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CITY OF SANTA FE, NEW MEXICO

BILL NO. 2019-27

INTRODUCED BY:

Mayor Alan M. Webber

Councilor Peter N. Ives

AN ORDINANCE

AMENDING VARIOUS SECTIONS OF THE SANTA FE HOMES PROGRAM, SECTION 26-1 SFCC 1987, TO REVISE THE REQUIREMENTS FOR MULTIFAMILY RENTAL HOUSING DEVELOPMENT SO THAT DEVELOPERS CAN CHOOSE FROM A MENU OF COMPLIANCE OPTIONS; REMOVING THE SUNSET PROVISION AND INCREASING THE FEE-IN-LIEU AS DETERMINED BY AN “AFFORDABILITY GAP CALCULATION”; DETERMINING THE REQUIREMENTS FOR “LOW-PRICED DWELLING UNITS” AS THEY APPLY TO MULTIFAMILY RENTAL HOUSING UNITS; DETERMINING THE REQUIREMENTS FOR SUBSIDIZED RENTAL UNITS INCLUDED ON-SITE IN MARKET-RATE RENTAL HOUSING; CLARIFYING DEVELOPER INCENTIVES AND TERMS OF COMPLIANCE SO THEY CORRELATE WITH DEGREE OF AFFORDABILITY; PROHIBITING MARKET RATE PROPERTIES THAT RECEIVE INCENTIVES FROM DISCRIMINATING ON THE BASIS OF INCOME SOURCE WHEN QUALIFYING TENANTS; AMENDING SECTION 26-2 SFCC 1987 TO CLARIFY THE REQUIREMENTS FOR RENTAL LOW-PRICED DWELLING UNITS THAT COMPLY WITH THE SANTA FE HOMES

1 **PROGRAM; AMENDING SECTION 26-3 SFCC 1978 TO PERMIT ALTERNATIVE**
2 **FUNDING CYCLES FOR ADMINISTRATION OF THE AFFORDABLE HOUSING**
3 **TRUST FUND; AND OTHER SUCH CHANGES TO THE SANTA FE HOMES**
4 **PROGRAM AS NEEDED.**

5
6 **Section 1. Section 26-1.5 of SFCC 1987 (being Ord. No. 2005-30(A) § 34, as**
7 **amended) is amended to read:**

8 **26-1.5 - Definitions.**

9 *Administrative procedures* means the procedures adopted by the governing body
10 [~~which~~] that set forth how the Santa Fe homes program (SFHP) shall be administered.

11 *Affordable home price* means the highest price at which an SFHP home may be sold
12 pursuant to subsection 26-1.16 of this chapter. For purposes of this chapter, the price of an
13 SFHP home cannot exceed the maximum established price, including the base price and any
14 fees charged of the buyer by the seller or a related entity, minus any of the buyer's closing costs
15 or financing costs paid by the seller, as indicated by the settlement statement for the sale. The
16 cost of allowable option upgrades may be in addition to the affordable home prices, as
17 permitted by subsection 26-1.16[~~(F)~~] SFCC 1987.

18 *Affordable manufactured home lot price* means the highest price at which an SFHP
19 manufactured home lot may be sold pursuant to subsection 26-1.16 of this chapter.

20 *Affordable rent* means the highest monthly rent that may be charged for an SFHP rental
21 unit pursuant to subsection 26-1.24 of this chapter.

22 *Allowable option upgrades* means additions and/or modifications to the standard
23 features of an SFHP home chosen solely at the option of the SFHP buyer to upgrade the
24 standard features of the SFHP home.

25 *Alternate means of compliance* means that SFHP developer has proposed complying

1 with the SFHP requirements through off-site construction, cash payment in lieu of constructing
2 or creating the required SFHP units or manufactured home lots, or dedication of land suitable
3 for construction or creation of inclusionary units of equivalent or greater value than would be
4 required for onsite construction, rather than constructing the required units pursuant to
5 subsection 26-1.33 SFCC 1987.

6 *Applicant* means a property owner or agent of a property owner who submits a
7 development request to the city ~~[which]~~ that is subject to any SFHP requirements, or any
8 successor in title that is subject to SFHP requirements.

9 *Area median income (AMI)* means the median income for the Santa Fe metropolitan
10 statistical area as adjusted for various household sizes and published and revised periodically
11 by the United States Department of Housing and Urban Development (HUD). However, ~~[that]~~
12 in the event of a discrepancy between the AMI established by HUD and HUD's program
13 income limits, the higher of the two (2) shall be used to establish AMI for the purpose of SFHP.

