

1 **CITY OF SANTA FE, NEW MEXICO**

2 **BILL NO. 2012-15**

3 **INTRODUCED BY:**

4
5 Councilor Calvert
6 Councilor Wurzbarger
7 Councilor Ives
8 Councilor Bushee
9

10 **AN ORDINANCE**

11 **CREATING A NEW SECTION 14-3.20 SFCC 1987 TO ESTABLISH RESIDENTIAL**
12 **CONDOMINIUM REQUIREMENTS; AMENDING SECTION 14-6.3(D)(1) SFCC 1987 TO**
13 **REQUIRE THAT A RESTRICTIVE COVENANT THAT IS REQUIRED TO BE IN**
14 **COMPLIANCE WITH 14-6.3(D) BE RECORDED PRIOR TO THE ISSUANCE OF A**
15 **CONSTRUCTION PERMIT FOR AN ACCESSORY DWELLING UNIT; CREATING A**
16 **NEW SECTION 14-10.6 TO PERMIT LEGALLY NONCONFORMING RESIDENTIAL**
17 **CONDOMINIUM UNITS; AND MAKING SUCH OTHER CHANGES AS ARE**
18 **NECESSARY.**

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

21 **Section 1. A new Section 14-3.20 SFCC 1987 is ordained to read:**

22 **14-3.20 [New Material] RESIDENTIAL CONDOMINIUMS**

23 **A. Applicability**

24 The provisions of this Section 14-3.20 apply to residential condominium declarations
25 recorded on or after May 30, 2012 that create a condominium or that amend an existing

condominium declaration to change the number of condominium units or reserved *development* rights.

B. Requirements

A residential condominium declaration shall contain written confirmation from the *land use director* that the proposed or amended condominium declaration complies with the zoning *density* requirements of Chapter 14 SFCC 1987.

C. Submittals

Prior to the recordation of a condominium declaration, the declarant shall submit information to the *land use director* sufficient to determine whether the proposed or amended condominium declaration is in compliance with the zoning *density* requirements of Chapter 14 SFCC 1987. The *land use director* shall determine the sufficiency of the information submitted.

D. Written Confirmation of Compliance with Zoning Density Requirements of Chapter 14

If the proposed or amended condominium declaration complies with the zoning *density* requirements of Chapter 14 SFCC 1987, the *land use director* shall issue a written confirmation to the condominium declarant for inclusion in the contents of the condominium declaration as required by 47-7B-5 NMSA 1978. The *land use director* shall maintain copies of written confirmations issued pursuant to this Section 14-3.20.

E. Existing Residential Condominiums

(1) A condominium (including constructed condominium units and unconstructed condominium units in the form of reserved *development* rights) is in conformance with the zoning *density* requirements of Chapter 14 when:

- (a) The condominium meets the zoning *density* requirements of Chapter 14; or
- (b) The condominium met the zoning *density* requirements of Chapter

1 14 when the most recent condominium declarations were recorded.

2 (2) A condominium (including constructed condominium units and
3 unconstructed condominium units in the form of reserved *development* rights) is subject to the
4 provisions of Section 14-10.6 (Nonconforming Residential Condominiums) if the condominium
5 declarations were recorded prior to May 30, 2012, and:

6 (a) The condominium does not meet the zoning *density* requirements
7 of Chapter 14; and

8 (b) The condominium did not meet the zoning *density* requirements of
9 Chapter 14 when the most recent condominium declarations were recorded.

10 Editor's Note: For applicable state law see §47-7B-5 NMSA 1978 of the Condominium Act [47-
11 7A-1 to 47-7D-20 NMSA 1978].

12 **Section 2. Section 14-6.2(A)(5)(b)(ii) SFCC 1987 (being Ord. #2011-37, §8) is**
13 **amended to read:**

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

17 **Section 3. Section 14-6.3(D)(1) SFCC 1987 (being Ord. #2011-37, §8 is amended**
18 **to read:**

19 (1) **Accessory Dwelling Units**

20 *Accessory dwelling units* located on residentially zoned property:

- 21 (a) Are required to meet parking standards as set forth in Section 14-8.6;
- 22 (b) Shall be regulated as per *City* regulations and policies regarding
23 *City* utilities;
- 24 (c) Are exempt from the *density* restrictions set forth in this Chapter
25 14; provided, however, that only one *accessory dwelling unit* shall be permitted per *legal lot* of

1 | record;

2 | (d) Shall be built only when permission to construct is granted to the
3 | owner-occupant of the *principal dwelling unit*;

4 | (e) Shall have *lot* coverage not exceeding the square footage of the
5 | *lot* coverage of the *principal dwelling unit* or not more than one thousand five hundred square feet,
6 | whichever is less;

7 | (f) Shall be limited to one story and shall not exceed fifteen feet to
8 | the top of the parapet or to the highest point of the roof if there is no parapet;

9 | (g) Shall be of the same architectural style as the *principal dwelling*
10 | *unit*;

11 | (h) May be rented as follows: [the owner of the property shall occupy
12 | either the *principal dwelling unit* or the *accessory dwelling unit* and may rent the other unit. The
13 | *principal dwelling unit* or the *accessory dwelling unit* may not be rented for less than thirty days
14 | except as provided in Subsection 14-6.2(A)(5); and]

15 | (i) By the owner-occupant who may rent the *principal*
16 | *dwelling unit* or the *accessory dwelling unit* as a *short-term rental unit* pursuant to Section 14-
17 | 6.2(A)(5) during which time, the owner-occupant shall occupy either the *principal dwelling unit* or
18 | the *accessory dwelling unit*; or

19 | (ii) By the owner-occupant who may rent either the *principal*
20 | *dwelling unit* or the *accessory dwelling unit*; or

21 | (iii) By the property owner who may rent both the *principal*
22 | *dwelling unit* and the *accessory dwelling unit* to the same lessee, however, no separate subletting
23 | of either unit is allowed.

