate to ensure a reasonable geographic allocation for all affordable housing programs.

(Ord. No. 390, § 4C(5), 9-27-2005)

Sec. 30-53. Certification by the city to the MFA.

The city shall certify an application to the MFA in writing upon:

- (1) Completion of its review of the application;
- (2) Determination that the application is complete;
- (3) Determination that the requirements of the Act, the Rules and this article have been satisfied; and
- (4) Determination that the applicant is a qualifying grantee.

(Ord. No. 390, § 4C(6), 9-27-2005)

Sec. 30-54. Review by the MFA.

The MFA upon its receipt of the certification from the city may, in its discretion, review the application and any of the materials submitted by the applicant to the city. The MFA may also request any additional information from the applicant, which it may require in order to determine whether the applicant is a qualifying grantee under the Act and the application is complete. The MFA will then notify the city of its determination of whether or not the application is complete and that the requirements of the Act and the Rules have been satisfied and the applicant is a qualifying grantee. Unless the period is extended for good cause shown, the MFA shall act on an application within 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.

(Ord. No. 390, § 4C(7), 9-27-2005)

Sec. 30-55. Notification of acceptance.

(a) The city, upon completion of its review of the application and an evaluation of the criteria for approval of the application as set forth in the this article and in any request for proposals (RFP) issued by the city and upon its determination that the applicant is a qualifying grantee, and upon its receipt of notification from the MFA that it agrees that the application is complete and that the Act and Rules have been satisfied and the applicant is a qualifying grantee, by written notice shall notify each applicant which has submitted an application of the approval or disapproval of its application. Upon approval of its application, the applicant shall be considered approved to participate in the affordable housing program.

(b) The city's and the MFA's determination of any application shall be conclusive.

(Ord. No. 390, § 4C(8), 9-27-2005)

Sec. 30-56. Additional requirements upon acceptance.

Upon acceptance, the following additional requirements shall apply to any applicant who is a qualifying grantee:

(1) *Contractual requirements.* The qualifying grantee shall enter into one or more contracts with the city, which contract shall be consistent with the Act and subject to the review of the MFA, in its discretion, and which contract 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 article, the city shall require the qualifying grantee to execute documents which will provide adequate security against the loss of public funds or property in the event the qualifying grantee abandons or fails to complete the affordable housing project, and which shall further provide, as may be permitted by law, for the recovery of any attorney's fees and costs which the city 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 city and the qualifying grantee, and which documents may include, but are not limited to the following: note, mortgage, loan agreement, land use restriction agreement, restrictive covenant agreements and/or any other agreement which the city may require in order to allow for any funds which the qualifying grantee may receive under a housing assistance grant or affordable housing funds to be adequately secured and to allow the city and the MFA to ensure that such funds shall be utilized by the qualifying grantee in accordance with the Act, the Rules and this article.

(3) *Performance schedule and criteria.* The qualifying grantee shall be required to abide by a reasonable performance schedule and performance criteria that the city, in its discretion, may establish.

(4) *Examination of books and records.* The qualifying grantee shall submit to and the city shall cause to be made such examinations of the books and records of each qualifying grantee as the city and/or the MFA deems necessary or appropriate to determine the qualifying grantee's compliance with the terms of the Act, the Rules, this article and any contracts between the qualifying grantee and the city. The city and/or the MFA may require each qualifying grantee to pay the costs of any such examination.

(5) *Infrastructure cost reimbursement contracts.*

a. *Invoices required for reimbursement.* Payment to a qualifying grantee under cost reimbursable contract provisions shall be made upon the city's receipt from the qualifying grantee of certified and documented invoices for actual expenditures allowable under the terms of any agreement between the qualifying grantee and the city.

b. *Cost reimbursements based on units of service provided.* Payment under any unit cost contract provisions shall be made upon the city's receipt from the qualifying grantee of a certified and documented invoice showing the number of units of service provided during the billing period.

c. *Rate at which costs incurred.* Under unit cost or cost reimbursable contracts, it is anticipated that costs will be incurred by the qualifying grantee at an approximate level rate during the term of any agreement between the

qualifying grantee and the city. If the city determines that the qualifying grantee is underspending or overspending, then the city may reduce the budget and/or exercise such other budgetary fiscal controls it deems appropriate.

d. *Submission of invoices.* Qualifying grantees shall not submit invoices more than once a month, unless written approval is obtained in advance from the city. Failure to submit invoices within 20 days of the close of the month for which payment is sought may result in the nonavailability of funds for reimbursement.