14 *Certified* ~~[means]~~ is a term that describes a buyer of a ~~[Santa Fe homes program]~~ SFHP
15 unit or renter of such unit who has obtained a certificate demonstrating completion of
16 homebuyer training courses and whose income has been verified by the city or its agent as
17 meeting the income limits ~~[which]~~ that establish eligibility to buy or rent under the program.
18 ~~[Buyers shall also receive a certificate verifying they have completed homebuyer training~~
19 ~~courses as part of the certification process.]~~

20 *City* means the city of Santa Fe or its agent.

21 *Dwelling unit* means one (1) room, or rooms connected together, constituting a
22 separate, independent housekeeping establishment for owner occupancy, or rental or lease, and
23 physically separated from any other rooms or dwelling units which may be in the same
24 structure, and containing independent cooking, sleeping, and bathroom facilities.

25 *Energy efficiency adjustment* means the amount that may be added to the affordable

1 home price of a for-sale SFHP unit that meets energy efficiency standards pursuant to
2 subsection ~~[26-1.16H]~~ 26-1.16(G) SFCC 1987.

3 *Extreme hardship* means a condition occurring as a direct consequence of the SFHP
4 Ordinance ~~[which]~~ that would require the property owner to lose money on the development
5 taken as a whole and/or affects the financing viability of ~~[the]~~ a project~~[,]~~ and ~~[the]~~ if the
6 property owner can demonstrate to the governing body's satisfaction that said loss would be an
7 unavoidable consequence of the SFHP requirement for construction of SFHP units.

8 *Fair market rent* means the rent amount (including utilities, except telephone) required
9 to rent privately-owned, existing, decent, safe and sanitary homes, of a modest/non-luxury nature,
10 as established by the HUD for every jurisdiction in the country through an annual survey.

11 *Income qualified* means a buyer or renter whose household income does not exceed the
12 amount ~~[which]~~ that would establish eligibility to buy or rent a ~~[Santa Fe homes program]~~
13 SFHP unit, within income ranges established for the program or under specific development
14 agreements.

15 *Income range* means the range of ~~[annual]~~ area median incomes used in the
16 determination of eligibility of an SFHP home buyer or an SFHP tenant. ~~[The income ranges~~
17 ~~are:]~~

18 *Income range 1*~~[:]~~ means fifty percent (50%) or less of area median income

19 *Income range 2*~~[:]~~ means more than fifty percent (50%) but not more than sixty-five
20 percent (65%) of area median income

21 *Income range 3*~~[:]~~ means more than sixty-five percent (65%) but not more than eighty
22 percent (80%) of area median income

23 *Income range 4*~~[:]~~ means more than eighty percent (80%) but not more than one
24 hundred percent (100%) of area median income

25 *Land use department* means the land use department of the city, its agent, or successor.

1 Low-priced dwelling unit (“LPDU”) means a dwelling unit as defined in Chapter 14
2 SFCC 1987 that complies with the requirements set forth in Section 26-2 SFCC 1987. A low-
3 priced dwelling unit is not a SFHP unit, unless it meets the requirements of 26-2.3 or a housing
4 opportunity program unit.

5 *Manufactured home lot* means a lot which is marketed and either sold or rented for the
6 purposes of the placement of a manufactured home.

7 *Maximum option upgrade allowance* means the maximum amount paid by the SFHP
8 buyer for allowable option upgrades pursuant to subsection 26-1.16 SFCC 1987.

9 *Median income* means the area median income as defined.

10 *Office of affordable housing* means the department created by subsection 26-1.6 SFCC
11 1987 to administer the [~~Santa Fe homes program~~] SFHP and other affordable housing
12 programs.

13 Project owner-operator means the entity that owns, or the operating agent that manages,
14 a multifamily rental property.

15 *SFHP* means Santa Fe homes program.

16 *SFHP agreement* means [~~an agreement~~] a contract between a property owner of record
17 and the city, whereby the city confers benefits in the form of development incentives to the
18 property owner in exchange for compliance with the SFHP [~~with regard to providing required~~
19 ~~SFHP units or alternate means of compliance~~].

20 *SFHP developer* means an owner of a property subject to any SFHP requirements, who
21 is carrying out any phase of developing the subject tract[.] or, as defined in this section, certain
22 successors in title.

23 *SFHP development* means a tract of land or any improvements thereon [~~which~~] that are
24 subject to an SFHP agreement.

