



ORDINANCE 11-03

AN ORDINANCE AMENDING ORDINANCE NO. 05-03 OF THE TOWN OF TAOS AND ESTABLISHING AN AFFORDABLE HOUSING PROGRAM PURSUANT TO THE AFFORDABLE HOUSING ACT; DEFINING TERMS; ESTABLISHING APPLICATION REQUIREMENTS AND REVIEW CRITERIA; AND ESTABLISHING PROCEDURES TO ADMINISTER AN AFFORDABLE HOUSING PROGRAM.

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

WHEREAS, under an exception to the "anti-donation" clause as set forth in Article IX, § 14, Sections E and F, of the New Mexico Constitution, the Town is not prohibited if certain conditions and safeguards are met from (i) donating land it owns for the construction on it of affordable housing; (ii) donating an existing building owned by the Town for conversion or renovation into affordable housing; (iii) providing or paying the costs of infrastructure necessary to support affordable housing projects; or (iv) providing financing, including the making of loans to Qualifying Grantees for affordable housing; and

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

WHEREAS, the Town Council ("Council"), the governing body of the Town, desires to continue and augment an affordable housing program for the Town; and

WHEREAS, the New Mexico Mortgage Finance Authority (“MFA”) has reviewed and approved the form and terms of Town of Taos Ordinance No. 05-03 prior to final adoption thereof, and has approved the amendments to that ordinance reflected in this Ordinance No. 11-03.

BE IT ORDAINED BY THE TOWN COUNCIL, THE GOVERNING BODY OF THE TOWN OF TAOS, NEW MEXICO:

SECTION 1. SHORT TITLE. This article may be cited as the "Affordable Housing Ordinance."

SECTION 2. PURPOSE. This ordinance is adopted to implement the Town'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 MFA Affordable Housing Act Rules, the purpose of the Affordable Housing Ordinance is to:

A. establish procedures to ensure that local housing assistance grantees are Qualifying Grantees who meet the requirements of the Act and the MFA 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;

B. permit the establishment of an application and award timetable for housing assistance grants or loans to permit the selection of Qualifying Grantees by the Town;

C. create an evaluation process for non-Household Qualifying Grantees to determine:

- (1) the financial and management stability of the Applicant;
- (2) the demonstrated commitment of the Applicant to the community;
- (3) a cost-benefit analysis of the project proposed by the Applicant;

- (4) the benefits to the community of a proposed project;
- (5) the type or amount of assistance to be provided;
- (6) the scope of the Affordable Housing Project;
- (7) any substantive or matching contribution by the Applicant to the proposed project;
- (8) a performance schedule for the Qualifying Grantee with performance criteria; and
- (9) any other rules or procedures which the Town 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 the Town's evaluation of the Applicant;

D. create an evaluation process for Household Qualifying Grantees to determine income and other eligibility;

E. require long-term affordability of the Town'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;

F. require that the Town 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;

G. 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;

H. 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;

I. require review and approval of a housing grant project budget by the Town and/or the MFA before any expenditure of grant funds or transfer of granted property;

J. require that a condition of grant or loan approval be proof of compliance with all applicable state and local laws, rules and ordinances;

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

L. provide the Town with a valid Affordable Housing Program.

SECTION 3. GENERAL DEFINITIONS. The following words and terms shall have the following meanings.

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

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

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

D. "Affordable Housing Funds" shall mean any or all funds awarded or to be awarded, loaned or otherwise distributed under this Ordinance or the Act

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

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

G. "Affordable Housing Project" or "Project" shall mean any work or undertaking,

whether new construction, acquisition of existing Residential Housing, remodeling, improvement, Rehabilitation or conversion, which may be undertaken in one or more phases, as approved by the Town and/or the MFA for the primary purposes as allowed by the Act.

H. "Affordability Period" shall mean:

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

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

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

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

I. "Applicant" shall mean, subject to further qualifications in Section 4(B), 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 that has submitted an Application meeting the appropriate criteria of the Town and/or the MFA.

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

K. "Builder" shall mean an individual or entity licensed as a general contractor to construct Residential Housing in the state and which has been approved by the Town and/or the MFA to participate in an Affordable Housing Program.

L. "Building" shall mean a structure capable of being renovated or converted into Affordable Housing or a structure that is to be demolished and is located on land donated for use in connection with an Affordable Housing Project.

