



# Agenda

SECRETARY *Guadalupe Quiroz*  
RECALLED BY *[Signature]*

**PLANNING COMMISSION**  
*April 19, 2012 – 6:00 P.M.*  
**CITY COUNCIL CHAMBERS**

- A. ROLL CALL**
- B. PLEDGE OF ALLEGIANCE**
- C. APPROVAL OF AGENDA**
- D. APPROVAL OF MINUTES AND FINDINGS/CONCLUSIONS**

MINUTES: April 5, 2012  
FINDINGS/CONCLUSIONS: None

- E. OLD BUSINESS**
- F. NEW BUSINESS**

1. An ordinance creating a new Section 14-3.20 SFCC 1987 to establish residential condominium requirements; amending Section 14-6.3(D)(1) SFCC 1987 to require that a restrictive covenant that is required to be in compliance with 14-6.3(D) be recorded prior to the issuance of a construction permit for an accessory dwelling unit; creating a new Section 14-10.6 to permit legally nonconforming residential condominium units; and making such other changes as are necessary. (Matthew O'Reilly) (Councilor Calvert)

- G. BUSINESS FROM THE FLOOR**
- H. STAFF COMMUNICATIONS**
- I. MATTERS FROM THE COMMISSION**
- J. ADJOURNMENT**

**NOTES:**

- 1) Procedures in front of the Planning Commission are governed by the City of Santa Fe Rules & Procedures for City Committees, adopted by resolution of the Governing Body of the City of Santa Fe, as the same may be amended from time to time (Committee Rules), and by Roberts Rules of Order (Roberts Rules). In the event of a conflict between the Committee Rules and Roberts Rules, the Committee Rules control.
- 2) New Mexico law requires the following administrative procedures to be followed by zoning boards conducting "quasi-judicial" hearings. By law, any contact of Planning Commission members by applicants, interested parties or the general public concerning any development review application pending before the Commission, except by public testimony at Planning Commission meetings, is generally prohibited. In "quasi-judicial" hearings before zoning boards, all witnesses must be sworn in, under oath, prior to testimony and will be subject to reasonable cross examination. Witnesses have the right to have an attorney present at the hearing.
- 3) The agenda is subject to change at the discretion of the Planning Commission.  
\*Persons with disabilities in need of special accommodations or the hearing impaired needing an interpreter please contact the City Clerk's Office (955-6520) 5 days prior to the hearing date.

**Index Summary of Minutes  
Santa Fe Planning Commission  
April 19, 2012**

<b>INDEX</b>	<b>ACTION TAKEN</b>	<b>PAGE(S)</b>
<b>Cover Sheet</b>		1
<b>Call to Order</b>	Chair Hughes called the meeting to order at 6:00 pm	2
<b>Roll Call</b>	A quorum was non-existent.	2
<b>Pledge of Allegiance</b>	Pledge of Allegiance was led by Commissioner Ortiz	2
<b>Approval of Agenda</b>	No Staff or Commission Changes	2
<b>Approval Minutes, April 5, 2012</b>	No Action, lack of quorum, deferred to next meeting in May.	2
<b>Old Business None</b>		2
<b>New Business</b> 1. An ordinance creating a new Section 14-3.20 SFCC 1987 to establish residential condominium requirements; amending Section 14-6.3(D)(1) SFCC 1987 to require that a restrictive covenant that is required to be in compliance with 14-6.3(D) be recorded prior to the issuance of a construction permit for an accessory dwelling unit; creating a new Section 14-10.6 to permit legally nonconforming residential condominium units; and making such other changes as are necessary. (Matthew O'Reilly) (Councilor Calvert)	No formal action, staff presentation, public comment, item to be placed on May agenda.	3-6
<b>Business from the Floor</b>	None	7
<b>Staff Communications</b>	Informational	7
<b>A. ADJOURNMENT AND SIGNATURE PAGE</b>	There being no further business to come before the Planning Commission, the meeting was adjourned at 6:50 pm.	8