25 *SFHP home* means a dwelling unit marketed and sold to satisfy SFHP requirements.

1 *SFHP home buyer* means a purchaser of an SFHP home, ~~or~~ the entire household
2 occupying an SFHP home, or the purchaser or entire household occupying an SFHP
3 manufactured home lot.

4 *SFHP manufactured home lot* means a lot ~~which~~ that is marketed and either sold or
5 rented for the purposes of the placement of a manufactured home and to satisfy SFHP
6 requirements.

7 *SFHP property owner* means the owner of any property ~~which~~ who is subject to
8 SFHP requirements or, as defined in this section, certain successors in title.

9 *SFHP proposal* means a ~~proposal~~ plan provided by a property owner of record ~~made~~
10 to the city, detailing the property owner's plan for complying with the SFHP.

11 *SFHP rental unit* means a ~~rental~~ unit marketed and leased specifically to satisfy SFHP
12 requirements.

13 *SFHP tenant* means ~~a person who is~~ a lessee of an SFHP rental unit ~~or~~ a
14 manufactured home rental lot, or the entire household occupying an SFHP rental unit or SFHP
15 manufactured home lot.

16 *SFHP unit* means a dwelling unit required to be provided on site by an SFHP developer
17 or an SFHP property owner to satisfy the SFHP requirements.

18 *Unit* means a dwelling unit.

19 **Section 2. Section 26-1.8 of SFCC 1987 (being Ord. No. 2005-30(A) § 37, as**
20 **amended) is amended to read:**

21 **26-1.8 Applicability and Amendments to Prior Agreements.**

22 A. ~~[Except as set forth in this paragraph the]~~ The SFHP ordinance shall apply to the
23 following actions or projects:

24 (1) any application for residential development including, but not limited to,
25 annexation, rezoning, subdivision plat, increase in density, development plan, or

1 extension of, or connection to, city utilities for land outside the city limits~~[-and];~~

2 (2) building permits ~~[which]~~ that propose two (2) or more dwelling units or
3 buildings or portions of buildings ~~[which]~~ that may be used for both nonresidential and
4 residential purposes, including single family homes, multifamily housing, live/work
5 housing, and manufactured home lots; [- SFHP applies to the residential portion of the
6 development.]

7 ([1]3) ~~[The SFHP applies to]~~ new construction, ~~[to]~~ the conversion of existing
8 rental units to ownership units, and the conversion of commercial uses to residential uses;
9 ~~[and]~~

10 (4) vacation time share projects and short term rental units, to the limited
11 extent described in subsection 26-1.22(B)(1)(c); and

12 (5) any amendment to an SFHP agreement or HOP agreement that was
13 entered into prior to June 8, 2011, so that the amended agreement meets the current
14 requirements of section 26.1.

15 [(2)] B. The SFHP Ordinance shall not apply to the following situations:

16 (1) a development or portion thereof that is subject to any formal, written,
17 and binding agreement entered into prior to August 15, 2005, with the city or Santa Fe county in
18 which the signatories agreed to provide affordable housing or payment in lieu thereof;

19 (2) a dwelling unit or manufactured home lot for an elementary, middle or
20 high school; college or university; hospital; or similar institution to be used exclusively by its
21 employees, enrolled students, patients, and their families. If the dwelling unit or lot is no longer
22 used exclusively by such employees, enrolled students, patients, or families, the SFHP Ordinance
23 applies at the time the units are converted;

24 (3) any non-residential portion of a development;

25 (4) a family transfer as set forth in subsection ~~[14-3.7(E)(3)(b)]~~14-3.7(F); or

1 (5) a division of land into two (2) lots as set forth in subsection [14-
2 2.3(E)(1)(a)] 14.3.7(D).

3 ~~[(3)—It shall be the responsibility of the applicant to determine the applicability of
4 SFHP to the proposed development and comply with the requirements of SFHP.~~

5 (4)—If a SFHP developer obtains a residential building permit for a SFHP development
6 with two (2) through ten (10) total units, then a seventy percent (70%) reduction in fees
7 associated with such development shall be assessed and the developer has the option to pay a fee
8 in lieu of providing the required percentage of units in accordance with the SFHP administrative
9 procedures.

