

THE BOARD OF COUNTY COMMISSIONERS  
OF SANTA FE COUNTY, NEW MEXICO

ORDINANCE NO. 2009-14

AN ORDINANCE AUTHORIZING SANTA FE COUNTY TO DONATE LAND, DONATE AN EXISTING BUILDING FOR CONVERSION OR RENOVATION INTO AFFORDABLE HOUSING, PAY THE COST OF INFRASTRUCTURE NECESSARY TO SUPPORT AFFORDABLE HOUSING PROJECTS IN SANTA FE COUNTY, OR MAKE HOUSING ASSISTANCE GRANTS, ALL PURSUANT TO THE NEW MEXICO AFFORDABLE HOUSING ACT AND ORDINANCE NO. 2006-02, PROVIDING ELIGIBILITY CRITERIA, AN APPLICATION PROCESS, CALLING FOR THE DEVELOPMENT OF RULES AND REGULATIONS IMPLEMENTING THE ORDINANCE, PROVIDING FOR LONG-TERM AFFORDABILITY

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY:

**Section One. Short Title.** This Ordinance may be cited as the Housing Assistance Ordinance.

**Section Two. Statutory Authority.** This Ordinance exists under the authority of Art. IX Section 14 of the New Mexico Constitution, the New Mexico Affordable Housing Act, NMSA 1978, § 6-27-1 *et seq.* and Santa Fe County Ordinance No. 2006-02, and is consistent with the County's Affordable Housing Plan, approved by the New Mexico Mortgage Finance Authority on September 4, 2009.

**Section Three. Scope.** This Ordinance shall apply within the unincorporated areas of central and northern Santa Fe County shown on Attachment A to Ordinance No. 2006-02, except that this Ordinance shall apply to affordable housing projects engaged in by Santa Fe County anywhere within the County.

**Section Four. Definitions.**

A. "The Act" means the New Mexico Affordable Housing Act, NMSA 1978, § 6-27-1 *et seq.* (2004).

B. "Affordable Housing" shall have the meaning assigned in Ordinance No. 2006-02.

C. The "Affordable Housing Administrator" is that person designated as such in Ordinance No. 2006-02.

D. "Affordable Housing Agreement" means the agreement required by Sections 4(D), 4(F) and 6(B)(2) of Ordinance No. 2006-02 and the Rules and Regulations promulgated pursuant thereto.

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02. E. "Affordable Housing Unit" shall have the meaning assigned in Ordinance No. 2006-

F. "Area Median Income" shall have the meaning assigned in Ordinance No. 2006-02.

G. "Authority" means the New Mexico Mortgage Finance Authority.

H. "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;

I. "Donation Agreement" means the agreement referred to in Sec. 5(H) of this Ordinance.

J. "Eligible Buyer" shall mean the purchaser of an Eligible Housing Unit whose annual adjusted gross income is no more than one hundred percent (100%) of the Area Median Income.

K. "Eligible Housing Unit" shall have the meaning assigned in Ordinance No. 2006-02.

L. "Entry Market Buyer" shall have the meaning assigned in Ordinance No. 2006-02.

M. "Housing Assistance Grant" means the donation, provision or payment by the County pursuant to this Ordinance and NMSA 1978, Section 6-27-5 (2007) of: (i) land for the construction on the land of affordable housing; (ii) the costs of converting or renovating an existing building into affordable housing; (iii) the costs of financing of infrastructure necessary to support affordable housing projects; or (iv) the costs of acquisition, development, construction, financing, operating or owning affordable housing.

N. "Infrastructure" means "Infrastructure Improvements" and "Infrastructure Purposes."

O. "Infrastructure Improvement" means improvements 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 nonmotor vehicle use for access, ingress, egress and parking;

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(6) parks, recreational facilities and open space areas to be used by 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;

P. "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;

(2) acquiring, converting, renovating or improving existing facilities for infrastructure, including facilities owned, leased or installed by the owner;

(3) acquiring interests in real property or water rights for infrastructure, including interests of the owner; and

(4) incurring expenses incident to and reasonably necessary to carry out the purposes specified in this subsection.