M. "Contribution" shall mean any provision of assistance for affordable housing, including an Affordable Housing Grant or Affordable Housing Funds, made by the Town.

N. "Congregate Housing Facility" shall mean Residential Housing designed for occupancy by more than four Households of Low or Moderate Income living independently of each other. The facility may contain group dining, recreational, health care or other communal living facilities and each unit in a Congregate Housing Facility shall contain at least its own living, sleeping, and bathing facilities.

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

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

Q. "Housing Assistance Grant" means the donation, provision, or payment by the Town of:

- (1) land upon which affordable housing will be constructed;
- (2) an existing Building that will be renovated, converted, or demolished and reconstructed as Affordable Housing;
- (3) the costs of acquisition, design, pre-development, development, construction, financing, and operating or owning affordable housing;
- (4) The costs of financing or infrastructure necessary to support Affordable Housing; or
- (5) reduction or waiver of building permit fees, sewer and water hook-up fees and other fees with respect to an Affordable Housing Project.

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

S. "Household Qualifying Grantee" or "Household Applicant" shall mean all members of a single household.

T. "Infrastructure" shall mean Infrastructure Improvements and Infrastructure Purposes.

U. "Infrastructure Improvement" includes, but is not limited to:

- (1) sanitary sewage systems, including collection, transport, storage, treatment, dispersal, effluent use and discharge;
- (2) drainage and flood control systems, including collection, transport, diversion, storage, detention, retention, dispersal, use and discharge;
- (3) water systems for domestic purposes, including production, collection, storage, treatment, transport, delivery, connection and dispersal;
- (4) areas for motor vehicle use for travel, ingress, egress and parking;

(5) trails and areas for pedestrian, equestrian, bicycle or other non-motor vehicle use for travel, ingress, egress and parking;

(6) parks, recreational facilities and open space areas for the use of residents for entertainment, assembly and recreation;

(7) landscaping, including earthworks, structures, plants, trees and related water delivery systems;

(8) electrical transmission and distribution facilities;

(9) natural gas distribution facilities;

(10) lighting systems;

(11) cable or other telecommunications lines and related equipment;

(12) traffic control systems and devices, including signals, controls, markings and signs;

(13) inspection, construction management and related costs in connection with the furnishing of the items listed in this subsection; and

(14) heating, air conditioning and weatherization facilities, systems or services, and energy efficiency improvements, that are affixed to real property.

V. "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.

(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.

W. "MFA" shall mean the New Mexico Mortgage Finance Authority.

X. "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).

Y. "Mortgage" shall mean a mortgage, mortgage deed, deed of trust or other instrument creating a lien, subject only to title exceptions as may be acceptable to the Town 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.

Z. "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, and which is authorized to make mortgage loans in the state.

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

BB. "Multiple Family Housing Project" shall mean Residential Housing that is designed for occupancy by more than four households living independently of each other or living in a Congregate Housing Facility, at least sixty percent (60%) of whom are Persons of

Low or Moderate Income, including without limitation Persons of Low or Moderate Income who are elderly and handicapped.

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

DD. "Ordinance" shall mean this Ordinance

EE. "Persons of Low Income" shall mean individuals or households whose incomes are at or below 80% of Area Median Income, defined by the Income Limits for Taos County, NM, as approved and published each year by MFA.

FF. "Persons of Moderate Income" shall mean individuals or households whose incomes are at or below 120% of Area Median Income, defined by the Income Limits FOR Taos County, NM, as approved and published each year by MFA.

GG. "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.

HH. "Qualifying Developer" shall mean an individual or entity that satisfies the requirements of Qualifying Grantee and has been approved by the Town and/or the MFA to participate in an Affordable Housing Program, who need not be 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.

II. "Qualifying Grantee" means:

(1) a household consisting of persons of low income or moderate income as defined in Section 3 EE and 3 FF that is qualified to receive assistance pursuant to the Act and is approved by the Town; or

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

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

(b) if a non-profit organization, has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual; and

(c) is approved by the Town.

JJ. "Recertification" shall mean the recertification of Applicants and/or Qualifying Grantees participating in any Affordable Housing Programs or in any programs under the Act as determined necessary from time to time by the Town and/or the MFA.