10 B.—The SFHP shall apply to dwelling units in vacation time share projects as defined in
11 Section 14-12 SFCC 1987.

12 C.—In addition to paragraph A(2) above, the SFHP shall not apply to the following:

13 (1)—Any development or portion thereof which is subject to any formal, written and
14 binding agreement entered into prior to August 15, 2005, with the city or Santa Fe county which
15 if within said agreement the signatories agreed to provide affordable housing or payment in lieu
16 thereof; or

17 (2)—Dwelling units or manufactured home lots for an elementary, middle or high
18 school, community college, private four (4) year college or related institutions where coursework
19 leads to an associate of arts, bachelors or vocational degree or certification, hospital or similar
20 institution to be used exclusively by its employees or enrolled students and their families. If the
21 dwelling units are no longer used exclusively by its employees or enrolled students, the SFHP
22 shall apply at the time the units are converted.]

23 ~~[D.]~~ C. Petitioners for annexations and the office of affordable housing shall negotiate
24 all terms for providing affordable housing on the site for which annexation is proposed, including
25 the distribution of development types and the number of SFHP units required or alternate means

1 of compliance. The number of SFHP units required or alternate means of compliance may be in
2 excess of that otherwise required by the SFHP ordinance. These terms shall be included in the
3 annexation agreement. To the extent practicable, all other SFHP requirements shall apply to
4 annexations. In no case shall the agreement provide for less affordable housing or a lesser in-lieu
5 contribution than required by the SFHP ordinance. As the property is developed, [~~a separate~~
6 ~~SFHP agreement in compliance with the annexation agreement shall be recorded with each~~
7 ~~subdivision plat or development plan] a SFHP developer shall record with each subdivision plat
8 or development plan a separate SFHP agreement in compliance with the annexation agreement.~~

9 [E-] D. All provisions of the prior ordinance, titled housing opportunity program
10 (HOP), remain in full force and effect with respect to any and all agreements executed by the city
11 and others [~~which~~] that were required by HOP or incorporated HOP provisions by reference.
12 Accordingly, the office of affordable housing will continue to use and annually update the
13 administrative procedures for the HOP ordinance until such time as all obligations under such
14 agreements have been satisfied.

15 E. If the amendment to a SFHP agreement or HOP agreement that was entered into
16 prior to June 8, 2011, reduces or redistributes the SFHP or HOP lots contemplated by an
17 annexation agreement, subdivision plat, or development plan, then the annexation agreement,
18 subdivision plat, or development plan shall be administratively amended to reflect the reduction
19 and redistribution of SFHP or HOP lots, and the amended annexation agreement, subdivision plat,
20 or development plan shall be recorded or filed, as applicable, by the owner or developer.

21 F. The applicant is responsible for determining the applicability of the SFHP
22 Ordinance to the proposed development and for complying with the requirements of SFHP.

23 **Section 3. Section 26-1.15 of SFCC 1987 (being Ord. No. 2005-30(A) § 44, as**
24 **amended) is amended to read:**

25 **26-1.15 Required number of for-sale SFHP homes in a development.**

1 A. If a SFHP developer obtains a residential building permit for a SFHP
2 development, twenty percent (20%) of the total number of dwelling units or manufactured home
3 lots offered for sale in an SFHP development shall be SFHP homes, sold at income range prices
4 as follows:

5 (1) Five percent (5%) of the total dwelling units or manufactured home lots
6 ~~[shall be sold]~~ at or below the affordable home price or affordable manufactured home lot
7 price, as applicable, for income range 2.

8 (2) Ten percent (10%) of the total dwelling units or manufactured home lots
9 ~~[shall be sold]~~ at or below the affordable home price or affordable manufactured home lot
10 price, as applicable, for income range 3, and

11 (3) Five percent (5%) of the total dwelling units or manufactured home lots
12 ~~[shall be sold]~~ at or below the affordable home price or affordable manufactured home lot
13 price, as applicable, for income range 4.

14 ~~[A modification to a SFHP agreement or HOP agreement that was entered into prior to~~
15 ~~June 8, 2011, shall be made to reflect the twenty percent (20%) requirement; and if applicable, an~~
16 ~~annexation agreement, subdivision plat or development plan shall be administratively amended to~~
17 ~~reflect the reduction and redistribution of SFHP or HOP lots and the amended annexation~~
18 ~~agreement, subdivision plat or development plan shall be recorded or filed, as applicable, by the~~
19 ~~owner or developer. Fifteen percent (15%) of the total number of dwelling units or manufactured~~
20 ~~home lots offered for rent in an SFHP development shall be SFHP units and meet all~~
21 ~~requirements of Section 26-1 SFCC 1987.]~~

22 B. If an applicant exceeds the percentage of units or manufactured home lots in
23 income range 2 or income range 3 as set forth above, the requirement in any higher income range
24 may be reduced by the same percentage.