Q. "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture or any legal or commercial entity.

R. "Qualifying Grantee" means:

(1) an individual who is qualified to receive assistance pursuant to the Affordable Housing Act and is approved by Santa Fe County to receive assistance; and

(2) a governmental housing agency, regional housing authority, tribal housing agency, corporation, limited liability company, partnership, joint venture, syndicate, association or nonprofit organization that:

- (a) is organized under state, local or tribal 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 Santa Fe County.

R. "Third Party Assistance" means funding provided by the State of New Mexico, the United States (or an instrumentality of the United States), or a federal home loan bank, so long as the assistance is approved by the Affordable Housing Administrator.

**Section Five. Grants of Property, an Existing Building, or Infrastructure.**

A. A person that provides Affordable Housing as required by Santa Fe County Ordinance No. 2006-02 may apply to the Affordable Housing Administrator to receive a Housing Assistance Grant consisting of a donation of land for the construction on the land of affordable housing, for the costs of converting or renovating an existing building into affordable housing, or the costs of infrastructure necessary to support affordable housing projects.

B. To be eligible to receive a Housing Assistance Grant as specified in paragraph A of this Section, the Qualifying Grantee must meet all the requirements established by the Authority pursuant to the Affordable Housing Act, NMSA 1978, Section 6-27-1 *et seq.* (2004).

C. Eligibility.

(1) To be eligible to receive a Housing Assistance Grant as specified in paragraph A of this Section, a Qualifying Grantee who is not an individual must:

- (a) 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;
- (b) have among its purposes significant activities related to providing housing or services to low- or moderate-income persons or households; and
- (c) if it has significant outstanding or unresolved monitoring findings from either the Authority or its most recent independent financial audit, have a certified letter from the Authority or auditor stating that the findings are in the process of being resolved;

(2) If the Qualifying grantee is a corporation, the corporation must be in good standing with the Public Regulation Commission, Corporations Bureau or, if a foreign

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corporation, the corporation must be registered with the Public Regulation Commission, Corporations Bureau, to do business in the State of New Mexico; and

(3) if a not-for-profit corporation, the corporation must have received a determination letter from the Internal Revenue Service concerning its non-profit status.

D. A Housing Assistance Grant pursuant to this Section shall be limited to the amount set forth in Sec. 5(F) of this Ordinance, or the fair market value of property or infrastructure as established by an appraisal, whichever is less.

E. A Housing Assistance Grant for the costs of infrastructure necessary to support affordable housing projects shall be tendered only after completion of the infrastructure that is the subject of the Housing Assistance Grant, and only after construction of Affordable Units served by the infrastructure commences.

F. The maximum Housing Assistance Grant under this Section shall be Ten Thousand Dollars (\$10,000.00) for each Affordable Unit provided.

G. A Housing Assistance Grant pursuant to this Section shall be in addition to any incentive set forth in Ordinance No. 2006-02.

H. A Housing Assistance Grant awarded pursuant to this Section shall be memorialized in a Donation Agreement, which may either be a part of the Affordable Housing Agreement required by Ordinance No. 2006-02 or a separate Agreement.

**Section Six. Grants of All or a Portion of the Costs of Acquisition, Development, Construction, Financing, Operating or Owning Affordable Housing.**

A. Each Qualifying Grantee who purchases an Affordable Housing Unit may receive a Housing Assistance Grant of down payment assistance to help pay the costs of acquisition, development, construction, financing, operating or owning affordable housing. Down payment assistance shall be available only upon the closing of permanent financing of the Affordable Housing Unit, and shall not be available upon the closing of temporary or construction financing.

B. Each Housing Assistance Grant issued pursuant to paragraph A of this Section shall be made at the closing of a purchase of an Affordable Housing and shall not exceed the sum of Ten Thousand Dollars (\$10,000).