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

LL. "Residential Housing" shall mean any Building, structure or portion thereof that is primarily occupied, or designed or intended primarily for occupancy, as a residence by one or more Households and any real property that is offered for sale or lease for the construction or location thereon of such a building, structure or portion thereof. "Residential Housing" includes

congregate housing, manufactured homes and housing intended to provide or providing transitional or temporary housing for homeless persons.

MM. "Residential Use" shall mean that the structure or the portion of the structure to benefit from the Affordable Housing Funds or Housing Assistance Grant, is designed primarily for use as the principal residence of the occupant or occupants and shall exclude vacation or recreational homes.

NN. "State" shall mean the State of New Mexico.

OO. "Town" shall mean the Town of Taos, New Mexico, a New Mexico municipal corporation.

PP. "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.

SECTION 4. GENERAL REQUIREMENTS. The following requirements shall apply to all Housing Assistance Grants and/or Affordable Housing Funds awarded, loaned or otherwise distributed by the Town under the Act to a Qualifying Grantee. Any Contribution, to be authorized, must be consistent with the Town's affordable housing plan.

A. Request for Proposals (RFP). The Town, in its discretion or as required by law, 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.

B. Applicant Eligibility. The following Applicants are eligible under the Act to apply for Affordable Housing Funds or a Housing Assistance Grant to provide housing or related services to Persons of Low or Moderate Income in their community:

- (1) households that are qualified to receive assistance pursuant to the Act, the Rules, and this Ordinance that are approved by the Town;
- (2) regional housing authorities and any governmental housing agencies;
- (3) for-profit organizations, including corporations, limited liability companies, partnerships, joint ventures, syndicates or associations;
- (4) non-profit organizations meeting the following requirements:
 - (a) a primary mission of the nonprofit organization must be to provide housing or housing-related services to Persons of Low or Moderate Income; and
 - (b) the non-profit organization must have received its 501(c)(3) designation prior to submitting an Application;
 - (c) have no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual;
- (5) all non-Household Applicants must
 - (a) be organized under state laws and can provide proof of such organization and be approved by the Town;
 - (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 Town, the MFA, or its most recent independent financial audit, or if it has any such findings, it has a certified letter from the Town, the MFA, or auditor stating that the findings are in the process of being resolved.

C. Renters of Multifamily Affordable Housing units and residents of transitional housing, who did not receive grants of Town Affordable Housing Funds, shall not be required to be Qualifying Grantees.

D. Applications.

Applicants wishing to apply for a Housing Assistance Grant, including the use of any Affordable Housing Funds, or to participate in any Affordable Housing Program are required to submit to the Town or its designated agent the following, as applicable:

(1) Household Applicants

(a) an application on the form provided by the Town or its designated agent, together with all applicable schedules and such other information as may be required by the Town under the Ordinance. The income of all household members who are 18 years or older shall be used to determine household income for Homebuyers regardless of whether this income is being used to qualify for financing to purchase the home. Income and asset determination and inclusion will follow HUD or other applicable federal or state guidelines.

(b) a verification signed by the Applicant before a notary public that the information provided, upon penalty of perjury, is true and correct to the best of the Applicant's information, knowledge, and belief.

(c) The Town may establish additional requirements for Household Applicants in ordinances that create specific Affordable Housing projects or programs.

(2) Non-Household Applicants

(a) one original Application, together with all required schedules, documents, or such other information which may be required by the Town or in any RFP which may have been issued by the Town, must be included in the completed Application;

(b) a proposal describing the nature and scope of the Affordable Housing Project proposed by the Applicant and for which the Applicant is applying for funds or a grant under the Act, and which describes the type and amount of assistance which the Applicant proposes to provide to Persons of Low or Moderate Income;

(c) executive summary and project narrative(s) that address the evaluation criteria set forth in any RFP issued by the Town for the Affordable Housing Funds or the Housing Assistance Grant for which the Applicant is applying;

(d) a proposed budget for the Affordable Housing Project for which the Applicant is applying for Affordable Housing Funds or for a Housing Assistance Grant;

(e) current independent financial audit;

(f) if the Applicant is a non-profit organization:

(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;

(g) 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 the Town 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 the Town;

(iv) evidence (or a certification as may be allowed by the Town) 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 the Town, the MFA, or its most recent independent financial audit; or if it has any significant outstanding or unresolved monitoring findings from the Town, the MFA, or its most recent independent financial audit, it has a certified letter from the Town, 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 who are, or will be, working on the proposed project. Job descriptions may be submitted as appropriate;