25 C. The whole number resulting from this calculation shall be the number of SFHP

1 homes required to be constructed or SFHP manufactured home lots to be created. If the
2 calculation [~~described~~] results in a fraction of a unit, this obligation shall be satisfied as set forth
3 in the administrative procedures. Nothing herein shall prohibit a developer from building a
4 greater number of SFHP homes or creating a greater number of SFHP manufactured home lots
5 than [~~specified herein~~] required. [~~Such a~~] Additional units shall meet all the requirements as an
6 SFHP home or manufactured home lot [~~in order~~] to be considered an SFHP home or
7 manufactured home lot. The SFHP developer shall receive the fee waivers described in
8 subsection 14-8.11(G)(2) for such additional units so long as those units meet all SFHP
9 requirements.

10 D. In any development with a mix of rental and ownership units or manufactured
11 home lots, or including units with varying numbers of bedrooms, the number of manufactured
12 lots or affordable units shall be distributed among these categories in numbers that are
13 proportionate to the proposed number of market rate lots or units in each category. [~~SFHP rental~~
14 ~~units or rental manufactured home lots shall be in the same proportion as the number of non-~~
15 ~~SFHP rental units or rental manufactured home lots and likewise with ownership units or~~
16 ~~ownership manufactured home lots].~~

17 E. In any development with [~~a mix of~~] both detached and attached ownership units,
18 the [~~mix~~] number of detached and attached SFHP units shall be in the same proportion as the
19 [~~mix~~] number of detached and attached non-SFHP units.

20 F. In the event that two (2) or fewer SFHP homes or SFHP manufactured home lots
21 are required, the SFHP homes or manufactured home lots shall be [~~affordable~~] sold to buyers in
22 income range 3 or lower.

23 G. If a SFHP developer obtains a residential building permit for a SFHP
24 development with between two (2) and ten (10) total for-sale units, then the city shall assess a
25 seventy percent (70%) reduction in fees associated with such development, and the developer

1 may pay a fee in lieu of providing the required percentage of units.

2 **Section 4. Section 26-1.19 of SFCC 1987 (being Ord. No. 2005-30(A) § 48) is**
3 **amended to read:**

4 **26-1.19 Enforcement of SFHP agreement.**

5 A. For-sale homes or manufactured home lots. When the city determines a sale is
6 ~~[found to be]~~ not in compliance with the SFHP ordinance or a SFHP agreement, or the
7 information is insufficient to determine compliance, the city shall notify the SFHP developer
8 ~~[shall be notified]~~ in writing and the SFHP developer shall have the opportunity to rectify the
9 noncompliance or supply the information lacking with respect to that SFHP home. However, in
10 the event of such noncompliance, the city shall not certify any sale of an SFHP home and reserves
11 the right not to certify the sale of any further non-SFHP units or manufactured home lots, while
12 recognizing that this shall create an encumbrance and title flaw if any sale is made.

13 B. Multifamily rental projects. At the time of final execution of a SFHP agreement,
14 the City shall place a lien on the relevant property to capture the value of the fees waived or other
15 quantifiable incentives provided under section 14-8.11(G) SFCC 1987 by the city for the
16 associated project. If a project owner-operator fails to comply with the provisions of the SFHP,
17 the city may enforce the lien as provided by law unless the noncompliance is cured.

18 C. General enforcement provisions. The enforcement provisions set forth in
19 subsections 1-3 and 14-11[-5D] SFCC 1987 shall apply to all instances of noncompliance with
20 the SFHP~~[, including noncompliance as described in subsection 26-1.19A SFCC 1987].~~

21 **Section 5. Section 26-1.22 of SFCC 1987 (being Ord. No. 2005-30(A) § 51, as**
22 **amended) is amended to read:**

23 **26-1.22 Requirements for SFHP rental units.**

24 A. If a SFHP developer obtains a residential building permit for multifamily
25 residential development between January 1, 2016, and December 31, 2019, then a fee

1 associated with such development shall be assessed in accordance with SFHP administrative
2 procedures. [~~A modification to a SFHP agreement or HOP agreement to construct rental units~~
3 ~~and create manufactured home lots for rent that was entered into prior to January 1, 2017,~~
4 ~~shall be made to reflect the modified requirement; and i]~~If applicable, an annexation
5 agreement, subdivision plat, or development plan shall be administratively amended to reflect
6 the [~~modified~~] updated requirement and the amended document shall be recorded or filed, as
7 applicable, by the owner or development. Incentives for SFHP developers as set forth in
8 subsection 14-8.11 SFCC 1987 will not be available for these projects, other than the density
9 bonus pursuant to subsection 14-8.11(G)(1).