e. *No dual allocation of costs permitted.* The qualifying grantee shall certify that any direct or indirect costs claimed by the qualifying grantee will not be allocable to or included as a cost of any other program, project, contract, or activity operated by the qualifying grantee and which has not been approved by the city in advance, in writing.

f. *Prohibition of substitution of funds.* Any affordable housing funds or other amounts received by qualifying grantee may not be used by qualifying grantee to replace other amounts made available or designated by the state or local governments through appropriations for use for the purposes of the Act.

g. *Methodology and manner of cost allocation.* The qualifying grantee shall clearly identify and distribute all costs incurred pertaining to the affordable housing project by a methodology and cost allocation plan at times and in a manner prescribed by, or acceptable to the city.

(Ord. No. 390, § 4D, 9-27-2005)

Sec. 30-57. Additional information from qualifying grantees.

Qualifying grantees shall provide the city with any and all information which the city reasonably may require in order for it to confirm that the qualifying grantees continue to satisfy the requirements of the Act, the Rules and this article throughout the term of any contract and/or any affordability period or otherwise as may be required by the city or the MFA in its discretion. At a minimum, on an annual basis, the city shall certify to the MFA in writing that to the best of its knowledge the qualifying grantee is in compliance with applicable provisions of the Act, the Rules and this article.

(Ord. No. 390, § 4D(9), 9-27-2005)

Sec. 30-58. 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) *Multifamily property.*

a. *Single apartment within a multifamily 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 multifamily 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 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) *Nonresidential property.* Qualifying grantees shall agree that they shall maintain any nonresidential property which has been acquired, rehabilitated, weatherized, converted, leased, repaired, constructed, or which property has otherwise benefited from affordable housing funds, including but not limited to any loans which have been repaid with affordable housing funds and which loans previously were secured by such properties, as a facility which provides housing related-services to persons of low or moderate income for so long as any or all of the affordable housing funds which have been awarded, loaned, or otherwise conveyed to the qualifying grantee are unpaid and outstanding or the affordability period, whichever is longer.

(4) *Obligations of qualifying grantees.*

a. Qualifying grantees shall agree that they shall maintain any land or buildings received as a housing assistance grant either as either single-family or multifamily affordable housing in accordance with subsections (1) and (2) of this section or as a facility which provides housing related-services to persons of low or moderate income in accordance with subsections (1), (2) and (3) of this section, as applicable, for the duration of the affordability period.

b. Qualifying grantees shall agree that they shall maintain any land or buildings for which they have received the costs of infrastructure as a housing assistance grant as either single-family or multifamily affordable housing or as a facility which provides housing-related services to persons of low or moderate income (as applicable) for the duration of the affordability period. In calculating the affordability period for housing assistance grants of either land or buildings, the fair market value of the land or buildings or the costs of infrastructure at the time of the donation by the state or city shall apply.

(5) *Affordability period.* The city, in its discretion, may increase the affordability period in any contract, note, mortgage, loan agreement, land use restriction agreement, restrictive covenant agreements and/or any other agreement which the city may enter into with any qualifying grantee or beneficiary of the affordable housing funds or of the housing assistance grant. (Refer to definition of affordability period in section 30-20.) Notwithstanding the foregoing, in the discretion of the MFA,

weatherization funds conveyed from the state to the MFA and/or any other similar conveyances where an affordability period is not practical, shall not be subject to the affordability period requirements of this section; but nevertheless, any such conveyances may be subject to recapture on some pro-rated basis as determined by the city and/or the MFA.

(Ord. No. 390, § 4E, 9-27-2005)

Sec. 30-59. 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 article and any agreement between the qualifying grantee and the city and/or the MFA.

(Ord. No. 390, § 4F, 9-27-2005)

Sec. 30-60. Recertification procedures.

(a) The qualifying grantee must meet the requirements of the Act, the Rules and this article both at the time of any award and throughout the term of any grant and contract related thereto.

(b) The city may establish procedures for recertifying qualifying grantees from time to time.

(c) Qualifying grantees that fail to satisfy the requirements for recertification shall cease to be eligible and shall be denied further participation in affordable housing programs until the requirements of the city and the MFA are satisfied.

(Ord. No. 390, § 4G, 9-27-2005)

Sec. 30-61. Compliance with the law.

The qualifying grantee shall provide the city with any certifications or other proof that it may require in order for the city and the MFA to confirm that the qualifying grantee and the qualifying grantee's proposed project are in compliance with all applicable federal, state and local laws, rules and ordinances.

