

ARTICLE III. - AFFORDABLE HOUSING ORDINANCE



FOOTNOTE(S):

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Editor's note— Ord. No. 2006-05, §§ 1—7, adopted October 10, 2006, enacted provisions which are not specifically amendatory of the Code. They are included herein as a new Art. III at the discretion of the editor. See also the Code Comparative Table.

State Law reference— Affordable Housing Act, NMSA 1978, § 6-27-1 et seq.

Sec. 24-51. - Short title.



This article may be cited as the "Affordable Housing Ordinance."

(Ord. No. 2006-05, § 1, 10-10-06)

Sec. 24-52. - Purpose.



This ordinance is adopted to implement Carlsbad'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"), Rules, the purpose of the affordable housing ordinance 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(s) by Carlsbad;
- (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 Carlsbad believes is 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 Carlsbad's evaluation of the applicant;
- (4) Require long-term affordability of Carlsbad'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 a grant or loan for a project must impose a contractual obligation on the qualifying grantee that the affording housing units in any project be occupied by persons of low or moderate income;
- (6) 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;
- (7) Require review and approval of a housing grant project budget by Carlsbad and/or the MFA before any expenditure of grant funds or transfer of granted property;
- (8) Require that a condition of grant or loan approval be proof of compliance with all applicable state and local laws, rules and ordinances;
- (9) Provide definitions for "low-income and moderate-income" and setting out requirements for verification of income levels;
- (10) Provide Carlsbad with a valid affordable housing program; and
- (11) Require that Carlsbad 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.

(Ord. No. 2006-05, § 2, 10-10-06)

Sec. 24-53. - General definitions.



The following words and terms shall have the following meanings.

Act shall mean the Affordable Housing Act, NMSA 1978, § 6-27-1 et seq.

Affordable shall mean 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 or households of low or moderate income.

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

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.

Affordable housing program or *program* shall mean any programs Carlsbad and/or the MFA establish pursuant to the act.

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

Affordability period shall mean:

- (1) If the fair market value of any housing assistance grant or the total amount of affordable housing funds that have been awarded, loaned, donated, or otherwise conveyed to the qualifying grantee is from \$1.00 to \$14,999.99, 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.

Applicant shall mean, subject to further qualifications in [section 24-54\(2\)](#), 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 Carlsbad and/or the MFA.

Application shall mean an application to participate in one or more affordable housing programs or affordable housing plans under the act submitted by an applicant to Carlsbad and/or the MFA.

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 Carlsbad 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 Carlsbad 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 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.

City shall mean the City of Carlsbad, New Mexico, a New Mexico municipal corporation.

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.

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

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

Housing assistance grant means the donation by Carlsbad of:

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

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

Infrastructure shall mean 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 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 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 shall mean:

- (1) Planning, design, engineering, construction, acquisition or installation of infrastructure, including the costs of applications, impact fees and other fees, permits and approvals related to the construction, acquisition or installation of the infrastructure, provided Carlsbad may determine it appropriate to reduce or waive building permit fees, sewer and water hook-up fees and other fees with respect to an affordable housing project for which affordable housing funds and/or housing assistance grants are awarded, loaned, donated or otherwise distributed under the act;
- (2) Acquiring, converting, renovating or improving existing facilities for infrastructure, including facilities owned, leased or installed by the owner;

- (3) Acquiring interests in real property or water rights for infrastructure, including interests of the owner; and
- (4) Incurring expenses incident to and reasonably necessary to carry out the purposes specified in this subsection.

MFA shall mean the New Mexico Mortgage Finance Authority.

MFA Act shall mean the Mortgage Finance Authority Act, enacted as Chapter 303 of the Laws of 1975 of the State of New Mexico, as amended (being Sections 58-18-1 through 58-18-27, inclusive, N.M.S.A. (1978), as amended).

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 Carlsbad 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 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 Carlsbad 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 shall mean a financial obligation secured by a mortgage, including a mortgage loan for a project.

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 Carlsbad 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.