C. Only one Housing Assistance Grant issued pursuant to this Section may be issued to a Qualifying Grantee.

D. Each Housing Assistance Grant issued pursuant to paragraph A of this Section shall be secured by a mortgage or lien in the amount of the Housing Assistance Grant. The mortgage or lien shall be due only upon resale, transfer of title or refinancing of the Affordable Unit or the failure of the Qualifying Grantee to occupy the Affordable Housing Unit as a primary residence. The mortgage or lien shall be in a form prescribed by the County Attorney. Alternatively to a

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mortgage or lien, at the election of the Affordable Housing Administrator, the Housing Assistance Grant may be secured by a land use restriction agreement whereby the Qualifying Grantee agrees to maintain the Affordable Housing Unit as Affordable Housing for a period of no less than five (5) years. The land use restriction agreement shall be in a form prescribed by the County Attorney, but shall require that if the Affordable Housing Unit is sold or transferred during the five year period when sale or transfer is restricted pursuant to the land use restriction agreement, the Qualifying Grantee may only sell or transfer the Affordable Housing Unit to an Eligible Buyer or an Entry Market Buyer.

E. Persons desiring to receive a Housing Assistance Grant pursuant to paragraph A of this section may pre-qualify for such assistance by filing an application with the Affordable Housing Administrator. If the applicant appears to qualify for a grant at the time of application, the Affordable Housing Administrator may certify the person as a potential Qualifying Grantee. A copy of such certification may be provided to the Mortgage Finance Authority. The certification shall be valid for one year except that after six months a person shall be required to update the application. Upon making an application pursuant to this Ordinance, the potential Qualifying Grantee shall certify, in writing, that there have been no material changes in any of the information or documentation provided or representations made. The Affordable Housing Administrator, in his or her discretion, may request that additional information be provided notwithstanding the previous certification as a potential Qualifying Grantee.

## **Section Seven. Application Process.**

### **A. Housing Assistance Grants for Property, Existing Buildings, or Infrastructure.**

(1) To obtain a Housing Assistance Grant pursuant to Sec. 5 of this Ordinance, the applicant must submit an application and a detailed budget that describes the uses of proposed grant, including all the items required to be submitted pursuant to this subsection. The application shall be made on a form provided by the Affordable Housing Administrator.

(2) The application shall include all information required by the Rules and Regulations established pursuant to Sec. 8, herein, including, but not limited to, the following information:

(a) A narrative that describes the nature and scope of the Affordable Housing project envisioned by the applicant, and that describes the type and amount of assistance requested;

(b) An executive summary and project narrative including, but not limited to, the following:

- i. the financial and management stability of the applicant;
- ii. the demonstrated commitment of the applicant to the community;
- iii. the cost-benefit analysis of the project proposed by the applicant;

the proposed project; and

- iv. the benefits to the community of a proposed project;
- v. the type or amount of assistance to be provided;
- vi. the scope of the affordable housing project;
- vii. the substantive or matching contribution by the applicant to
- viii. a performance schedule with performance criteria.

(c) Relevant information concerning the applicant (organization structure, status, goals and objectives of the organization, accounting system, and other requirements set forth in Section 5 of this Ordinance, together with supporting documentation);

(d) A detailed budget for the proposed project that includes sources and uses of funds;

(e) A recent financial statement and audit, as applicable;

(f) A list, as applicable, of current board members, principals, key executive staff and an organizational chart;

(g) A copy of the Affordable Housing Agreement and Donation Agreement, as appropriate;

(h) A statement of the experience of the applicant developing, financing or managing Affordable Housing projects;

(i) A verification signed by the applicant that the information provided, under penalty for perjury, is true and correct to the best of the applicant's knowledge and belief;

(j) All information required by this Ordinance and the Affordable Housing Regulations; and

(k) Other information required by the Affordable Housing Administrator.