# PLANNING COMMISSION MINUTES

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April 19, 2012 – 6:00 pm –  
City Councilor Chambers  
Santa Fe, NM

## A. ROLL CALL

### Present

Commissioner Ken Hughes, Chair  
Commissioner Tom Spray, Vice Chair  
Commissioner Lawrence Ortiz  
Commissioner Signe Lindell

### **Not Present**

Commissioner Angel Schackel Bordegaray  
Commissioner Renee Villarreal  
Commissioner Michael Harris  
Commissioner Lisa Bemis

*A quorum was not present and reflected by roll call.*

### Staff Present

Greg Smith, Current Planning Division Director  
Matthew O'Reilly, Land Use Department Director  
Kelley Brennan, City Attorney

### Others Present

Fran Lucero, Stenographer

## B. PLEDGE OF ALLEGIANCE

Commissioner Ortiz led the Pledge of Allegiance

## C. APPROVAL OF AGENDA

Staff had no changes to the agenda.

Chair approved Agenda as presented.

## D. APPROVAL OF MINUTES AND FINDINGS/CONCLUSIONS

MINUTES: April 5, 2012

Minutes deferred until May, 2012 meeting.

## E. OLD BUSINESS

None

# PLANNING COMMISSION MINUTES

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## F. NEW BUSINESS

1. An ordinance creating a new Section 14-3.20 SFCC 1987 to establish residential condominium requirements; amending Section 14-6.3(D)(1) SFCC 1987 to require that a restrictive covenant that is required to be in compliance with 14-6.3(D) be recorded prior to the issuance of a construction permit for an accessory dwelling unit; creating a new Section 14-10.6 to permit legally nonconforming residential condominium units; and making such other changes as are necessary. (Matthew O'Reilly) (Councilor Calvert)

Mr. O'Reilly stated that this ordinance is the companion piece to the referenced December 2011 re-introduction of (now Senate Bill 10) by Senator Wirth and the NM Municipal League wrote to Governor Martinez asking her to message the bill for the 2012 session (see Exhibits D, E & F). Governor Martinez messaged the bill. The bill again passed the house and senate unanimously and was subsequently signed into law by the Governor. The law becomes effective on May 16, 2012.

Mr. O'Reilly stated that the ordinance addresses the creation of condominiums that are created illegally, are not in compliance with the City of Santa Fe density and zoning requirements but were created that way because of a loop hole in state law that allowed that to be done. Senate bill 10 that I referred to corrected that loop hole but also had a provision in it. [Read from the Bill] If required by local ordinance there must be written confirmation from a local zoning official that a condominium complies with the zoning density requirements of local zoning structure and ordinances or regulations as required in Section 47-7.6 of the State Statutes. What that means is that portion of the state law is opting in, the city has to pass an ordinance in order for it to fly. The ordinance before you tonight does that along with some other things. Sections 2-3 and 4 of the ordinance address some on-going issues that we have had with the creation of accessory and guest houses and it cleans up that language in the code. One of the things that those sections do is instead of requiring an affidavit be submitted by someone wanting to construct an accessory dwelling now changes that to a restricted covenant that runs with the land binding by future property owners. Section 4 of the ordinance basically addresses how we deal with existing condominiums that are not in conformance or exceed the maximum density requirements of Chapter 14. This is a new code section that applies to density-nonconforming condominiums created before May 30, 2012 (the effective date of the ordinance). This section establishes these condominiums as "legal nonconforming" uses and structures with regard to zoning density only. It does not confer any other legal nonconforming status. Another concern are those condominiums that were constructed without building permits. Unless or until they can come in and get their permits, they would have to pay their fees and penalties and that is when they would be in conformance.

### Public Comments:

Barbara Fritz, 610 Alicia Street, Santa Fe, New Mexico

This ordinance is good for the neighborhood and for the community in Santa Fe. People have bought condominiums and don't know what they are up against. This is a big endeavor for the land use department to take on and it will protect the neighborhoods and the condominium buyers. It is going to allow neighbors to be good neighbors.

