

1 CITY OF SANTA FE, NEW MEXICO

2 BILL NO. 2016-17

3 INTRODUCED BY:

4
5 Councilor Joseph M. Maestas

6 Mayor Javier M. Gonzales

7 Councilor Peter N. Ives

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9
10 AN ORDINANCE

11 AMENDING SECTION 14-6.2 OF THE LAND USE DEVELOPMENT CODE TO
12 REMOVE CERTAIN LIMITATIONS ON SHORT-TERM RENTAL DWELLING UNITS;
13 AMENDING THE FEE SCHEDULE FOR A SHORT-TERM RENTAL PERMIT; AND
14 REQUIRING THAT PERMIT HOLDERS PAY ALL APPLICABLE TAXES OR BE
15 SUBJECT TO CERTAIN PENALTIES.

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17 BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:

18 Section 1. Subsection 14-6.2 of the Land Use Development Code (being Ord.
19 #2011-37 (as amended)) is amended to read:

20 14-6.2 USE-SPECIFIC STANDARDS

21 (A) Residential Uses

22 (1) Continuing Care Community

23 (a) Density

24 Independent *dwelling units* are subject to the *density* standards of the
25 district in which the *continuing care community* is located.

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(b) Compliance with state and federal law
Continuing care communities must comply with all applicable *state* and federal laws and regulations.

(2) Mobile Home, Permanent Installation

In any district in which permanent single-*family* occupancy of a *mobile home* on an individual *lot* is allowed as a special use *permit* by the board of adjustment, the following minimum standards apply:

- (a) the *mobile home* shall be anchored to a concrete foundation and skirted as specified by the *land use director*;
- (b) the rental or lease of *mobile homes* used as single-*family* residences on individual *lots* is prohibited; and
- (c) minimum requirements for *lot size, front, side and rear yards*, and all other standards pertaining to single-*family residential* land use set forth in Chapter 14 apply.

(3) Mobile Home Park

(a) Applicability
New *mobile home parks* are prohibited as of December 10, 2012 (effective date of this Ordinance No. 2012-37). In a district in which *mobile home parks* are allowed, the minimum standards set out in this section apply.

(b) License
Prior to beginning operation, a *mobile home park* owner or operator must obtain a business license from the *city* under the provisions of Article 18-1 SFCC 1987.

(c) Inspection

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The *city* may inspect a *mobile home park* for conformance with the provisions of this section.

(d) Transfer of License

The *city* may issue a transfer of the license only after the following:

- (i) *application* in writing for transfer of a license and payment of the transfer;
- (ii) an inspection report by the *land use director* has been submitted to the *governing body*, stating conformance or nonconformance with the provisions of this section;
- (iii) approval by the *governing body*.

(e) Revocation of License

The *governing body* may revoke a license to maintain and operate a *mobile home park*, as provided in Article 18-1 SFCC 1987 when the *licensee* has violated any provision of this section.

(f) Posting

The license certificate shall be conspicuously posted in the office of or on the *premises* of the *mobile home park* at all times.

(g) Standards

Mobile home parks shall comply with the standards set forth in Subsection 14-7.2(1).

(4) Manufactured Homes

Manufactured homes:

- (a) are permitted in any district in which site-built, *single-family dwellings* are allowed;
- (b) shall meet all requirements of other site-built, *single-family dwellings* in

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the same district and all applicable historic or aesthetic standards set forth in Chapter 14; and

(c) shall be constructed according to the Manufactured Home Construction and Safety Standards, 24 CFR Section 3280.

(5) Short-Term Rental of Dwelling Units – Residentially Zoned Property

(a) Dwelling Units

Dwelling units located on *residentially zoned property* may not be rented for less than thirty days except as set forth in this Subsection 14-6.2(A)(5).

(b) Short-Term Rental Units

Short-term rental units are prohibited on *residentially zoned property* except as provided in this Subsection 14-6.2(A)(5)(b).

(i) ~~[An owner may rent the *dwelling unit* that the owner normally resides in for two rental periods within a calendar year. The general provisions set forth in Subsection 14-6.2(A)(5)(c) do not apply and a *permit* is not required.]~~

~~[(ii)] i~~ *Short-term rental units* that are operated in compliance with Subsection 14-6.3(D)(1) (Accessory Dwelling Units) and in compliance with this Subsection 14-6.2(A)(5)(b)~~[(ii)](i)~~ are allowed.