Multi-family housing program shall mean a program involving a congregate housing facility, a multiple family housing project or a transitional housing facility.

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

Ordinance shall mean this ordinance (Ord. No. 2006-05).

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.

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 Carlsbad; 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 non-profit organization, has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual; and
 - c. Is approved by Carlsbad.

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 Carlsbad and/or the MFA.

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

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.

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.

RFP shall mean any request for proposal made by Carlsbad.

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

State shall mean the State of New Mexico.

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. 2006-05, § 3, 10-10-06)

Sec. 24-54. - General requirements.

With the exception of housing assistance grants involving funding from the state which shall be governed by [section 24-54\(12\)](#) below, the following requirements shall apply to all housing assistance grants and/or affordable housing funds awarded, loaned or otherwise distributed by Carlsbad under the act to a qualifying grantee.

- (1) *Request for proposals.* Carlsbad, in its discretion, may issue one or more 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.
- (2) *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:
 - a. All individuals who are qualified to receive assistance pursuant to the act, the rules, and this article that are approved by Carlsbad;
 - b. All regional housing authorities and any governmental housing agencies;
 - c. All for-profit organizations, including any corporation, limited liability company, partnership, joint venture, syndicate or association;
 - d. All non-profit organizations meeting the following requirements:
 1. A primary mission of the nonprofit organization must be to provide housing or housing-related services to persons of low or moderate income; and
 2. The non-profit organization must have received its 501(c)(3) designation prior to submitting an application;
 3. Have no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual;
 - e. All non-individual applicants must:
 1. Be organized under state or local laws and can provide proof of such organization and be approved by Carlsbad;
 2. 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;
 3. Have among its purposes significant activities related to providing housing or services to persons or households of low or moderate income; and
 4. Have no significant outstanding or unresolved monitoring findings from Carlsbad, the MFA, or its most recent independent financial audit, or if it has any such findings, it has a certified letter from Carlsbad, the MFA, or auditor stating that the findings are in the process of being resolved.

(3) *Applications.*

- a. *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 Carlsbad the following (as applicable):
1. One original application, together with all required schedules, documents, or such other information which may be required by Carlsbad or in any RFP which may have been issued by Carlsbad, 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 narrative(s) that address the evaluation criteria set forth in any RFP issued by Carlsbad 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;
 6. If the applicant is a non-profit organization:
 - (i) Proof of 501(c)(3) tax status;
 - (ii) Documentation that confirms that no part of its net earnings inures to the benefit of any member, founder, contributor or individual;
 7. If an applicant is a legal entity, including a non-profit organization:
 - (i) 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 Carlsbad and/or the MFA in its discretion;
 - (ii) 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;
 - (iii) A list of members of the applicant's current board of directors or other governing body, including designated homeless participation, where required by Carlsbad;
 - (iv) Evidence (or a certification as may be allowed by Carlsbad) 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;
 - (v) Evidence that the applicant has no significant outstanding or unresolved monitoring findings from Carlsbad, the MFA, or its most recent independent financial audit; or if it has any significant outstanding or unresolved monitoring findings from Carlsbad, the MFA, or its most recent independent financial audit, it has a certified letter from Carlsbad, the MFA, or the auditor stating

- that the findings are in the process of being resolved;
- (vi) An organizational chart, including job titles and qualifications for the applicant's employees or as otherwise may be required by Carlsbad and/or the MFA in its discretion. Job descriptions may be submitted as appropriate;
 - (vii) 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;
8. Information as may be required by Carlsbad in order for it to determine the financial and management stability of the applicant;
 9. Information as may be required by Carlsbad in order for it to determine the demonstrated commitment of the applicant to the community;
 10. 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;
 11. Information supporting the benefits to the community of the affordable housing project proposed by the applicant;
 12. 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;
 13. Any certifications or other proof which Carlsbad may require in order for Carlsbad to confirm that the applicant is in compliance with all applicable federal, state and local laws, rules and ordinances;
 14. 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;
 15. Certifications as may be required by Carlsbad and signed by chief executive officer, board president, or other authorized official of the applicant, provided that Carlsbad at its discretion may waive any of the foregoing requirements if not deemed applicable;
- b. *Additional requirements for multi-family housing projects.* Applicants who are submitting applications in connection with a multi-family housing program must also submit to Carlsbad following additional information:
1. A verified certificate that, among other things:
 - (i) Identifies every multi-family housing program, including every assisted or insured project of HUD, RHS, FHA and any other state or local government housing finance agency in which such applicant has been or is a principal;
 - (ii) Except as shown on such certificate, states that:

- i. No mortgage on a project listed on such certificate has ever been in default, assigned to the 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. Carlsbad 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.
- c. *Additional requirements for mortgage lenders.* If the applicant is a mortgage lender, Carlsbad 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. Carlsbad's assessment of the ability of the applicant or its designated servicer to act as originator and servicer of mortgage loans for any multi-family housing programs or other programs to be financed; and
 5. Previous participation by the applicant in the MFA's programs and HUD, Federal Housing Authority, or rural housing service programs.
- d. *Submission procedure.*
1. *Time, place and method of submission delivery.*
 - (i) If Carlsbad has issued an RFP, all applications must be received by Carlsbad no later than the deadline set forth in the RFP; otherwise, all applications must be received by Carlsbad by the deadline Carlsbad 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, Carlsbad shall issue any RFP's, solicit any applications, or otherwise identify any qualifying grantees no later than October 15 of any year in order to allow sufficient time for prospective applicants to respond to

any such RFP, solicitation, or otherwise, and further to allow the MFA not less than 45 days in which to review any such applications or otherwise determine or confirm that an applicant is a qualifying grantee under the act and consistent with the rules.

- (ii) Applications shall be submitted by applicants to Carlsbad in the form required by Carlsbad and shall contain all information which is required by this article and any RFP which may have been issued.
2. *Additional factors.* The application procedures shall take into consideration:
- (i) Timely completion and submission to Carlsbad of an application or other appropriate response to any solicitation by Carlsbad;
 - (ii) Timely submission of all other information and documentation related to the program required by Carlsbad as set forth in this article or as set forth in the rules;
 - (iii) Timely payment of any fees required to be paid to Carlsbad at the time of submission of the application; and
 - (iv) Compliance with program eligibility requirements as set forth in the act, the rules and this article.
3. *Submission format.*
- (i) City forms or MFA forms (if available) must be used when provided and no substitutions will be accepted; however attachments may be provided as necessary.
 - (ii) An applicant's failure to provide or complete any element of an application, including all requirements of Carlsbad or as may be listed on any RFP, may result in the rejection of the application prior to review.
 - (iii) Illegible information, information inconsistent with other information provided in the application, and/or incomplete forms will be treated as missing information and evaluated accordingly.
 - (iv) Carlsbad and the MFA reserve the right to request further information from any applicant so long as the request is done fairly and does not provide any applicant an undue advantage over another applicant.
 - (v) Carlsbad in its discretion may cancel any RFP or reject any or all proposals in whole or part submitted by any applicant.
 - (vi) Neither Carlsbad nor the MFA shall be responsible for any expenses incurred by an applicant in preparing and submitting an application. However, Carlsbad 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 Carlsbad or the MFA, as applicable, in any RFP or otherwise shall be advertised as part of the application solicitation process.
4. *Review by Carlsbad.* On receipt of an application, Carlsbad shall:
- i. Determine whether the application submitted by the applicant is complete and responsive;
 - ii. Determine whether the applicant is a qualifying grantee as defined herein and

in the act;

- iii. 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;
- iv. 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;
- v. 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 Carlsbad in any RFP or otherwise;
- vi. Determine whether the applicant has support from public service agencies, or such other support as may be required by Carlsbad and/or the MFA in its discretion, for its proposed services in the community;
- vii. 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;
- viii. 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;
- ix. Ascertain whether the applicant has and can demonstrate the capability to manage the implementation of the program for which the applicant is applying;
- x. 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 Carlsbad or the MFA, as applicable or if it has any such findings, it has a certified letter from Carlsbad, the MFA, or auditor stating that the findings are in the process of being resolved;
- xi. 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 Carlsbad or the MFA, as applicable, for those prior program funds;
- xii. Evaluate the applicant's proposal in part based upon the applicant's current financial audit;
- xiii. 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 Carlsbad 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;
- xiv. On receipt of an application from a builder, Carlsbad 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 Carlsbad.