Miguel Chavez, 1615 Calle Porvenir, Santa Fe, New Mexico

This came up during my service as City Councilor in 2010. We saw the off street parking as a problem. I have no problems with condominiums but when they run into the neighborhoods and

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bother the infrastructure it concerns me. Senator Wirth had to go through two attempts to get this bill passed. I want to acknowledge staff for their hard work as well. As we move forward how will this be tracked as there are units that might never fit in to the requirements that are before us. Mr. Chavez asked if this will be similar to the rental? In general, I want to say that I am in support of this. I would suggest that staff be assigned to the oversight of this and possibly a 1 or 2 year review as we move forward.

Rick Martinez, 725 Zia Road, Santa Fe, New Mexico

I am glad to see this bill has passed. In our neighborhood we are pleased to see something with teeth. In the past neighbors could complain to the city and nothing would happen; now we feel in the neighborhood that their voices will be heard. Some of these condos may have been constructed at night because they didn't meet construction guidelines. A lot of times they don't have firewalls or sufficient parking. I compliment staff for the hard work they have done. I am happy to see this bill be passed.

Commissioner Hughes: I hear a lot of grandfathering going on, if someone did come in for additional units or a need for a permit, can they ask for compliance?

Mr. O'Reilly: Absolutely, that is the point. If I could address Mr. Martinez concern first, in the instance of where he is referring to which I call exception #3 on page 4 of my staff report where someone has done this without a permit. When they come for permits they will have to bring that house up to code. If it meant they had to do a firewall they would have to do it and if they didn't do it they would not be able to achieve the legal non-conforming status. They would have to pay the standard penalty fee for building without a permit which is double the permit fee which in some cases can add up to thousands of dollars. In many of these situations if there was work that was done without a permit and is now covered up and our inspectors cannot confirm that the work was done properly, then we would have to disassemble part of the house so we can see it or they might have to hire a very expensive structural or electrical engineers to demonstrate to the city that the house is in compliance with code. No one is getting away with this without having serious monetary consequences if they want to bring the house in to compliance.

In response to your question, if someone wanted to add another unit to an existing Condominium Association; if that Condominium Association is one of these associations that was made legal non-conforming it would not be looked at under a unit. The way we would catch that is the ordinance requires that they have a written confirmation on zoning from the city whether they are creating a condominium at the very beginning or if they are modifying or amending a condominium declaration to change the number of units in anyway. So, they have to come and see the city and if they are going to propose an addition condominium unit in an existing association and it exceeds density it will not be approved.

In relation to Councilor Chavez comment about tracking, I am glad the Councilor is here. He always supported what we were doing all along and he was always cognizant that the council supported us getting this fixed.

On page 2: 14-3.20 (D) Written Confirmation of Compliance with Zoning Density Requirements of Chapter 14.

*If the proposed or amended 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 SEFF 1987. The land use director shall determine the sufficiency of the information submitted.*

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Many of the associations have guest houses and the accessory dwelling unit for restrictive covenant has been added which will allow us to track.

Commission Hughes: Will the Summary Committee and staff be well versed on this change to be able to give advice.

Mr. O'Reilly: Thank you for this question. This finding applies to lot splits and if they don't have enough acreage they can't do a lot split. This is the same for condominiums .

Ms. Lindell: Last yet was a huge disappointment and I thank you Mr. O'Reilly for working with Senator Wirth to get this bill passed. Do you have any idea how many units are owned by non-declarants. On staff report, page 4, #2, of the condominiums were they all owned by the original declarant; do you know how many there are?

Mr. O'Reilly referred to Page 2 of the staff report, Table 3: Units Owned by Original Declarant: By our calculations there are a total of 35 units in (9) Associations owned by the original declarant. That is an average of 4 units each.

Chair Hughes: How will the city know if they have a guest house and if they have made it their main house.