(vii) documentation that the Applicant is duly organized under state, tribal, or local law and certification that the Applicant is in good standing with any

state authorities, including the Public Regulation Commission, the Attorney General, and/or the Secretary of State;

(h) information as may be required by the Town in order for it to determine the financial and management stability of the Applicant;

(i) information as may be required by the Town in order for it to determine the demonstrated commitment of the Applicant to the community;

(j) adequate information describing the Affordable Housing project proposed by the Applicant. The information provided must clearly evidence the need for the subsidy, that the value of the housing assistance grant reduces the housing costs to persons of low or moderate income, and that there is or will be a direct benefit from the project proposed by the Applicant to the community and/or to the purported beneficiaries of the project, consistent with the provisions of the Act.

(k) information to the Town supporting the benefits to the community of the Affordable Housing Project proposed by the Applicant;

(l) proof, as the Town may require, of substantive or matching funds or contributions and/or in-kind donations to the proposed Affordable Housing Project in connection with the Application for funds under the Act. Nothing contained herein shall prevent or preclude an Applicant from matching or using local, private, or federal funds in connection with a specific Housing Assistance Grant or a grant of Affordable Housing Funds under the Act;

(m) any certifications or other proof which it may require in order for the Town to confirm that the Applicant is in compliance with all applicable federal, state and local laws, rules and ordinances;

(n) a verification signed by the Applicant before a notary public that the information provided, upon penalty of perjury, is true and correct to the best of the Applicant's information, knowledge, and belief;

(o) certifications as may be required by the Town and signed by chief executive officer, board president, or other authorized official of the Applicant;

(p) the Town may set forth criteria for a waiver of the above application requirements in an ordinance defining and authorizing specific Affordable Housing projects, to the extent permitted by the Affordable Housing Act, the MFA Rules, and any other applicable law.

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

(a) 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 and 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 statement, states that:

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

(B) there has not been a suspension or termination of payments under any HUD assistance contract in which the Applicant has had a legal or beneficial interest;

(C) such Applicant has not been suspended, debarred or otherwise restricted by any department or agency of the Federal Government or any state government from doing business with such department or agency because of misconduct or alleged misconduct; and

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

If such Applicant cannot certify to each of the above, such Applicant shall submit a signed statement to explain the facts and circumstances that such Applicant believes will explain the lack of certification. The Town may then determine if such Applicant is or is not qualified.

(b) the experience of the Applicant in developing, financing and managing Multiple-Family Housing Projects; and

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

(4) Submission Procedure.

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

(i) If the Town has issued an RFP, all Applications must be received by the Town no later than the deadline set forth in the RFP; otherwise, all Applications must be received by the Town by the deadline the Town has established in connection with the respective award or grant.

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

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

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

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

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

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

(c) Submission Format.

(i) Town forms must be used when provided and no substitutions will be accepted; however attachments may be provided as necessary.

(ii) An Applicant's failure to provide or complete any element of an Application, including all requirements of the Town or as may be listed on any RFP, may result in the rejection of the Application prior to review.

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

(iv) The Town and the MFA reserve the right to request further information from any Applicant so long as the request is done fairly and does not provide any Applicant an undue advantage over another Applicant.

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

(vi) Neither the Town nor the MFA shall be responsible for any expenses incurred by an Applicant in preparing and submitting an Application. However, the Town 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 Town or the MFA, as applicable, in any RFP or otherwise shall be advertised as part of the Application solicitation process.

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

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

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

(c) Non-Household Applicants:

(i) 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;

(ii) 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;

(iii) 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 Town in any RFP or otherwise;

(iv) determine whether the Applicant has support from Public Service Agencies, or such other support as may be required by the Town and/or the MFA in its discretion, for its proposed services in the community;

(v) 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;

(vi) 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;

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

(viii) if Applicant is a prior recipient of either a Housing Assistance Grant, Affordable Housing Funds and/or other Program funds, confirm that the Applicant had no outstanding findings or matters of non-compliance with program requirements

from the Town or the MFA, as applicable or if it has any such findings, it has a certified letter from the Town, the MFA, or auditor stating that the findings are in the process of being resolved;

(ix) if Applicant is a prior recipient of either a Housing Assistance Grant, Affordable Housing Funds and/or other Program funds, confirm that the Applicant reasonably committed and expended the funds under the prior Program and/or met anticipated production levels as set forth in any contract with the Town or the MFA, as applicable, for those prior Program funds;

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

(xi) 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 Town 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;

(xii) on receipt of an Application from a Non-Household Applicant, the Town will analyze the Applicant's ability to construct and sell sufficient Residential Housing units to Persons of Low or Moderate Income within the time or times as may be required by the Town.

