

INCORPORATED COUNTY OF LOS ALAMOS ORDINANCE NO. 571

AN ORDINANCE AUTHORIZING THE CONVEYANCE OF REAL PROPERTY FOR AFFORDABLE HOUSING UNDER THE LAND DONATION AND LAND DISCOUNT PROGRAM; AND AMENDING CHAPTER 14 ARTICLE II SECTIONS 14-31 AND 14-39 OF THE CODE OF THE INCORPORATED COUNTY OF LOS ALAMOS CONCERNING TRANSFER OF LAND TO AUTHORIZE THE CONVEYANCE OF COUNTY PROPERTY UNDER THIS ORDINANCE AND THE USE OF FUNDS DERIVED FROM THE PROGRAM

WHEREAS, the Incorporated County of Los Alamos (the "County") adopted Ordinance No. 551 establishing an Affordable Housing Program pursuant to the New Mexico Affordable Housing Act, Section 6-27-1 et. seq. NMSA 1978 (the "Affordable Housing Ordinance"); and

WHEREAS, the County approved the Los Alamos County Affordable Housing Plan (the "Plan") which generally outlines the various housing programs which may be established under authority of the state law and the Affordable Housing Ordinance; and

WHEREAS, one of the programs authorized by the Affordable Housing Ordinance is a Land Donation and Land Discount Program; and

WHEREAS, the Land Donation and Land Discount Program must be implemented by ordinance and by adoption of rules and regulations which establish standards and guidelines to assist in the administration of the program; and

WHEREAS, the County's Community Development Department is charged with administering all of the County's affordable housing programs; and

WHEREAS, the Community Development Department acts as the County's liaison with the New Mexico Mortgage Finance Authority which Authority must approve any ordinances enacted under authority of the New Mexico Affordable Housing Act and the County's Affordable Housing Ordinance and the rules and regulations associated with the programs outlined in the Plan; and

WHEREAS, the New Mexico Mortgage Finance Authority has approved, by letter dated August 16, 2010, the Land Donation and Land Discount Program as authorized in this Ordinance No. 571 and implemented through the proposed rules and regulations for the Land Donation and Land Discount Program; and

WHEREAS, future amendments to this Ordinance No. 571 or the Land Donation and Land Discount Program rules and regulations must be approved by the New Mexico Mortgage Finance Authority; and

WHEREAS, a land conveyance and donation or discount granted by the County under this Land Donation and Land Discount Program is an exception to the requirements of County Code Chapter 14 concerning transfers of county property because of the authority granted by the New Mexico Affordable Housing Act and the Affordable Housing Ordinance

NOW, THEREFORE, THE INCORPORATED COUNTY OF LOS ALAMOS HEREBY ORDAINS:

Section 1. Authority.

(a) Conveyance.

The County is authorized to convey improved or unimproved real property directly to qualified recipients or to a builder for subsequent resale or lease to a qualified recipient in accordance with the requirements of this ordinance and the program rules and regulations approved by the County Council. The County Council shall adopt an ordinance authorizing a property conveyance to a builder for resale or lease to a qualified recipient or a property conveyance to a qualified recipient directly.

(b) Donation and discount.

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

Section 2. Definitions.

(a) Affordability period means that amount of time represented by the term of a mortgage during which only a qualified recipient or builder may hold title to or lease of real property conveyed by the county under authority of this ordinance and shall be the following time periods:

- (1) With a donation or discount from \$1 to \$14,999.99, then the affordability period shall be five (5) years;
- (2) With a donation or discount from \$15,000 up to and including \$40,000, then the affordability period shall be ten (10) years;
- (3) With a donation or discount from \$40,001 up to and including \$100,000, then the affordability period shall be fifteen (15) years;
- (4) With a donation or discount from \$100,001 up to and including \$200,000, then the affordability period shall be twenty (20) years;

- (5) With a donation or discount from \$200,001 up to and including \$300,000, then the affordability period shall be twenty-five (25) years; and
- (6) With a donation or discount greater than \$300,001, then the affordability period shall be thirty (30) years.
- (b) Builder shall mean an individual or entity licensed by the State of New Mexico Construction Industries Division as a general contractor to construct Residential Housing. The term "Builder" shall also include an individual that satisfies the requirements of a Qualified Recipient or a non-profit or for-profit organization that agrees to sell or rent to a Household(s) that satisfies the requirements of a Qualified Recipient, provided that such individual or organization contracts with a general contractor licensed in the State to construct Residential Housing.
- (c) Discount is that amount of money equal to the difference between the fair market value of the property and the cash received by the county at the time of sale of the property, which difference is represented by the promissory note payable to the county by a builder or qualified recipient and which difference is intended to be forgiven by the county at the end of the affordability period in accordance with this ordinance and the program rules and regulations in order to assist low income qualified recipients in obtaining affordable housing in Los Alamos County.
- (d) Donation is that amount of money equal to the fair market value of the property as represented by the promissory note payable to the county by the builder or qualified recipient and which is intended to be forgiven by the county at the end of the affordability period in accordance this ordinance and the program rules and regulations in order to assist very low income qualified recipients in obtaining affordable housing in Los Alamos County.
- (e) Program is the Land Donation and Land Discount Program authorized in this ordinance.
- (f) Qualified Recipient is an individual or group of individuals who qualify as a household under the United States Housing and Urban Development Department ("HUD") regulations whose income is less than eighty (80) percent of the area median income, adjusted for household size, as defined by HUD in the granting of a discount by the county or whose income is less than fifty (50) percent of the area median income, adjusted for household size, as defined by HUD in the granting of a donation by the county.