(Ord. No. 390, § 4H, 9-27-2005)

Sec. 30-62. Extension of affordable housing programs.

The MFA shall have the power to create variations or extensions of affordable housing programs, or additional programs that comply with the Act and the Rules.

(Ord. No. 390, § 4I, 9-27-2005)

Sec. 30-63. City grant requirements.

(a) The city is authorized to make housing assistance grants under the Act. Upon determination that the city will make a housing assistance grant, including the use of any affordable housing funds, the city shall provide the MFA with the following:

(1) Documentation that confirms that the city has an existing valid affordable housing plan;

(2) A copy of the proposed ordinance which provides for the authorization of the housing assistance grant, including the use of any affordable housing funds, together with a written certification that the proposed grantee is in compliance with Act and the Rules so that the MFA may confirm both that the ordinance is in compliance with the Act, that the application is complete, and that the proposed grantee is a qualifying grantee under the Act and the Rules.

(b) Prior to the submission of the ordinance to the council, the council must approve the budget submitted by the applicant.

(c) An ordinance authorizing the city to make a housing assistance grant and/or distribute affordable housing funds:

(1) Must authorize the grant, including use of affordable housing funds, if any;

(2) Must state the requirements and purpose of the grant;

(3) Must authorize the transfer or disbursement of funds to the qualifying grantee only after a budget is submitted to and approved by the council;

(4) Must comply with the Rules, as amended; and

(5) 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.

(d) The MFA shall act to approve the proposed housing assistance grant authorized by the city within 45 days of its receipt of the documentation required in subsections (a), (b) and (c) of this section.

(e) The city, in its discretion, may also hold any award of affordable housing funds or any housing assistance grant made by the city in escrow pending the issuance by the city of any RFP or pending the award of the affordable housing funds or of the housing assistance grant by the city to the qualifying grantee without the issuance of an RFP by the city. Any award of affordable housing funds or a housing assistance grant by the city shall subject the qualifying grantee of the award or grant to the oversight of the city and the MFA under this article and the Rules.

(Ord. No. 390, § 4J, 9-27-2005)

Sec. 30-64. School district and post-secondary educational institution grant requirements.

If a school district or a post-secondary education institution intends to make a housing assistance grant, then it shall provide the MFA with written certification that the proposed grantee is in compliance with the Act, the Rules and this article so that the MFA may confirm that the application is complete and that the proposed grantee is a qualifying grantee under the Act, the Rules and this article.

(1) Any transfer of land by a school district to the city to be further granted as part or all of an affordable housing grant shall be subject to the additional limitations contained in the Act that the school district and the council enter into a contract that provides the school district with a negotiated number of affordable housing units that will be reserved for employees of the school district. Any transfer of land by a post-

secondary educational institution shall be subject to the additional limitations contained in the Act that:

- a. The property transferred shall be granted by the city as part of all of an affordable housing grant; and
- b. The governing board of the post-secondary educational institution and the council enter into a contract that provides the post-secondary educational institution with affordable housing units. As used in this section, the term "post-secondary educational institution" means a state university or a public community college.

(2) The city, in its discretion, may also hold any housing assistance grant made by any school district or post-secondary educational institution in suspense pending the issuance by the city of any request for proposals (RFP) or pending the award of the housing assistance grant by the city to the qualifying grantee without the issuance of an RFP by the city. Any award of a housing assistance grant by a school district or a post-secondary educational institution shall subject the qualifying grantee of the grant to the oversight of the city and the MFA under these Rules.

(Ord. No. 390, § 4K, 9-27-2005)

Sec. 30-65. Housing grants from state.

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.

(Ord. No. 390, § 4L, 9-27-2005)

Sec. 30-66. 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 city shall require compliance by all qualifying grantees with all applicable federal and state laws and regulations relating to affirmative action, nondiscrimination and equal opportunity.

(Ord. No. 390, § 5, 9-27-2005)

Sec. 30-67. Administration of affordable housing programs.

The city and the MFA shall administer any affordable housing programs in accordance with provisions of the Act, the Rules, this article, any applicable state and federal laws and regulations as each of which may be amended or supplemented from time to time. The city and the MFA, 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.

(Ord. No. 390, § 6, 9-27-2005)

Sec. 30-68. Termination.

The council may repeal this article and terminate the city's affordable housing program and any or all contracts undertaken in its authority. Termination shall be by ordinance at a public hearing or in accordance with the terms of the contract. If an ordinance or a contract is repealed or terminated, all contract provisions of the contract regarding termination shall be satisfied.

(Ord. No. 390, § 7, 9-27-2005)