(2) If the application is made in the context of a request for proposals issued by the County, then the application shall be submitted and processed according to the instructions set forth in the request for proposals. Otherwise, the Affordable Housing Administrator shall review a pending application and make a finding whether the application conforms to this Ordinance and Ordinance No. 2006-02, and whether the application is complete and approvable.

(3) If the Affordable Housing Administrator makes a finding that the application is complete and approvable, the Affordable Housing Administrator shall prepare a staff analysis of the application and shall make a recommendation concerning the application to the Board of County Commissioners.

(4) The application shall be presented to the Board of County Commissioners for final action. The Board may approve the application, approve the application with conditions or modifications, or may deny the application, in its absolute discretion.

(5) In making its decision, the Board of County Commissioners shall consider whether the application conforms to the Act, Ordinance No. 2006-02, this Ordinance, the Affordable Housing Regulations, and any applicable directive of the Affordable Housing Administrator, whether the proposed project will provide Affordable Housing, whether the applicant is likely to be able to complete the project described in the application, and whether the proposed grant will assist in the creation of Affordable Housing.

(6) The Affordable Housing Administrator shall provide a copy of the decision and relevant documents to the applicant and to the New Mexico Mortgage Finance Authority.

(7) Following approval of the application, the applicant shall execute a Donation Agreement concerning the proposed project, or, alternatively, enter into an amendment containing the same material to an existing Affordable Housing Agreement. The agreement shall require the applicant to obtain adequate security against loss of public funds or property in the event the project is not completed, shall provide a construction schedule, shall provide for auditing and inspection of books and records pertaining to the project, and will only authorize payment on a reimbursement basis.

**B. Grants of All or a Portion of the Costs of Acquisition, Development, Construction, Financing, Operating or Owning Affordable Housing.**

(1) To obtain a Housing Assistance Grant pursuant to Sec. 6 of this Ordinance, the applicant must submit an application and supporting material. The application shall be made on a form approved by the Affordable Housing Administrator. Supporting material required by this Ordinance, the Affordable Housing Regulations, and the Affordable Housing Administrator, shall be attached.

(2) Each applicant for a housing assistance grant shall agree, in a written agreement, to maintain the property in good repair and to keep current any mortgages or notes on the property for so long as the applicant owns the property.

(3) If the Affordable Housing Administrator makes a finding that the application is complete and the proposed grantee is a Qualifying Grantee and complies with the requirements established by the New Mexico Mortgage Finance Authority pursuant to the Affordable Housing Act, NMSA 1978, Section 6-27-1 *et seq.* (2004), the Affordable Housing Administrator may approve the grant.

(4) The Affordable Housing Administrator shall provide a copy of the decision and relevant documents to the applicant and to the New Mexico Mortgage Finance Authority.

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(5) Following approval of the application, the applicant shall execute liens, mortgages or other documents required by this Ordinance and Ordinance No. 2006-02, as a condition precedent to receiving the Housing Assistance Grant.

**Section Eight. Rules and Regulations.**

A. The Affordable Housing Administrator shall recommend and present to the Board of County Commissioners proposed amendments to the Affordable Housing Regulations to implement the provisions of this Ordinance.

B. The rules and regulations shall include the following:

(1) procedures to ensure that Qualifying Grantees meet the requirements of the Affordable Housing Act and rules promulgated pursuant to that Act at the time of the award;

(2) an application and award timetable for Housing Assistance Grants to permit the selection of the potential Qualifying Grantees prior to January of the year in which the grants would be made;

(3) procedures to review and process the application, including an independent evaluation of the:

(a) financial and management stability of the applicant;

(b) demonstrated commitment of the applicant to the community;

(c) cost-benefit analysis of the project proposed by the applicant;

(d) benefits to the community of a proposed project;

(e) type or amount of assistance to be provided;

(f) scope of the affordable housing project;