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

- (a) completion of its review of the Application;
- (b) determination that the Application is complete;

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

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

(7) Review by the MFA. The MFA upon its receipt of the certification from the Town may, in its discretion, review the Application and any of the materials submitted by the Applicant to the Town. 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 Town of its determination of whether or not the Application is complete and that the requirements of the Act and the Rules have been satisfied and the Applicant is a Qualifying Grantee. Unless the period is extended for good cause shown, the MFA shall act on an Application within forty-five (45) days of its receipt of any Application, which the MFA deems to be complete, and, if not acted upon, the Application shall be deemed to be approved.

(8) Notification of Acceptance. The Town, upon completion of its review of the Application, shall notify each Applicant in writing of the approval or disapproval of its Application. Upon approval of its Application, the Applicant shall be considered approved to participate in the Affordable Housing Program. The Town's determination of any Application shall be conclusive.

E. Additional Requirements. Upon acceptance, the following additional requirements shall apply to any Applicant who is a Qualifying Grantee:

(1) Contractual Requirements. The Qualifying Grantee shall enter into one or more contracts with the Town, which contract(s) shall be consistent with the Act and subject to

the review of the MFA, in its discretion, and which contract(s) shall include remedies and default provisions in the event of the unsatisfactory performance by the Qualifying Grantee.

(2) Security Provisions and Collateral Requirements. In accordance with the Act, the Rules and this Ordinance, the Town shall require the Qualifying Grantee to execute documents, which will provide adequate security against the loss of public funds or property in the event the Qualifying Grantee abandons or fails to complete the Affordable Housing Project, and which shall further provide, as may be permitted by law, for the recovery of any attorneys' fees and costs which the Town and/or the MFA may incur in enforcing the provisions of this Ordinance, the Rules, the Act and/or any agreement entered into by the Town 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 Town 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 Town and the MFA to ensure that such funds shall be utilized by the Qualifying Grantee in accordance with the Act, the Rules and this Ordinance.

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

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

(5) Examination of Books and Records. Each Non-Household Qualifying Grantee shall submit to and the Town shall cause to be made such examinations of the books and records of each Qualifying Grantee as the Town and/or the MFA deems necessary or appropriate to determine the Qualifying Grantee's compliance with the terms of the Act, the Rules, this Ordinance and any contracts between the Qualifying Grantee and the Town. The Town and/or the MFA may require each Qualifying Grantee to pay the costs of any such examination.

(6) Cost Reimbursement Contracts with Non-Household Qualifying Grantees.

(a) Cost Reimbursements. Payment to a Qualifying Grantee under cost reimbursable contract provisions shall be made upon the Town's receipt from the Qualifying Grantee and approval of certified and documented invoices for actual expenditures allowable under the terms of any agreement between the Qualifying Grantee and the Town.

(b) Cost Reimbursements For Units of Service. Payment under any unit cost contract provisions shall be made upon the Town's receipt from the Qualifying Grantee and approval of a certified and documented invoice showing the number of units of service provided during the billing period.

(c) Every contract shall contain a provision that the Town's obligations under the contract are subject to appropriations and availability of funds.

(d) Invoices. Qualifying Grantees shall not submit invoices more than once a month, unless written approval is obtained in advance from the Town.

(e) No Dual Application of Costs. The Qualifying Grantee shall certify that any direct or indirect costs claimed by the Qualifying Grantee will not be allocable to or included as a cost of any other program, project, contract, or activity operated by the Qualifying Grantee and which has not been approved by the Town in advance, in writing.

(f) Prohibition of Substitution of Funds. Any Affordable Housing Funds or other amounts received by a Qualifying Grantee may not be used by the Qualifying Grantee to replace other amounts made available or designated by the state or local governments through appropriations for use for the purposes of the Act.