~~[(iii)]~~ *Short term rental units* owned by the *property* owner who resides on a *contiguous lot* and in compliance with this paragraph are allowed. The operation of the short term rental shall cease immediately upon sale of either or both *properties* or if the *property* owner no longer resides on the *contiguous lot*.]

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~~[(iv)]~~ ii *Short-term rental units* located in a *development* containing resort facilities approved pursuant to a special use *permit* ~~[prior to January 30, 2008,]~~ which are owned in common by the *owners* within the *development*, are allowed. As used in this item, "resort facility" means any combination of swimming pools, spa facilities, golf courses, restaurants and tennis facilities. ~~[The general provisions set forth in Subsection 14-6.2(A)(5)(e) shall not apply except for Item (ix) regarding applicable taxes.]~~

~~[(v)]~~ iii The *land use director* may issue ~~[up to three hundred fifty short-term]~~ rental *permits* in a quantity approved by the governing body through adoption of a resolution for *residential* units not otherwise qualifying for *permits* under Items (i) (ii) ~~[(iii) or (iv)]~~ above. *Dwelling units* on non-residentially zoned property pursuant to §14-6.2(6) are not subject to the *permit* limit imposed by this subsection.

~~[(vi)]~~ iv Whenever the ~~[number of]~~ demand for short-term rental units exceeds the number permitted in accordance with Item ~~[(v)]~~ iii above ~~[falls below three hundred fifty],~~ the number of additional ~~[new]~~ *permits* may be authorized by the governing body through adoption of a subsequent resolution and issued by the *land use director*. New *permits* shall be issued in the order that qualifying *applications* are received.

~~(vii)~~ ~~Permit holders who have been issued a permit prior to October 14, 2009 are not required to reapply for a permit; provided, however, if the permit expires pursuant to Subsection 14-~~

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- (v[i]) occupants shall not park *recreational vehicles* on site or on the *street*;
- (vi) short-term rentals will not be permitted to be used for non-residential purposes. This excludes the use of short-term rentals permits for outdoor events, weddings and the like.
- (vii) the total number of persons that may occupy the short-term rental unit is twice the number of bedrooms;
- (viii) noise or other disturbance outside the short-term rental unit is prohibited after 10:00 p.m., including *decks, portals, porches, balconies or patios*;
- (ix) all occupants shall be informed in writing of relevant *city* ordinances, including the *city's* nuisance and water conservation ordinances, by the *owner/operator* of the short-term rental unit. All occupants shall comply with all relevant *city* ordinances and comply with all provisions of the lodger's tax ordinance;
- (x) the *owner/operator* shall pay all applicable local, *state* and federal taxes, including lodgers' tax, gross receipts tax and income taxes;
- (xi) should the *owner/operator* neglect to pay all applicable taxes, the *owner/operator* shall be subject to penalties pursuant to Subsection 14-6.2(A)(5)(f).
- ~~{(xi)}~~(xii) the *owner/operator* shall make available to the *city* for its inspection all records relating to the operation of the short-term rental unit to determine compliance with this paragraph~~—The *owner/operator* shall report to the *land use director* on a monthly~~

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basis in a format provided by the ~~land use director~~]; and

~~[(xii)]~~(xiii) the *owner* shall maintain adequate *property* insurance coverage for the *short-term rental unit*. Proof of insurance shall be required at the time the *permit* is issued and such other times as requested by the *land use director*.

(xiv) should ownership of a short-term rental unit transfer from one owner to the other, the short-term rental permit is canceled and shall revert to the land use department. If the new owner wishes to continue using the property as a short-term rental unit, a new application shall be made with the land use department.

(d) Applications

Unless otherwise stated, an *application* for a *permit* for a short-term rental shall be submitted to the *city* as follows:

(i) the *application* shall include the name and phone number of the *owner/operator* who is available twenty-four hours per day, seven days per week to respond to complaints regarding the operation or occupancy of the short-term rental unit as well as the name and phone number of *city* staff responsible for enforcing this section;

(ii) the *application* shall include a ~~verified, notarized~~ statement signed by the *owner/operator* that the short-term rental shall be operated in compliance with this paragraph and all other applicable *city* codes and that the operation of the short-term rental is in compliance with any applicable legally binding private covenants, including those that prohibit the presence of

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short-term rental;

(iii) all applicants must submit proof of all required inspections with their initial application. Renewal applications for the same property may submit proof of all required inspections in the form of a statement attesting to self-compliance of all fire, health and safety requirements. The city shall perform random inspections to ensure compliance.