Mr. O'Reilly said that they will be able to track it. Right now a guest house can be rented for 365 days and up to 10 years. They are not allowed to have two families worth of over-parking, trash facilities that weren't planned for in the community.

Commissioner Lindell: We have 9 owners with 35 units who are going to be deeply disappointed with this. I am just trying to be clear about this.

Mr. O'Reilly said that this number only represents 10% of the total of 9 owners that are non-compliant. Why someone would buy a property with that problem we cannot answer for.

Commissioner Lindell: Page 4 of the ordinance – renting guest houses. I am happy that it is very clear, it will solve a lot of problems and it is something that we needed. Thank you for all the work that you have done.

Commissioner Lindell: I very much appreciated on page 4 of the ordinance on the section on renting guest houses and how clear that is and I think that will alleviate a lot of problems for people. It seems very clear to me and I believe they needed that. Thank you very much for the work you have done.

Commissioner Spray: Thank you Mr. O'Reilly for all of this work. Question on Monitoring implementation and I know we have discussed some of this before. Will you be, in your office, reviewing declarations before they are taken for filing to make sure that they have this and to record them?

Mr. O'Reilly: Yes, that is the point of the ordinance, it requires that they come to the city. Some are wishing to create a residential condominium or modify an existing condominium they must get written confirmation from the city. It says land use director but as you all know, that has been our catch all phrase for staff in the land use department. They will have to get a written confirmation from us and they must then include it in their condominium declaration not only by

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city law but by state law as soon as this ordinance is passed. It requires that the land use director keep copies of the written confirmations.

Commissioner Spray: And full declarations?

Mr. O'Reilly: No, not full declarations. We are not required to keep copies of the declaration only our written confirmation that the condominium complies with zoning density requirements. The ordinance under Section 1(c) in terms of submittals reads: *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.*

If someone comes in with a sketch on the back of an envelope and says; "here, approve my condominium, that is not going to be acceptable. They have to show us enough information so we can determine that the number of units they are intending to create or modify meet standard requirements and that may include many things.

Commissioner Spray: The city will determine than from the county standpoint they have no enforcement mechanism in that at all, is that correct? They would just take it as it was presented to them.

Mr. O'Reilly: If you look at the end of your packet you saw that the city council asked the county clerk not to record these and she declined. The reason is because she was given advice by the attorney's from the county that she could not legally do that. But what it does require is that someone who wants to create or amend a condominium has to do this. Most condominium declarations, most, are prepared by attorneys who do land use law. They will follow the law, if they were to create a condominium and it somehow did not have this in it, Ms. Brennan can speak to what that means, but it would seem to me that it would error and possibly harm their client. I think it would be much clearer that the condominium is illegal and I think that in reviewing purchase and sale documents for condominiums I would imagine that someone would catch that and say that it is not legally created. Before there was some question about that.

Commissioner Spray: Ms. Brennan, would you like to comment any more on that?

Ms. Brennan: It is accurate.

Commissioner Ortiz: Thank you to staff and Director O'Reilly. In reading the ordinance I feel that it is straight forward, a good job has done on this. In listening to the neighbors they are very happy with this. Thank you.

Chair Hughes: On behalf of the commissioners we thank you for the hard work that you have done.

We would like to ask that this be put on the May 3<sup>rd</sup> agenda?

Mr. Smith: There has been an interpretation of Robert Rules of Order that for lack of quorum it will go on to the next agenda. Default answer is we will take it to the next meeting.

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### G. BUSINESS FROM THE FLOOR

None

### H. STAFF COMMUNICATIONS

Mr. O'Reilly looked in to the status of St. Francis Drive, I have talked to Long Range Planning, they have talked with some officials of the state but they still want to talk to the city on responsibility for maintenance of St. Michael's Drive.

### I. MATTERS FROM THE COMMISSION

None

### J. ADJOURNMENT

*There being no further business to come before the Planning Commission, the Chair called for adjournment at 6:50 pm.*

*Signature Page:*

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*Chair Ken Hughes*

  
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*Fran Lucero, Stenographer*