(g) substantive or matching contribution by the applicant to the proposed project; and

(h) a performance schedule for the Qualifying Grantee with performance criteria;

(4) an acknowledgement that a Housing Assistance Grant imposes a contractual obligation on the Qualifying Grantee that the Affordable Housing provided pursuant to the Affordable Housing Act and Ordinance No. 2006-02 is to be occupied by low- or moderate-income households;

(5) provisions for adequate security against the loss of public funds or property in the event that a Qualifying Grantee abandons or otherwise fails to complete a project;

(6) a requirement for review and approval of a Housing Assistance Grant project budget before any expenditure of grant funds or transfer of granted property;

(7) a requirement that, unless the period is extended for good cause shown, the County shall place the application on an agenda of the Board within forty-five (45) days of the date of receipt of an application that the County deems to be complete and, if not placed upon an agenda of the Board within forty-five (45) days, the application shall be deemed approved;

(8) a requirement that a condition of Housing Assistance Grant approval be proof of compliance with all applicable state and local laws, rules and ordinances;

(9) provisions setting out requirements for verification of income levels of applicants; and

(10) a requirement that the Donation Agreement or Affordable Housing Agreement, or other agreement with a Qualifying Grantee is consistent with the Affordable Housing Act and include remedies and default provisions in the event of the unsatisfactory performance by the Qualifying Grantee.

**Section Nine. Limitation.**

A grant pursuant to this Ordinance shall be subject to availability of funds budgeted for the purposes of providing grants pursuant to this Section.

**Section Ten. Affordable Housing Fund.**

A. Proceeds from the Affordable Housing Fund that was established in Ordinance No. 2006-02 may be used to make the donations permitted pursuant to this Ordinance.

B. The County may accept donations to support the Affordable Housing Fund, and may seek grants from granting agencies to supplement the fund. In such case, expenditures from the fund shall be limited to the terms of the grant.

C. The County may solicit and receive grants from the State and federal governments to support the Affordable Housing Fund and programs established to support Affordable Housing within Santa Fe County.

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**Section Eleven. Budget.**

A. Any and all Housing Assistance Grants made pursuant to this Ordinance shall become final only following approval by the Board of County Commissioners of a budget that includes the proposed grant. From time to time and at least annually, the Affordable Housing Administrator shall submit a budget to the Board of County Commissioners for consideration and approval.

B. Matching of Affordable Housing Grants may be made from local, private or federal funds either through direct participation with a federal agency pursuant to federal law or through indirect participation through programs of the Mortgage Finance Authority.

**Section Twelve. Review of the New Mexico Mortgage Finance Authority.**

No less than forty-five days prior to the enactment of this Ordinance, it shall be submitted to the New Mexico Mortgage Finance Authority to ensure compliance with rules promulgated by the Authority. Within fifteen days after enactment of this Ordinance, a certified true copy shall be submitted to the New Mexico Mortgage Finance Authority.

**Section Thirteen. Effective Date.**

This Ordinance shall become effective thirty days after recordation pursuant to NMSA 1978, Section 4-37-9 (1975).

**PASSED AND ENACTED THIS 10 DAY OF Nov., 2009.**

**THE BOARD OF COUNTY COMMISSIONERS  
OF SANTA FE COUNTY, NEW MEXICO**

By [Signature]  
Michael D. Anaya, Chair

ATTEST:  
[Signature]  
Valerie Espinoza, County Clerk

Approved as to form:

[Signature]  
Stephen C. Ross, County Attorney



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COUNTY OF SANTA FE )  
STATE OF NEW MEXICO ) ss  
I Hereby Certify That This Instrument Was Filed for  
Record On The 20TH Day Of November, 2009 at 11:27.58 AM  
And Was Duly Recorded as Instrument # 1583778  
Of The Records Of Santa Fe County  
Witness My Hand And Seal Of Office  
Deputy [Signature] Valerie Espinoza  
County Clerk, Santa Fe, NM