(g) Cost Allocation. The Qualifying Grantee shall clearly identify and distribute all costs incurred pertaining to the Affordable Housing Project by a methodology and cost allocation plan at times and in a manner prescribed by, or acceptable to the Town.

F. Affordable Housing Requirements. All Affordable Housing Funds or Housing Assistance Grants awarded under the Act are to be used by Qualifying Grantees for the benefit of Persons of Low or Moderate Income subject to the provisions of the Act and with particular regard to their housing related needs.

(1) Single Family Property. Qualifying Grantees shall agree that they shall maintain any single-family property which has been acquired, rehabilitated, weatherized, converted, leased, repaired, constructed, or which property has otherwise benefited from Affordable Housing Funds, including but not limited to any loans which have been repaid with Affordable Housing Funds and which loans previously were secured by such properties, as Affordable Housing for so long as any or all of the Affordable Housing Funds which have been awarded, loaned, or otherwise conveyed to the Qualifying Grantee are unpaid and outstanding or the Affordability Period, which ever is longer.

(2) Multi-Family Property. Any Qualifying Grantees providing Multi-Family Affordable Housing units shall enter into a contractual agreement with the Town of Taos that the housing units in an Affordable Housing Project be occupied by low- or moderate-income households.

(a) Single Apartment within a Multi-Family Property. Qualifying Grantees shall agree that, if any single apartments are to be rehabilitated, weatherized, converted, leased, repaired, constructed, or otherwise are to benefit from Affordable Housing Funds, those apartments shall be leased to Persons of Low or Moderate Income at the time of any such award. Qualifying Grantees, who are the landlords and/or owners of such properties, shall further agree to contribute at least sixty percent (60%) of the cost of the rehabilitation, weatherization, conversion, lease, repair, and/or construction. Qualifying Grantees also shall agree that the Persons of Low or Moderate Income, who are tenants of those apartments, shall be allowed to remain tenants for any Affordability Period and for so long as there are no uncured defaults by those tenants under their respective leases and provided that there is no just cause for the landlord to terminate any lease agreement with those tenants.

(b) Multiple Apartments. Qualifying Grantees shall agree that, if multiple apartments or an entire multi-family property are to be acquired, rehabilitated, weatherized, converted, leased, repaired, constructed, or otherwise are to benefit from Affordable Housing Funds, including but not limited to any loans which have been repaid with Affordable Housing Funds and which loans previously were secured by such properties, they shall maintain not less than sixty percent (60%) of the housing units as Affordable Housing for so long as any or all of the Affordable Housing Funds which have been awarded, loaned, or otherwise conveyed

to the Qualifying Grantee are unpaid and outstanding or the Affordability Period, whichever is longer.

(3) **Non-Residential Property.** Qualifying Grantees shall agree that they shall maintain any non-residential property which has been acquired, rehabilitated, weatherized, converted, leased, repaired, constructed, or which property has otherwise 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, which ever is longer.

(4) **Housing Assistance Grant Affordability Requirements.** Qualifying Grantees shall agree that they shall maintain any land or buildings received as a Housing Assistance Grant either as either single-family or multi-family Affordable Housing in accordance with Sections 4(E)(1) and (2) or as a facility which provides housing-related services to Persons of Low or Moderate Income in accordance with Section 4(E)(3) (as applicable) for the duration of the Affordability Period. Qualifying Grantees shall agree that they shall maintain any land or buildings for which they have received the costs of Infrastructure as a Housing Assistance Grant either as either single-family or multi-family Affordable Housing or as a facility which provides housing-related services to Persons of Low or Moderate Income (as applicable) for the duration of the Affordability Period. In calculating the Affordability Period for Housing Assistance Grants of either land or buildings, the fair market value of the land or buildings or the costs of Infrastructure at the time of the donation by the Town shall apply.

(5) **Affordability Period.** The Town, in its discretion, may increase the Affordability Period to be included in any contract, note, Mortgage, loan agreement, land use restriction agreement, restrictive covenant agreements and/or any other agreement which the Town may enter into with any Qualifying Grantee or beneficiary of the Affordable Housing Funds or of the Housing Assistance Grant. See definition of Affordability Period in Section 3(H) of this Ordinance. Notwithstanding the foregoing, in the discretion of the Town, weatherization funds and/or rehabilitation funds conveyed to a Qualifying Household Grantee where an Affordability Period is not practical, shall not be subject to the Affordability Period requirements of this Section 4(F); but nevertheless, any such conveyances may be subject to recapture on some pro-rated basis as determined by the Town and/or the MFA.