10 [~~B. — One (1) year prior to the sunset clause date, this amendment will be evaluated~~
11 ~~to determine its effectiveness in reaching the city's goal of creating at least two thousand~~
12 ~~(2,000) multi-family rental units.]~~

13 [~~C]~~B. Effective January 1, 2020, and thereafter, [~~fifteen percent (15%) of the total~~
14 ~~number of dwelling units offered for rent in]~~ a [~~SFHP development]~~ SFHP developer that
15 obtains a building permit for a multifamily residential development shall [be delivered]
16 comply with the SFHP ordinance [as described in this section] by either paying a fee, creating
17 LPDUs, or affordable on-site units as follows:

18 (1) Fee in lieu. The SFHP developer may pay of a fee in lieu of providing
19 on-site units, assessed according to an “affordability gap” calculation that determines
20 the base fee, which is the difference between a FMR and the rent affordable to a renter
21 earning sixty-five percent (65%) of the AMI.

22 a) The steps of the calculation of the base fee amount, as more fully
23 described in the administrative procedures, are as follows:

24 (i) multiply the total number of units (broken out by
25 number of bedrooms) by fifteen percent (15%) to determine the number of

1 affordable units;

2 (ii) multiply the number of affordable units by the base fee
3 associated with each type of unit (broken out by number of bedrooms) to
4 determine the monthly fee; and

5 (iii) multiply the monthly fee by twenty-four (24) months to
6 determine the total project fee.

7 (b) HUD's FMR will be used to establish the affordability gap
8 ("base fee amount") relative to HUD's AMI data. Developers shall pay phased fee
9 increases according to when projects are permitted as follows:

10 (i) for units permitted on or before June 30, 2020, the base
11 fee amount;

12 (ii) for units permitted between July 1, 2020, and June 30,
13 2021, the base fee, increased by twenty percent (20%) fee increase;

14 (iii) for units permitted between July 1, 2021, and June 30,
15 2022, the base fee, increased by forty percent (40%) fee increase;

16 (iv) for units permitted between July 1, 2022, and June 30,
17 2023, the base fee, increased by sixty percent (60%) increase;

18 (v) for units permitted between July 1, 2023, and June 30,
19 2024, the base fee, increased by eighty percent (80%) increase; and

20 (vi) for units permitted on or after July 1, 2024, the base fee,
21 increased by one hundred percent (100%).

22 (c) A SFHP developer that creates a vacation time share project or
23 short term rental units shall be subject to the fees set forth in this subparagraph
24 26-1.22(B)(1);

25 (2) One-hundred percent (100%) LPDUs. An SFHP developer may create

1 a development that consists of one-hundred percent (100%) LPDUs that shall comply
2 with the requirements set forth in subsection 26-2.3;

3 (3) Fifteen percent (15%) affordable rental units. An SFHP developer
4 may set aside of fifteen percent (15%) of on-site rental units for income certified
5 renters as described in subsection 26-1.23(A); or

6 (4) Combination. An SFHP developer may combine two (2) or more of
7 the preceding three (3) options if such a combination provides an equivalent and
8 beneficial impact toward meeting identified housing needs, subject to approval by the
9 office of affordable housing. If a developer chooses to provide a combination of the
10 options, then the city shall provide the developer incentives set forth in subsection 14-
11 8.11(G), as approved by the land use director.

12 [D]C. The marketing, leasing, and occupancy of either an SFHP rental unit ~~and~~ or
13 an SFHP manufactured home lot that is rented shall conform to the criteria set forth in the
14 administrative procedures. Rental rates shall ~~be in accordance~~ comply with the rates set forth
15 in subsection 26-1.24 SFCC 1987. SFHP rental units shall ~~be built to~~ comply with the
16 minimum size, unit type(s), and other structural requirements set forth in subsection 26-
17 1.25 SFCC 1987. ~~The location of the SFHP rental units shall be approved by the office of~~
18 affordable housing] SFHP developers must obtain approval for the location of SFHP rental
19 units. The units or manufactured home lots shall have compatible exterior architectural and
20 landscaping appearance with other units in the development.

21 D. Units or manufactured home lots available for SFHP rentals shall be described in
22 a SFHP proposal in sufficient detail so that such units or manufactured home lots can be
23 identified after construction or creation and occupancy. SFHP tenants must meet eligibility
24 requirements at the time they initially lease an SFHP unit.