~~[(iii)](iv)~~ prior to issuance of a *permit*, a *certificate of occupancy* is required to ensure compliance with this paragraph and all applicable codes;

~~[(iv)](v)~~ the *permit* is not transferable to another *person* or *property*;

~~[(v)](vi)~~ within ten days of the issuance of the *permit*, the *owner/operator* shall mail notice by first class mail, with certificate of mailing, to the *owners* of *properties* within two hundred (200) feet of the subject *property*, exclusive of *rights of way*, as shown in the records of the *county* ~~[treasurer]~~assessor, and by first class mail to the physical addresses of such *properties* where such address is different than the address of the *owner* and the land use department. Notice shall be on a form approved by the *land use director*, and shall contain the name and phone number of the *owner/operator* who will be available twenty-four hours per day, seven days per week to respond to complaints regarding the operation or occupancy of the short-term rental as well as the name and phone number of *city* staff

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responsible for enforcing this paragraph. Copies of all required mailing lists and mailing certificates shall be provided to the *land use director* within ten days of the mailing. Failure to notify neighbors as described is subject to penalties and prosecution pursuant to Subsection 14-6.2(A)5(f);

[(vi)](vii) each *application* shall be accompanied by a fee of one hundred ~~[fifty]~~ dollars (\$~~[150]~~ 100) to cover *application* processing and inspections. This application fee is non-refundable.

[(vii)](viii) The annual *permit* fee schedule is as follows:

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Annual Permit and Registration Fees*		
Short-term Rental Type	Permit Fee per Unit	Registration Fee per Unit
§14-6.2A(5)(b)(i) — Primary Residence; 2 rental periods per year]	[\$ 0.00]	
§14-6.2A(5)(b)((ii))(i) — Accessory Dwelling Units	[\$175.00] <u>\$325.00</u>	
§14-6.2A(5)(b)(iii) — Unit(s) on Contiguous Lot]	[\$175.00]	
§14-6.2A(5)(b)((iv))(ii) — Resort Units	[\$150.00] <u>\$100</u>	<u>\$100</u>
§14-6.2A(5)(b)((v))(iii) — Residential Units	[\$350.00**] <u>\$325.00**</u>	
§14-6.2A(6) — Commercial Districts	[\$100]	<u>\$100</u>
Initial Application and Processing Fee (one-time)	<u>\$100</u>	
<p>*The annual permit fee shall not be prorated for a portion of the year.</p> <p>* *If there is more than one short-term rental unit on a lot, the permit fee is [\$140.00] <u>\$350.00</u> for each additional unit.</p>		

~~(viii)~~(ix) The annual fee includes the city's business registration fee and inspections related to issuance of the short-term rental

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permit. Revenue from fees imposed pursuant to this paragraph shall be used only to administer, manage, and enforce this section.

~~(ix)~~(x) If payment of a *permit* fee was in excess of that for which a *person* was liable, the *person* may claim a refund by directing to the city ~~treasurer~~finance director a written claim for refund no later than one year from the date payment was made. Every claim for refund shall state the amount and basis for the claim. The *city* ~~treasurer~~finance director may allow the claim in whole or in part or may deny it. If the claim is not allowed in whole, the *person* may appeal the decision pursuant to Section 14-3.17.

~~(x)~~xi Unless revoked as set forth in Subsection 14-6.2(A)(5)(e), a *permit* holder may renew the *permit* annually. If not renewed by March 15 of each year, the ~~permit expires~~ the owner/operator may pay late fee of fifty dollars (\$50) which will permit them to renew by April 15. An *owner* of an expired *permit* may submit a new *application* for a short-term rental *permit* to the *land use director* in accordance with Subsection 14-6.2(A)(5)(b)(vi) subject to availability of *permits* ~~within the three hundred fifty limit~~.

~~(xi)~~(xii) ~~The~~ A valid *permit* number shall be included in all advertising of the short-term rental, including listings on web-based rental sites.