24 | (i) Shall not be issued a construction *permit* until a restrictive
25 | covenant is recorded at the office of the county clerk that requires the current property owner and

1 all future property owners to comply with Section 14-6.3(D)(1). [an agreement, plat or other
2 declaration signed by the property owner in a form approved by the land use director shall be prior
3 to issuance of any construction permit for an accessory dwelling unit stating that the property
4 owner agrees to comply with these provisions.] The covenant shall be in a form approved by the
5 land use director and the city attorney and shall be notarized prior to recordation. A copy of the
6 recorded covenants shall be provided to the land use director with the construction permit
7 application. The land use director shall maintain copies of recorded covenants pursuant to the
8 provisions of this section. An affidavit filed prior to the adoption of Ordinance No. 2008-5
9 (ordaining Subsection 14-6.2(A)(5)) and amending Subsection 14-6.3(D)(1) remains in effect and
10 is automatically amended to reflect the provisions of Ordinance No. 2008-5. (Ord. No. 2012-11 §
11 15)

12 (j) Shall not be subdivided from a principal dwelling unit or sold
13 under separate ownership from a principal dwelling unit unless the accessory dwelling unit meets
14 all applicable requirements for a principal dwelling unit. In such case, the restrictions set forth in
15 Section 14-6.3(D)(1) shall no longer apply and the affidavit or restrictive covenant in Section 14-
16 6.3(D)(1) may be voided upon approval of the land use director; and

17 (k) Shall remain in continuous compliance with the provisions of this
18 section to maintain the validity of the certificate of occupancy of the accessory dwelling unit. The
19 certificate of occupancy of an accessory dwelling unit may be revoked for noncompliance with
20 this Section 14-6.3(D)(1) as provided in Article 14-11 (Enforcement).

21 **Section 4. A new Section 14-10.6 SFCC 1987 is ordained to read:**
22 **14-10.6 [New Material] NONCONFORMING RESIDENTIAL CONDOMINIUMS**

23 **A. Applicability**

24 This Section 14-10.6 applies to a condominium (including constructed condominium units
25 and unconstructed condominium units in the form of reserved *development* rights) if the

condominium declarations were recorded prior to May 30, 2012, and:

(a) The condominium does not meet the zoning *density* requirements of Chapter 14; and

(b) The condominium did not meet the zoning *density* requirements of Chapter 14 when the most recent condominium declarations were recorded.

B. Density Exception for Constructed Condominium Units

Constructed condominium units described in Section 14-10.6(A) are *legal nonconforming uses and structures* with regard to the zoning *density* requirements of Chapter 14. A constructed condominium unit described in Section 14-10.6(A) that is destroyed by any means may be *reconstructed* if the *reconstructed* unit complies with all other applicable provisions of Chapter 14.

C. Unconstructed Condominium Units

Unconstructed condominium units described in Section 14-10.6(A), that are in the form of reserved *development* rights in excess of the zoning *density* requirements of Chapter 14, are not legal and may not be developed.

D. Condominium Units Owned by the Original Declarant

A condominium described in Section 14-10.6(A), where all condominium units are owned as of May 30, 2012 by the original declarant, or by an entity controlled by the original declarant, are not legal and are *nonconforming uses and structures*

E. Condominium Units Constructed without Required Permits

Condominium units described in Section 14-10.6(A), that were constructed without required construction *permits* are not legal and are *nonconforming uses and structures*. Such condominium units must be issued all required construction *permits* and a *certificate of occupancy* to become subject to the provisions of Section 14-10.6(B).

F. Applicability of Other Regulations

The *density* exception provided in Section 14-10.6(B) is not intended to provide an

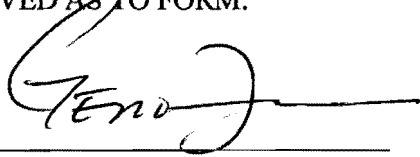
1 exception to the other provisions of Article 14-10 regarding *nonconforming uses* and *structures*.

2 **Section 5. Article 14-12 SFCC 1987 (being Ord. #2011-37, §15, as amended) is**
3 **amended to amend the following definition:**

4 **OWNER-OCCUPANT or RESIDENT OWNER.** As used in Sections 14-6.2(A)(5)
5 (Short Term Rental of Dwelling Units) and 14-6.3(D)(1) (Accessory Dwelling Units) means a
6 natural *person* who holds fee simple title and resides on the *property*.

7 **Section 6. Effective Date.** This Ordinance shall be effective immediately upon
8 adoption.

9 APPROVED AS TO FORM:

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12 GENO ZAMORA, CITY ATTORNEY
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