

ORDINANCE NO. 495

AN ORDINANCE OF CITY OF SISTERS ADOPTING AN AFFORDABLE HOUSING PROGRAM FOR PURPOSES OF CREATING AND PRESERVING AFFORDABLE HOUSING IN CITY.

WHEREAS, City of Sisters ("City") has determined that City lacks sufficient affordable housing inside City's incorporated limits; and

WHEREAS, Section 42(3) of the 2003 Sisters City Charter (the "Charter") provides that City may waive City's system development charges ("SDC(s)") for affordable housing provided by nonprofit organizations provided the housing is affordable for a period of fifty (50) years; and

WHEREAS, subject to and in accordance with the Charter, City has granted certain requests to waive SDCs for affordable housing provided by nonprofit organizations; and

WHEREAS, City desires to collaborate with agencies and private developers to provide permanent, new affordable housing opportunities within City's incorporated limits, including, without limitation, providing support for agencies and private developers who provide safe, comfortable, and affordable housing; and

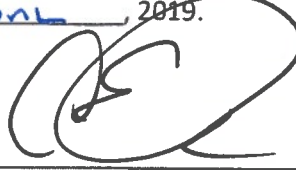
WHEREAS, by adoption of this Ordinance 495 (this "Ordinance"), the Sisters City Council (the "Council") desires to establish a program and guidelines to subsidize costs of constructing affordable housing in City.

NOW, THEREFORE, City of Sisters ordains as follows:

1. Findings. The above-stated findings are hereby adopted.
2. Affordable Housing Program Established. Council hereby establishes the City of Sisters Affordable Housing Program (the "Program"). The Program will be implemented and administered in accordance with the Program terms and conditions attached hereto as Exhibit A.
3. Miscellaneous. All pronouns contained in this Ordinance and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the identity of the parties may require. The singular includes the plural and the plural includes the singular. The word "or" is not exclusive. The words "include," "includes," and "including" are not limiting. Any reference to a particular law, statute, rule, regulation, code, or ordinance includes the law, statute, rule, regulation, code, or ordinance as now in force and hereafter amended. If any section, subsection, sentence, clause, and/or portion of this Ordinance is for any reason held invalid, unenforceable, and/or unconstitutional, such invalid, unenforceable, and/or unconstitutional section, subsection, sentence, clause, and/or portion will (a) yield to a construction permitting enforcement to the maximum extent permitted by applicable law, and (b) not affect the validity, enforceability, and/or constitutionality of the remaining portion of this Ordinance.

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This Ordinance was PASSED by the City Council by a vote of 5 for and 0 against and APPROVED by the mayor on this 10 day of April, 2019.

A large, stylized handwritten signature in black ink, consisting of a large loop and a trailing flourish.

Chuck Ryan, Mayor

ATTEST:

A handwritten signature in blue ink, appearing to be 'Kerry Prosser' with a stylized flourish.

Kerry Prosser, City Recorder

Exhibit A
City of Sisters Affordable Housing Program
[attached]

Exhibit A
City of Sisters Affordable Housing Program

1. Purpose. The purpose of this ordinance is to establish the administrative framework pursuant to which city may grant or loan funds for qualified affordable housing projects located in city that benefit low- and moderate-income persons.

2. Program Established. City establishes this affordable housing program to offer eligible agencies and private developers grant and/or loan funds for purposes of constructing and offering affordable housing to low- and moderate-income persons in city.

3. Definitions. For purposes of this ordinance, the following terms and phrases have the meanings assigned to them below:

“Affordability period” means the period commencing on the date which a qualified project receives a certificate of occupancy or final inspection, whichever is later, and ending ten years from such date; provided, however, council may increase or shorten the ten-year affordability period for a project if (a) circumstances necessitate a longer or shorter affordability period, as determined by council in council’s sole discretion, and/or (b) applicable law, including, without limitation, the 2003 Sisters Charter, requires a longer affordability period.

“Administrator” means the city manager or such other individual designated by council from time to time to administer the program.

“AMI” means area median income.

“Applicant(s)” means the person applying for program funds.

“City” means City of Sisters, Oregon.

“City council” or “council” means city’s then elected legislative body.

“City manager” means city’s then appointed city manager or his or her designee(s).

“Code” or “SMC” means the Sisters Municipal Code.