- xv. Consider other factors it deems appropriate to ensure a reasonable geographic allocation for all affordable housing programs.
5. *Certification by Carlsbad to the MFA.* Carlsbad shall certify an application to the MFA in writing upon:
 - i. Completion of its review of the application;
 - ii. Determination that the application is complete;
 - iii. Determination that the requirements of the act, the rules and this article have been satisfied; and
 - iv. Determination that the applicant is a qualifying grantee.
 6. *Review by the MFA.* The MFA upon its receipt of the certification from Carlsbad may, in its discretion, review the application and any of the materials submitted by the applicant to Carlsbad. 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 Carlsbad 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.
 7. *Notification of acceptance.* Carlsbad, upon completion of its review of the application and an evaluation of the criteria for approval of the application as set forth in this article and in any RFP issued by Carlsbad 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.
Carlsbad's and the MFA's determination of any application shall be conclusive.
- (4) *Additional requirements.* Upon acceptance, the following additional requirements shall apply to any applicant, who is a qualifying grantee:
- a. *Contractual requirements.* The qualifying grantee shall enter into one or more contracts with Carlsbad, 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.
 - b. *Security provisions; collateral requirements.* In accordance with the act, the rules and this article, Carlsbad shall require the qualifying grantee to execute documents, which will provide adequate security against the loss of public funds or property in the event the qualifying grantee abandons or fails to complete the affordable housing project, and which shall further provide, as may be permitted by law, for the recovery of any

attorneys' fees and costs which Carlsbad and/or the MFA may incur in enforcing the provisions of this article, the rules, the act and/or any agreement entered into by Carlsbad 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 Carlsbad 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 Carlsbad 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.

- c. *Performance schedule and criteria.* The qualifying grantee shall be required to abide by a reasonable performance schedule and performance criteria that Carlsbad, in its discretion, may establish.
- d. *Examination of books and records.* The qualifying grantee shall submit to and Carlsbad shall cause to be made such examinations of the books and records of each qualifying grantee as Carlsbad 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 Carlsbad. Carlsbad and/or the MFA may require each qualifying grantee to pay the costs of any such examination.
- e. *Infrastructure cost reimbursement contracts.*
 1. *Cost reimbursements.* Payment to a qualifying grantee under cost reimbursable contract provisions shall be made upon Carlsbad'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 Carlsbad.
 2. *Cost reimbursements for units of service.* Payment under any unit cost contract provisions shall be made upon Carlsbad's receipt from the qualifying grantee of a certified and documented invoice showing the number of units of service provided during the billing period.
 3. *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 Carlsbad. If Carlsbad determines that the qualifying grantee is underspending or overspending, then Carlsbad may reduce the budget and/or exercise such other budgetary fiscal controls it deems appropriate.
 4. *Invoices.* Qualifying grantees shall not submit invoices more than once a month, unless written approval is obtained in advance from Carlsbad. 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.
 5. *No dual application of costs.* The qualifying grantee shall certify that any direct or indirect costs claimed by the qualifying grantee will not be allocable to or included as a cost of any other program, project, contract, or activity operated by the qualifying grantee and which has not been approved by Carlsbad in advance, in writing.
 6. *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.

7. *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 Carlsbad.
 - f. *Additional information.* Qualifying grantees shall provide Carlsbad with any and all information which Carlsbad 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 Carlsbad or the MFA in its discretion. At a minimum, on an annual basis, Carlsbad 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.
5. *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.
 - a. *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.
 - b. *Multi-family property.*
 1. *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.
 2. *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

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.