25 **Section 6. Section 26-1.23 of SFCC 1987 (being Ord. No. 2005-30(A) § 52, as**

1 amended) is amended to read:

2 26-1.23 [~~Required number of SFHP rental units in a development~~] Compliance
3 Requirements for Set Aside of Affordable On-Site Units for Income Certified Renters.

4 A. [~~Fifteen percent (15%) of the total number of dwelling units and SFHP~~
5 ~~manufactured home lots offered for rent in an SFHP development shall be SFHP rental units~~
6 ~~or SFHP rental manufactured lots, as follows:~~

7 (1) ~~Five percent (5%) of the total dwelling units or manufactured home~~
8 ~~lots shall be rented at or below the affordable rent for income range 1.~~

9 (2) ~~Five percent (5%) of the total dwelling units or manufactured home~~
10 ~~lots shall be rented at or below the affordable rent for income range 2.~~

11 (3) ~~Five percent (5%) of the total dwelling units or manufactured home~~
12 ~~lots shall be rented at or below the affordable rent for income range 3.~~

13 B. ~~If an applicant exceeds the percentage in income range 1 or income range 2 as~~
14 ~~set forth above, the requirement in any higher income range may be reduced by the same~~
15 ~~percentage.] An SFHP developer that chooses the compliance option described in subsection 26-
16 1.22(B)(3) shall set aside at least fifteen percent (15%) of units or manufactured home lots for
17 income certified renters, as described in the administrative procedures developed by the office of
18 affordable housing. These units shall be set aside for renters earning no more than sixty-five
19 percent (65%) of the AMI, and affordable rental rates shall be determined pursuant to section 26-
20 1.24. Renters who are certified by the office of affordable housing or the city's approved subsidy
21 provider to receive federal or local rental vouchers will have preference for access to SFHP units.
22 All terms of the subsidy provided to income certified renters must conform to HUD standards, as
23 verified by the office of affordable housing.~~

24 (1) Incentives for SFHP developers. Projects that include on-site affordable
25 rental units shall receive the incentives set forth in subsection 14-8.11(G). The city shall

1 provide the development fee waivers and other cost reductions in an amount that is
2 double the percentage of affordably priced units (e.g., the reduction would be applied to
3 thirty percent (30%) of the total units if the developer provides fifteen percent (15%)
4 affordable units).

5 (2) Annual reporting and compliance monitoring. Project owner-operators
6 shall report their inventory of units rented according to income and rent restrictions
7 described in their respective SFHP agreements, including certifications of income
8 qualification, to the city on an annual basis.

9 [C]B. The whole number resulting from [this calculation] applying the percentage
10 calculation to the total number of units as specified in the SFHP proposal and agreement shall
11 be the number of required SFHP rental units [to be constructed] or rental manufactured home
12 lots [to be created]. If the calculation described results in a fraction of a unit or manufactured
13 home lot, [this] the minimum SFHP unit obligation shall be satisfied as set forth in the
14 administrative procedures. Nothing herein shall prohibit a developer from building a greater
15 number of SFHP rental units or creating a greater number of SFHP rental manufactured home
16 lots than required [herein]. Such additional units shall meet all the requirements as an SFHP
17 rental unit or manufactured home lot. The SFHP developer shall receive the fee waiver
18 described in subsection 14-8.11(G)(2) for such additional units so long as the units meet all
19 SFHP requirements.

20 [D. In any development with a mix of rental and ownership units or manufactured
21 home lots, the number of SFHP rental units or manufactured home lots shall be in the same
22 proportion as the number of non-SFHP rental units or manufactured home lots and likewise
23 for ownership units or manufactured home lots.

24 E. In the event that only two (2) or fewer SFHP rental units or SFHP rental
25 manufactured home lots are required, the SFHP rental unit(s) or SFHP rental manufactured

1 home lot(s) shall be affordable to income range 2 or income range 1.