“Grant, loan, and/or program document(s)” means city’s program documents in form and content acceptable to city and such other restrictive covenants, trust deeds, security agreements, assignments, UCC financing statements, subordination agreements, guarantees, documents, and/or instruments city may require to effectuate any program grant and/or loan, including, without limitation, those program documents identified under Section 9.2 and/or Section 9.3.

“Housing needs analysis” means city’s then existing housing plan and/or housing needs analysis adopted by city, as amended from time to time.

“HUD” means United States Department of Housing and Urban Development or HUD’s successor.

"Income-qualified person(s)" means (a) as applied to owner-occupied or lease-to-purchase housing, a person or group of persons whose household income does not exceed one-hundred twenty percent (120%) of AMI for Deschutes County as calculated and adjusted for household size from time to time by HUD, and/or (b) as applied to rental housing, a person or group of persons whose household income does not exceed one-hundred percent (100%) of AMI for Deschutes County as calculated and adjusted for household size from time to time by HUD.

"Person" means any natural person, corporation, limited liability company, partnership, limited liability partnership, joint venture, firm, association, trust, incorporated organization, and/or any other entity, whether acting in an individual, fiduciary, or other capacity.

"Program" means the City of Sisters Affordable Housing Program described in this ordinance.

"Program funds or funds" means grant and/or loan funds provided by city under the program.

"Project" means the proposed development for which an applicant requests program funds which may include, without limitation, multi-family housing, single-family residence(s), and/or other dwelling unit(s); provided, however, the term "project" does not include rehabilitation projects.

"Qualified expense(s)" means land use fees, building permit fees, material and supply costs and expenses, and such other fees, costs, and expenses arising out of the development and construction of a qualified project; "qualified expense(s)" may include, without limitation, costs and expenses for the acquisition of real property on which a qualified project will be constructed.

"Qualified project(s)" means a project located in city's incorporated limits that is (a) owner-occupied or lease-to-purchase housing for households with an income at or below one-hundred twenty percent (120%) of AMI for Deschutes County as calculated and adjusted for household size from time to time by HUD, or (b) rental housing for households with an income at or below one-hundred percent (100%) of AMI for Deschutes County as calculated and adjusted for household size from time to time by HUD.

"SDC" means the Sisters Development Code.

"Transfer" means any transfer, including, without limitation, any sale, conveyance, exchange, gift, lease (excepting a tenant lease in the ordinary course), encumbrance, and/or foreclosure of an encumbrance, regardless of whether the transfer occurs voluntarily or involuntarily, by operation of law, or because of any act or occurrence.

4. Program Administrator. The administrator has the authority to implement, administer, and manage the program, including, without limitation, the authority to interpret the program and this ordinance. Notwithstanding this broad authority, the administrator will act reasonably, in compliance with applicable federal, state, and local laws, regulations, and ordinances, and in a manner the administrator reasonably believes is in city's best interests. The decision of the administrator on any given matter will not set any precedent nor bind future decisions of the administrator.

5. Annual Appropriation. Available program funds will be determined and subject to appropriation each fiscal year by resolution of the council. The amount of financial assistance may be increased or decreased at any time by council resolution. Council may limit or elect not to provide

funding for the program in any fiscal year. Council will attempt to provide notice of available program funding (if any) each fiscal year; provided, however, council will attempt to provide additional notice of any program funds available after March 1. If program fund requests exceed funding provided by the council, council will determine program participation based upon what the council determines is in city's best interests. At all times, city's financial assistance under the program will be based on availability of funds in city's program budget at the time of application and, if applicable, any subsequent fiscal year(s). Notwithstanding anything contained in this ordinance to the contrary, city will not be obligated to provide any program funding if sufficient funding is not then available.

6. Funding. Subject to the provisions of this ordinance, city may, in city's sole discretion, grant and/or loan program funds to an applicant satisfying all program requirements in an amount not to exceed the amount requested in the applicant's application. Program funds provided to an applicant may consist of grant funds, loan funds, and/or a combination of grant and loan funds. Notwithstanding anything contained in this ordinance to the contrary, grant and/or loan funds provided under the program will be used for qualified expenses and for no other purposes.