- c. *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.
 - d. *Housing assistance grant affordability requirements.* Qualifying grantees shall agree that they shall maintain any land or buildings received as a housing assistance grant either as either single-family or multi-family affordable housing in accordance with [section 24-54\(5\)a.](#) and [b.](#) or as a facility which provides housing related-services to persons of low or moderate income in accordance with [section 24-54\(5\)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 as a housing assistance grant either as either single-family or multi-family affordable housing or as a facility which provides housing related-services to persons of low or moderate income (as applicable) for the duration of the affordability period. In calculating the affordability period for housing assistance grants of either land or buildings, the fair market value of the land or buildings or the costs of infrastructure at the time of the donation by the state or Carlsbad shall apply.
 - e. *Affordability period.* Carlsbad, 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 Carlsbad 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 24-53](#) of this article. 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 24-54\(5\)](#); but nevertheless, any such conveyances may be subject to recapture on some pro-rated basis as determined by Carlsbad and/or the MFA.
- (6) *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 Carlsbad and/or the MFA.
 - (7) *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. Carlsbad 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 Carlsbad and the MFA are satisfied.
- (8) *Compliance with the law.* Qualifying grantee shall provide Carlsbad with any certifications or other proof that it may require in order for Carlsbad 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.
- (9) *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.
- (10) *Carlsbad grant requirements.*
- a. Carlsbad is authorized to make housing assistance grants under the act. Upon determination that Carlsbad will make a housing assistance grant, including the use of any affordable housing funds, Carlsbad shall provide the MFA with the following:
 - 1. Documentation that confirms that Carlsbad 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 the 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 Carlsbad 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; and
 - 3. Must authorize the transfer or disbursement to the qualifying grantee only after a budget is submitted to and approved by the council;
 - 4. Must comply with the rules, as amended;
 - 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 Carlsbad within 45 days of its receipt of the documentation required above in this [section 24-54\(10\)a—c.](#)
 - e. Carlsbad, in its discretion, may also hold any award of affordable housing funds or any housing assistance grant made by Carlsbad in suspense pending the issuance by Carlsbad of any RFP or pending the award of the affordable housing funds or of the housing assistance grant by Carlsbad to the qualifying grantee without the issuance of

an RFP by Carlsbad. Any award of affordable housing funds or a housing assistance grant by Carlsbad shall subject the qualifying grantee of the award or grant to the oversight of Carlsbad and the MFA under this article and the rules.

- (11) *School district and public post-secondary educational institution grant requirements.* If a school district or a public 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, rules and this article. Any transfer of land by a school district to Carlsbad 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 public post-secondary educational institution shall be subject to the additional limitations contained in the act that:
- a. The property transferred shall be granted by Carlsbad as part or all of an affordable housing grant; and
 - b. The governing board of the public post-secondary educational institution and the council 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. Carlsbad, 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 Carlsbad of any RFP or pending the award of the housing assistance grant by Carlsbad to the qualifying grantee without the issuance of an RFP by Carlsbad. Any award of a housing assistance grant by a school district or a public post-secondary educational institution shall subject the qualifying grantee of the grant to the oversight of Carlsbad and the MFA under these rules.

- (12) 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. 2006-05, § 4, 10-10-06)

Sec. 24-55. - Discrimination prohibited.

The development, construction, occupancy and operation of an affordable housing program or an affordable housing project financed or assisted under the act shall be undertaken in a manner

consistent with principles of non-discrimination and equal opportunity, and Carlsbad 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.

(Ord. No. 2006-05, § 5, 10-10-06)

Sec. 24-56. - Administration.



Carlsbad and the MFA shall administer any affordable housing programs in accordance with provisions of the act, the rules, this article, and any applicable state and federal laws and regulations as each may be amended or supplemented from time to time. Carlsbad 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. 2006-05, § 6, 10-10-06)

Sec. 24-57. - Termination.



The council may repeal this article and terminate Carlsbad'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. 2006-05, § 7, 10-10-06)