(e) Violations

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(i) The *land use director* shall document all alleged violations of this paragraph and shall pursue enforcement through the municipal court as set forth in Article 1-3 SFCC 1987 or in another appropriate court of law. The City shall give the owner a written Notice of Violation, which shall be mailed either to the owner’s local or business address or agent’s address, informing the owner of the violation. If corrective action is not completed within fifteen (15) days of the date of the letter, the City may file a criminal complaint in municipal court. Upon conviction of a ~~[third]~~ first violation, the *land use director* shall revoke the *permit* and operation of the short-term rental shall cease within thirty days.

(ii) An *owner* who offers for rent as a short-term rental a *dwelling unit* that is not permitted for use as a short-term rental is in violation of this paragraph and is subject to penalties, property liens and/or prosecution pursuant to Subsection 14-.2(A)(5)(f).

(iii) An agent who knowingly assists an *owner* in advertising or renting a *dwelling unit* as a short-term rental unit that is not permitted under this paragraph is subject to penalties and prosecution ~~[and the agent’s business license is subject to revocation]~~ pursuant to Subsections 18-1.7 through 18-1.9.

(f) Penalties

(i) If an *owner* fails to report [their lodgers’ tax] all applicable taxes, including gross receipts tax and lodger’s tax, they shall be subject to [the provisions of the Lodgers’ Tax Ordinance,

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~~Section 18-11.11 SFCC 1987, and shall be~~ all enforcement authority permissible under the short-term rental ordinance and any applicable city, county, state, or federal law or statute. The owner shall also be subject to revocation of their short term rental permit pursuant to Subsection 14-6.2(A)(5)(f)(ii).

(ii) If an owner is found guilty of operating a short term rental without a valid permit, they shall be fined five hundred dollars (\$500). The city may ask the municipal court to treat each day after the initial written notice of violation as a separate violation and assess two hundred fifty dollars (\$250) for each day of these daily violations for a total cumulative fine amount. If the city is awarded money as part of this court hearing and defendant does not make timely payments to the city, the city may bring an action in lien or equity for the collection of any amounts due.

~~(g)~~ Private restrictive covenants, enforceable by those governed by the covenants, may prohibit short-term rental units.

~~(g)~~ Real estate brokers listing *residential property* in Santa Fe shall provide prospective buyers a current copy of this ~~paragraph~~ ordinance.

~~(h)~~ The *land use director* shall establish administrative procedures necessary to implement, manage and enforce this paragraph.

(6) Short-term Rental of Dwelling Units – Non-residentially Zoned Property
Short-term rental of *dwelling units* on *non-residentially zoned property* is permitted as set forth in Table 14-6.1-1, required to register; pay a one-time \$100 application fee; one-time \$100 application, inspection and processing fee; and

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comply with submission requirements of all applicable taxes.

(7) Dwelling Units in Specified Commercial Districts

In the C-2 and SC Districts, *dwelling units* do not include *mobile homes* or *recreational vehicles* and shall be either:

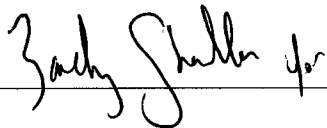
- (a) *accessory dwelling units* for occupancy only by *owners, employees* or *tenants of nonresidential* uses that are operated on the same *premises*;
- (b) part of a planned *development*; or
- (c) part of a use for which a *development plan* or special use *permit* is required.

(8) Effective Date.

The provisions of Article 14-6.2(A)(5) of the Land Use Development Code shall go into effect immediately upon approval of the governing body. A ninety (90) day grace period shall be given for affected units to enter into full compliance with this ordinance. All owners who have a current 2016 permit shall pay the new application and permit fees, but shall receive a credit for amounts already paid to the City for current 2016 permits. All owners who have a current 2016 permit under Subsection 14-6.2(A)(5)(b)(iii) who reapply subject to these revisions to Subsection 14-6.2(A)(5) within sixty (60) days of the Effective Date and who meet all requirements shall be guaranteed to receive one of the allowable permits for 2016. This guarantee shall only apply for 2016. All owners who have a current 2016 permit who reapply subject to these revisions to Subsection 14-6.2(A)(5) within sixty (60) days of the Effective Date and meet all requirements shall be grandfathered in and are not subject to the geographic requirements of Subsection 14-6.2(A)(5)(c)(ii).

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APPROVED AS TO FORM:



KELLEY A. BRENNAN, CITY ATTORNEY