Section 3. Conveyance to Builder.

- (a) A sale of real property may be made by a quit claim deed to a builder upon payment to the county of the appraised value of the property less the donation or discount amount determined by the county. The builder shall execute a promissory note and a mortgage on the property securing the promissory note for the donation or discount amount. The builder shall pay in cash or certified funds for the appraised value of the property not included in the promissory note.
- (b) The mortgage will include restrictive covenants that the property will only be resold or

- (c) If the real property is conveyed with improvements such improvements shall qualify as a fixture under New Mexico law.
- (d) A mortgage on the property being conveyed may only be subordinate to a mortgage securing a construction loan or remodel loan.
- (e) Before a conveyance may be made, the builder shall comply with all contractual and pre-approval requirements of the program to the county's satisfaction.
- (f) The builder shall resell or lease the property conveyed by the county under this program to qualified recipients in accordance with the program's rules and regulations.
- (g) Satisfaction of the promissory note and a release of the mortgage on the property shall only be made upon a) payment in full of the promissory note payable to the county and conveyance of the property from the builder to a qualified recipient in accordance with the restrictive covenants and the program's rules and regulations; b) acceptance by the county of a new promissory note and mortgage from the qualified recipient covering the donation or discount amount; and, c) receipt by the county of any difference between the donation or discount amount granted to builder and the amount of the new promissory note granted to the qualified recipient. If the property was legally subdivided by the builder and conveyance of a subdivided lot is made to a qualified recipient, the county may issue a partial satisfaction of the promissory note and a partial release of the mortgage in accordance with the program's rules and regulations.
- (h) When the mortgage term expires and the builder is not otherwise in default of any provision of the note, mortgage or program contract with the county, the county shall indicate full satisfaction of the promissory note by forgiveness of the amount owed and release the mortgage on the property.

Section 4. Conveyance to Qualified Recipient.

(a) Sale to Qualified Recipient.

- (1) A sale of real property may be made by a quit claim deed to a qualified recipient upon payment to the county of the appraised value of the property less the donation or discount amount determined by the county. The qualified recipient shall execute a promissory note and a mortgage on the property securing the promissory note for the donation or discount amount. The qualified recipient shall pay in cash or certified funds for the appraised value of the property not included in the promissory note.
- (2) The mortgage shall include restrictive covenants that the property shall only be resold or leased to a qualified recipient and that only a qualified recipient shall maintain residency on the property during the affordability period.
- (3) If the real property is conveyed with improvements such improvements shall qualify as a fixture under New Mexico law.

- (4) A mortgage on the property being conveyed may only be subordinate to a first purchase money mortgage.
- (5) Before a conveyance may be made, the qualified recipient shall have complied with all requirements of the program to the county's satisfaction as provided in the program's approved rules and regulations.
- (6) A promissory note is assumable by and mortgage is assignable to another qualified recipient during the term of the affordability period provided as the term in the mortgage with prior approval of the county.
- (7) When the mortgage term expires and the qualified recipient is not otherwise in default of any provision of the note or mortgage, the county shall indicate full satisfaction of the promissory note by forgiveness of the amount owed and release the mortgage on the property.

(b) Lease to Qualified Recipient.

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

Section 5. Funds Received Under Program. Any funds received under this program shall be retained for the purpose of providing additional affordable housing under this program unless otherwise directed by council.

Section 6. Section 14-31 of the County Code is amended to read as follows:

Sec. 14-31. Generally.

The council may sell, lease, exchange or otherwise transfer county-owned real property and interests in real property, including the improvements contained thereon, when such transfer is made in accordance with the requirements of this article, except that such transfers may be made without following the requirements of sections 14-32--14-35, when the:

- (1) Property is being transferred under authority of the Municipal Housing Law, section 3-45-1, *et. seq.* NMSA 1978, Urban Development Law, section 3-46-1, *et. seq.* NMSA 1978, Community Development Law, section 3-60-1, *et. seq.* NMSA 1978, or the Affordable Housing Act, section 6-27-1 *et. seq.* NMSA 1978 and Incorporated County of Los Alamos Ordinance No. 571;
- (2) Property is being transferred to any other federal, state or local governmental agency or instrumentality after the council determines by resolution that the transfer is in the best interest of the public;
- (3) Property is being donated for the care and maintenance of the sick and indigent;
- (4) Property interest being transferred is either an easement or a license;
- (5) Property is being leased to an entity engaged in providing health care services, including nursing home services; or

(6) Property interest is being transferred expressly pursuant to the authority granted by NMSA 1978, § 3-54-1, subject to the referendum requirements therein contained.

Section 7. Section 14-39 of the County Code is amended to read as follows:

Sec. 14-39. Proceeds from sale or exchange of property.

Except for funds received from a sale or lease under the land donation or land discount program as provided in Ordinance No. 571, all funds received from the sale or exchange of any county-owned property by the council shall be deposited in a separate account within the capital improvements fund and expended solely for the purpose of acquiring real property or capital improvements needed by the county.

Section 8. SEVERABILITY. If any section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or enforceability of that section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

Section 9. EFFECTIVE DATE. This ordinance shall become effective thirty (30) days after publication of notice of its adoption.

PASSED AND ADOPTED this 17th day of August, 2010.

INCORPORATED COUNTY OF LOS ALAMOS

Michael E. Wismer

Michael E. Wismer
Council Chair

ATTEST:

Janet Foster

Janet Foster
Los Alamos County Clerk