7. Minimum Eligibility Requirements. In addition to any eligibility requirements and/or conditions that the administrator may impose, to be eligible for program funds, an applicant must demonstrate compliance with all eligibility requirements and conditions imposed under this ordinance, including, without limitation, the following minimum requirements: (a) the applicant must be (i) a housing authority, (ii) a qualified non-profit organization that constructs affordable housing, or (iii) a for-profit developer of affordable housing for low- and moderate-income households; (b) the project for which program funds are sought must be an eligible qualified project as defined in this ordinance; and (c) the applicant must timely apply for program funds on city's then current program application and in such manner as the administrator may prescribe.

8. Application Review.

8.1 Applications. Application forms for program funds will be available at the Sisters City Hall. Each application must be filed with the administrator no later than March 1 immediately preceding the fiscal year in which the applicant desires to obtain program funds. Notwithstanding the immediately preceding sentence, if the council has not awarded all program funds appropriated for the fiscal year, an application may be filed with the administrator after March 1 subject to the provisions of this ordinance. Each application must contain all information and documentation city may require, including, without limitation, the following:

(a) The date of the application and the applicant's name, address, contact information, and the signature of the applicant's authorized representative.

(b) A description of the proposed project, including, without limitation, the type of housing, the proposed project location (i.e., identification of the real property of which the proposed project concerns), a timeline for project completion, and such additional information city deems necessary or appropriate to demonstrate that the proposed project will satisfy the eligibility requirements of a qualified project.

(c) The amount of program funds requested and the purposes for which the program funds will be used (including, without limitation, identification of all eligible qualified expenses).

(d) The project pro forma, including, without limitation, identification of funding sources to be used in connection with the proposed project. Applications must include evidence that all other funding commitments (e.g., conventional construction and permanent loans, subsidies and loans, and/or low-income housing tax credits) have been, or are anticipated will be, obtained. If applications to other funding programs are due after submission of the program application, the applicant will submit documentation that the proposed financing structure is expected to meet other source requirements and the timeline for applying and receiving award notification from other funders. If requested by the administrator, the applicant will provide a copy of the application to be submitted to other funding sources.

(e) Certification that that the applicant is current on all city accounts. The applicant may not be delinquent on any city accounts (e.g., utility accounts) and all property taxes for the property(ies) identified in the application must be paid at the time of application.

(f) All other information that the administrator deems necessary and/or appropriate to enable city to review the application and determine eligibility for the program funds.

8.2 Preliminary Review. Each application will be reviewed and processed by the administrator in order of receipt. The administrator will perform a preliminary review of each application and conduct whatever investigation the administrator deems necessary or appropriate to determine whether the application is complete, the statements made therein are true and accurate, and whether the application complies with this ordinance. City reserves the right to request additional documentation and information as needed. If, after a preliminary review, the administrator determines that the application does not include all required materials and/or information, the administrator will return the application and notify the applicant, in writing, of the deficiencies. If, after a preliminary review, the administrator determines the application is complete, the administrator will forward the application to council for review and evaluation along with the administrator's recommendations.

8.3 Evaluation; Criteria. Applications will be evaluated by council to determine whether to approve the application and award program funds (or any portion of program funds requested) or deny the application. The council may request additional documentation and/or information to render a decision on an application. The council may approve, approve with conditions, or deny an application. Applications (and the amount of funds provided) will be evaluated on criteria, including, without limitation, the following:

(a) Qualified Expenses. Applications will list specific qualified expenses for which the program funds are sought. City may give priority to certain types of expenses, including, without limitation, requests for program funds to assist with land use fees, building permit fees, material and supply costs and expenses, and other fees, costs, and expenses arising out of the construction of a new qualified project. Preference may be given to projects where other public funders have made their maximum award.

(b) Type of Housing; Needs. City may consider factors relating to the type of housing to be constructed, including, without limitation, whether city is experiencing a shortage of certain types of housing (e.g., multi-family housing), the percentage of units in a project that will be offered as affordable, and/or whether the project addresses city's housing needs as identified in city's housing needs analysis and/or council's then current housing goals.

(c) Applicant History. City may evaluate whether the applicant has previously received funding under the program and the applicant's compliance with the provisions of this ordinance. City may consider the applicant's history of constructing and offering affordable housing in city and/or the region.

The council may establish the relative weight (value) of any criteria for purposes of evaluating applications. The administrator will provide the applicant written notice of the council's decision on an application. The council's decision will be final and binding on the date the decision is mailed to the applicant. The decision of the council on any application or given matter will not set any precedent nor bind future council decisions.

