

1 CITY OF SANTA FE, NEW MEXICO

2 BILL NO. 2020-17

3 INTRODUCED BY:

4
5 Mayor Alan Webber

6 Councilor Signe I. Lindell

7 Councilor Carol Romero-Wirth

8 Councilor Renee Villarreal

9
10 AN ORDINANCE

11 AMENDING SECTION 14-11.4 OF THE LAND DEVELOPMENT CODE TO ADOPT
12 CIVIL PENALTY PROVISIONS, A CIVIL FINE SCHEDULE, AND CIVIL CITATION
13 PROCEDURES FOR LAND USE CODE ENFORCEMENT ACTIONS; AND TO
14 PERMIT THE LAND USE DIRECTOR TO ORDER A ONE-YEAR WAITING PERIOD
15 FOR APPLICATION FOR SHORT-TERM RENTAL PERMIT BY A PERSON WHO
16 HAS VIOLATED THE SHORT-TERM RENTAL ORDINANCE, SECTION 14-6.2(A)(5)
17 SFCC 1987.

18
19 BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:

20 Section 1. Section 14-11.4 of the Land Development Code (being Ord. No.
21 2011-37, § 14, as amended) is amended to read:

22 14-11 ENFORCEMENT

23 14-11.4 REMEDIES AND PENALTIES

24 (A) Remedies

25 (1) If a *structure* is erected, constructed, reconstructed, *altered*, repaired,

1 converted, or maintained in violation of Chapter 14; or a *structure* or *property* is used
2 in violation of Chapter 14; or if any other violation of this chapter occurs,
3 the *governing body*, *city* attorney, enforcement officer, or other proper *city* official
4 may institute appropriate actions or proceedings to prevent, restrain, correct, or abate
5 such violation or to mandate compliance.

6 (2) The *land use director* may:

7 (a) withhold or revoke permits that the director is authorized to
8 issue, including construction *permits* and short-term rental permits, if the
9 applicant or permittee has violated a regulation relating to the granting of the
10 permit, or if in the judgment of the land use director the public welfare
11 requires that the permit be revoked or withheld;

12 (b) withhold or revoke *certificates of occupancy*;

13 (c) withhold the recording of *plats* or *development* plans;

14 (d) order discontinuance of illegal use of land or *structures*;

15 (e) order discontinuance of any illegal work being done;

16 (f) order removal of illegal *structures* or *alterations*; ~~and~~

17 (g) order that any land or *structure* modified in violation of this
18 Chapter be restored to compliance; or

19 (h) order a one (1)-year waiting period for *application* for a short-
20 term rental *permit* by a person who has operated a *short-term rental unit* in
21 violation of the short-term rental ordinance, subsection 14-6.2(A)(5), or has
22 failed to pay or report taxes on the *short-term rental unit* as required by law.

23 (3) The *land use director* may use one or more of the remedies and
24 penalties provided in this Article 14-11 without limiting the authority of the *land use*
25 *director* or other officials to take other enforcement actions provided in this Code,

1 including the suspension or revocation of a *permit* by the *building official* pursuant to
2 Chapter 7 Building and Housing, or ~~[to pursue]~~ the pursuit of other legal remedies.

3 (B) **Fines, Imprisonment**

4 Violations of Chapter 14 or of terms of approvals made pursuant to this chapter
5 may be punished as provided in ~~[Article]~~Section 1-3 SFCC 1987 (General Penalty)~~[of~~
6 ~~the Santa Fe City Code]~~.

7 (C) **Civil Penalties**

8 (1) Assessment of Civil Fines. In addition to other penalties or remedies,
9 ~~the land use director may assess a [penalty fee may be assessed for construction with~~
10 ~~proper permit approvals in accordance with a schedule adopted by resolution of~~
11 ~~governing body]~~ civil fine for any of the following:

12 (a) violation of any provision of Chapter 14;

13 (b) construction or other *development* without a required *permit* ;

14 (c) rental of a *short-term rental unit* without a *permit* or
15 registration;

16 (d) misrepresentation of fact on an application submitted to the
17 land use department; or

18 (e) failure to pay or report fees or taxes owed.