G. **Consent to Jurisdiction.** Each Qualifying Grantee shall consent to the jurisdiction of the courts of the State over any proceeding to enforce compliance with the terms of the Act, the Rules and this ordinance and any agreement between the Qualifying Grantee and the Town and/or the MFA.

H. **Recertification Procedures.** The Town may establish procedures for recertifying Qualifying Grantees from time to time.

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

J. **Town Grant Requirements.**

(1) The Town is authorized to make Housing Assistance Grants under the Act. Upon determination that the Town will make a Housing Assistance Grant, including the use of any Affordable Housing Funds, the Town shall provide the MFA with the following:

(a) documentation that confirms that the Town has an existing valid Affordable Housing Plan;

(b) a copy of the proposed project ordinance which provides for the authorization of Housing Assistance Grants, including the use of any Affordable Housing Funds, together with a written certification that proposed grantees will be in compliance with the Act and the Rules so that the MFA may confirm both that the project ordinance is in compliance with the Act, and that all grantees are required to be Qualifying Grantees under the Act and the Rules.

(2) Prior to the submission of a project ordinance to the Council, the Council must approve the budget for the project.

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

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

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

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

(d) must comply with the Rules, as amended; and

(e) may provide for matching or using local, private or federal funds either through direct participation with a federal agency pursuant to federal law or through indirect participation through the MFA.

(4) The Town, in its discretion, may also hold any award of Affordable Housing Funds or any Housing Assistance Grant made by the Town in suspense pending the issuance by the Town of any RFP or pending the award of the Affordable Housing Funds or of the Housing Assistance Grant by the Town to the Qualifying Grantee without the issuance of an RFP by the Town. Any award of Affordable Housing Funds or a Housing Assistance Grant by the Town shall subject the Qualifying Grantee of the award or grant to the oversight of the Town and the MFA under this Ordinance and the Rules.

K. School District and Post-Secondary Educational Institution Grant Requirements.

Any transfer of land by a school district to the Town 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 (i) the property transferred shall be granted by the Town as part of all of an Affordable Housing grant; and (ii) 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, "post-secondary educational institution" means a state university or a public community college. The Town, 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 Town of any RFP or pending the award of the Housing Assistance Grant by the Town to the Qualifying Grantee without the issuance of an RFP by the Town. 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 Town and the MFA under these Rules.

SECTION 5. DISCRIMINATION PROHIBITED. The development, construction, occupancy and operation of an Affordable Housing Program or an Affordable Housing Project financed or assisted under the Act shall be undertaken in a manner consistent with principles of non-discrimination and equal opportunity, and the Town 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.

SECTION 6. ADMINISTRATION. The Town and the MFA shall administer any Affordable Housing programs in accordance with provisions of the Act, the Rules, this Ordinance, any applicable state and federal laws and regulations as each of which may be amended or supplemented from time to time. The Town 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.

SECTION 7. AMENDMENT OR TERMINATION. The Council may amend or repeal this Ordinance and alter or terminate the Town's Affordable Housing Program. Any amendment to this Ordinance shall be submitted to MFA for review and approval prior to adoption. Amendment or termination shall be by ordinance following a public hearing.

SECTION 8. REPEALER. All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent with this Ordinance are repealed by this Ordinance but only to the extent of that inconsistency. This repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof, previously repealed.

SECTION 9. SEVERABILITY. If any section, paragraph, clause or provision of this Ordinance shall for any reason be held by a court of competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability of that section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.


SECTION 10. RECORDING; AUTHENTICATION; PUBLICATION; EFFECTIVE DATE.

This ordinance shall become effective as provided by law.

ORDAINED, ADOPTED, APPROVED, AND RATIFIED this 8th day of February, 2011 by the following vote:

Mayor Pro Tem Rudy C. Abeyta	<u>yes</u>
Councilmember Amy J. Quintana	<u>yes</u>
Councilmember A. Eugene Sanchez	<u>yes</u>
Councilmember Michael A. Silva	<u>yes</u>

TOWN OF TAOS



Darren M. Cordova, Mayor

ATTEST: *



Renee Lucero, Town Clerk



APPROVED AS TO FORM



Allen Ferguson, Jr., Town Attorney