9. Program Participation Requirements.

9.1 Affordability Period. As a condition to receiving funds under the program, during the affordability period a project must continue to satisfy the eligibility requirements contained in this ordinance, including, without limitation, continuing to be a qualified project. Subject to the provisions of this ordinance, city will record documentation, in form and content satisfactory to city, of the program grant and/or loan (and affordability requirements) with the Deschutes County Clerk's office upon commencement of the affordability period.

9.2 Documentation. The applicant must enter into and sign all then-applicable program documents as a condition to receiving funds under the program. The program documents will contain terms and conditions acceptable to city, including, without limitation, (a) disbursement procedures, (b) conditions to disbursement of program funds, (c) the timeframe within which funds must be used, and (d) such restrictive covenants, deed restrictions, and/or related instruments to ensure the continued affordability of the qualified project in accordance with this ordinance. Notwithstanding anything contained in this ordinance to the contrary, program documents will contain such terms and conditions reasonably requested by the city manager and/or city attorney and will be subject to the review and approval of the city manager and city attorney.

9.3 Security. A recipient must perform all recipient obligations contained under this ordinance and all program documents. To this end, a recipient's obligations to city under this ordinance and the program documents may, as determined by city in city's sole discretion, be secured and/or evidenced by a deed restriction and/or perfected security interest in the following real and/or personal property (collectively, the "collateral"): (a) the subject project property and all improvements, fixtures, equipment, and other articles of personal property located on and used in connection with the subject project property; (b) all present and future leases, rents, accounts, deposit accounts, general intangibles, and income and revenues of any nature relating to the subject project property; and (c) all products and proceeds of the foregoing. City's security interest in the collateral may, as determine by city in city's sole discretion, be evidenced by, and each recipient will execute and deliver to city (and/or cause any other person to execute and deliver to city), such deed restrictions, trust deeds, security agreements, assignments, Uniform Commercial Code financing statements, certificates of title, subordination agreements, guarantees, and all other documents and/or instruments city may request from time to time (each in form and substance acceptable to city) to evidence, secure, grant, preserve, protect, perfect, and continue the validity and priority of city's security interest in the collateral. The council may, from time to time, prescribe the type of documentation and/or instrument required for purposes

of evidencing city's security interest in the collateral. Council may distinguish documentation and/or instrument requirements on the basis of award amount and/or award type.

9.4 Affordability Certification. During the affordability period, the recipient will maintain such documentation and information necessary to demonstrate that the project is occupied by income-qualified person(s) and continues to meet the eligibility requirements of this ordinance. For each owner-occupied single-family residence, the recipient will certify to city, in form and content satisfactory to city, that the project meets the eligibility requirements upon any transfer of the project occurring during the affordability period; for all other projects, the recipient will certify to city, in form and content satisfactory to city, that the project meets the eligibility requirements upon any transfer of the project and on or before January 1 of each year during the affordability period.

10. Disqualification. If, during the affordability period, a project ceases to qualify as a qualified project, the recipient will repay all program funds to city immediately upon city's demand, plus interest at the statutory rate for interest on a judgement from the date of the document recording described in Section 9.1.

11. Denial; Suspension; Repayment.

11.1 Grounds for Denial. City may deny an application for the following: (a) the application is incomplete and/or fails to meet the requirements under this ordinance; (b) fraud, misrepresentation, and/or false statement(s) contained in the application and/or willful withholding of information or incomplete disclosure concerning any matter required to be furnished in connection with any such application; (c) failure to satisfy the eligibility requirements under this ordinance, including, without limitation, disqualification under Section 10; and/or (d) failure to comply with any applicable federal, state, and/or local law, regulation, and/or ordinance, and/or any agreement with city.

11.2 Remedies. In addition to any other remedy available to city, city reserves the right to demand immediate repayment of program funds (or any portion thereof) if a recipient violates the provisions of this ordinance. The remedies provided in this Section 11.2 are not exclusive and will not prevent city from exercising any other rights and/or remedies available under law. City will be entitled to collect from any recipient violating or otherwise failing to comply with this ordinance city's reasonable attorney fees and all other fees, costs, and expenses incurred by city to enforce this ordinance.