19 (2) Civil Fine Schedule. Each act subject to a civil fine constitutes a
20 separate civil violation. For violations that can be remedied within one day, each day
21 after receipt of notice of violation constitutes a separate civil violation. A civil violation
22 shall subject the applicant, permittee, *owner*, operator of a *short-term rental unit*,
23 and/or tenant, as applicable, to the following civil fines for violations during any
24 consecutive thirty-six (36)-month period:

25 (a) a civil fine of one hundred dollars (\$100.00) for the first

1 offense;

2 (b) a civil fine of two hundred and fifty dollars (\$250.00) for the
3 second offense; and

4 (c) a civil fine of five hundred dollars (\$500.00) for the third and
5 subsequent offenses.

6 (3) Civil Citation. If the *land use director* determines that a civil penalty
7 should be assessed, the land use department shall issue a written civil citation.

8 (a) Delivery. The civil citation shall be posted on the *property* in a
9 conspicuous place; delivered in person; or mailed by certified mail, return
10 receipt requested, to the last-known address of the *applicant, permittee, owner,*
11 operator of a *short-term rental unit*, and/or tenant, as applicable.

12 (b) Form and Contents. The civil citation shall contain the
13 following information:

14 (i) the address where the violation occurred;

15 (ii) a description of the specific violation;

16 (iii) a statement of whether this is the first, second, or third
17 or subsequent offense;

18 (iv) instructions for submitting payment of the civil fine;

19 (v) a statement that within fifteen (15) days of issuance of
20 the civil citation the cited person must either pay the civil fine or
21 submit a written request for hearing;

22 (vi) the name and phone number of the *city* employee from
23 whom the person cited may obtain further information or submit a
24 request for hearing; and

25 (vii) a copy of this subsection 14-11.4.

1 (4) Administrative Hearing.

2 (a) Request for Hearing. A person who is issued a civil citation
3 may request an administrative appeal hearing before a hearing officer, who
4 shall be appointed by the city manager. A request for hearing must be made in
5 writing and must be submitted to the land use director within fifteen (15) days
6 of the date that the civil citation was posted, delivered, or mailed.

7 (b) Deposit Pending Appeal. An amount equal to the civil fine
8 assessed must accompany a request for hearing. The city shall hold the payment
9 as a deposit until the hearing officer makes a decision. The hearing officer shall
10 schedule a hearing within thirty (30) days of the request for hearing. If the
11 hearing officer upholds the civil citation, the city shall apply the deposit toward
12 the civil citation. If the hearing officer decides in favor of the requestor, the city
13 shall return the deposit to the requestor.

14 (5) Appeal to District Court. If the hearing officer denies an appeal, the
15 appealing party may file an appeal in the first judicial district court under Rule 1-074
16 NMRA. If the court rules in favor of the appealing party, the city shall dismiss the civil
17 citation and return the deposit to the requester.

18 (6) Revenue. The revenue generated through civil fines shall be retained by
19 the land use department and shall be used exclusively for enforcement of the land use
20 code.

21 (D) **Revocation of Approvals**

22 Land use and development approvals, ~~[such as]~~ including but not limited to special
23 use permits, development plan approvals, variances, design approvals by the HDRB[~~or~~
24 BCDDRC and], construction permits, or short-term rental permits, may be revoked by
25 whichever body or official approved them, upon determining that there exists a substantial,

1 continuing, or recurring violation of any of the conditions of approval or other provisions of
2 this Code and that revocation is an appropriate remedy given the nature of the violation.


3 (1) The procedure to revoke an approval shall be similar to the procedure
4 for its issuance.

5 (a) For an approval that was granted by a *land use board* or
6 the *governing body*, a public hearing shall be required at the same body to
7 consider revocation. The *land use director* shall provide public notice of the
8 revocation hearing by publication of the meeting agenda and/or a public
9 hearing notice and by posting the *property* as required for the approval
10 hearing. The *land use director* shall also provide notice fifteen (15) days prior
11 to the hearing by certified mail with return receipt requested to the permittee
12 and to any *person* who has filed a written complaint concerning the violation.

13 (b) The *land use director* or other administrative official may
14 revoke an approval that he or she has granted upon written notice delivered to
15 the permittee by hand, by posting a notice on the *property* where the violation
16 occurs, or by certified mail with return receipt requested.

17 (2) Vacation of recorded subdivision *plats* shall be as provided in Section
18 3-20-12 NMSA 1978 and Section 23-1.2 SFCC 1987. Revocation of approved
19 amendments to the *general plan* future land use map or the official zoning map shall
20 be as provided for *city*-initiated amendments to those maps.

21 APPROVED AS TO FORM:

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23 _____
24 ERIN K. McSHERRY, CITY ATTORNEY

25 *Legislation/2020/Bills/Chapter 14 Civil Penalties*