2 F. ~~Units or manufactured home lots available for SFHP rentals shall be described~~
3 ~~in the SFHP proposal in sufficient detail so that such units or manufactured home lots can be~~
4 ~~identified after construction or creation and occupancy. SFHP rental units or manufactured~~
5 ~~home lots shall have approximately the same ratios of unit or manufactured home lot sizes as~~
6 ~~the number of non-SFHP rental units. SFHP tenants must meet eligibility requirements at the~~
7 ~~time of the initial lease. If an SFHP tenant vacates an SFHP rental unit or manufactured home~~
8 ~~lot, landlord shall offer that unit or manufactured home lot, or another equivalent unit or~~
9 ~~manufactured home lot, to an eligible tenant within the same income range.]~~

10 **Section 7. Section 26-1.24 of SFCC 1987 (being Ord. No. 2005-30(A) § 53, as**
11 **amended) is amended to read:**

12 **26-1.24 Determination of affordable rent.**

13 A. To ensure that rental rates do not exceed thirty percent (30%) of the monthly
14 income for both rent and utilities for households [~~in each applicable income range~~] according
15 to the occupants applicable income range, as certified by a HUD-compliant income
16 certification, the affordable rent for SFHP rental dwelling units [~~is~~] shall be determined
17 annually, based on HUD income limits[~~, pursuant to the administrative procedures~~].

18 B. [~~Affordable rental rates shall be determined for each income range pursuant to~~
19 ~~the SFHP rental rate schedule in the administrative procedures.~~] The required rental rates
20 include utilities and shall be adjusted if utilities are provided separately.

21 C. The affordable rent for manufactured home lots shall not exceed thirty percent
22 (30%) of the affordable rent for a three (3)-bedroom dwelling unit [~~for each applicable income~~
23 ~~range, pursuant to SFHP rental rate schedule~~].

24 D. Beginning in 2006 and every year thereafter, affordable rent and affordable
25 manufactured home lot rent [~~for each applicable income range~~] shall be adjusted by the

1 percentage change in area median income from the previous twelve (12) months, as per
2 HUD's annual determination of income limits, and the office of affordable housing shall issue
3 an updated schedule of affordable rents and affordable manufactured home lot rent for [~~each~~
4 ~~applicable~~] qualified income ranges. The office of affordable housing shall report to the
5 governing body within thirty (30) days of adjusting affordable rents and affordable
6 manufactured home lot rent.

7 **Section 8. Section 26-1.25 of SFCC 1987 (being Ord. No. 2005-30(A) § 54) is**
8 **amended to read:**

9 **26-1.25 Design, unit types for SFHP rental dwelling units.**

10 [~~The~~] On-site affordable SFHP rental dwelling units created pursuant to subsection 26-
11 1.23 shall be constructed according to the [~~minimum requirements~~] following guidelines for
12 bathrooms and area of habitable residential space [~~described below~~]:

Unit Type	Minimum Number of Bathrooms	Minimum Area
Efficiency/Studio	1	500 square feet
1 Bedroom	1	650 square feet
2 Bedroom	1	800 square feet
3 Bedrooms	2	950 square feet
4 Bedrooms	2	1,100 square feet

23 Habitable space shall be defined and calculated in accordance with the city's building
24 code[~~, except that the minimum area of SFHP rental units may be greater than minimum~~
25 ~~building code requirements~~].

1 **Section 9. Section 26-1.26 of SFCC 1987 (being Ord. No. 2005-30(A) § 55) is**
2 **amended to read:**

3 **26-1.26 Marketing to and certifying SFHP tenants.**

4 A. Owners of SFHP developments for rental housing or rental manufactured
5 home lots shall market the SFHP rental units [~~in accordance with the administrative~~
6 ~~procedures~~] to ensure that the target market, income-qualified renters, are reached. Marketing
7 materials shall clearly state the policies of the SFHP program with regard to pricing of SFHP
8 rental units and tenant eligibility. For developments with SFHP rental units for which the city
9 or its agent expects immediate effective demand to outstrip the supply, the city or its agents
10 shall establish and maintain a fair and competitive process for allocating rights to lease the
11 SFHP rental units. In developments where the city or its agent has established such a process,
12 the developer shall [~~be required to~~] follow the process when selecting SFHP tenants. For
13 developments besides those described above, the developer shall establish and maintain an
14 equitable process of marketing SFHP rental units, including waiting lists where demand
15 exceeds supply.

16 B. [~~It~~] When renting SFHP rental units, the landlord shall give preference to
17 individuals who are residents of Santa Fe county or are presently employed or under contract
18 with an employer within Santa Fe county, as may be limited by federal programs.

19 C. Prior to executing a lease for any SFHP rental unit, the prospective SFHP
20 tenant shall be certified as meeting the SFHP requirements by the city or its agent. [~~The~~
21 ~~certification shall be as set forth in the administrative procedures.~~] Nothing, however, in this
22 chapter or administrative procedures shall be construed so as to penalize qualifying renters for
23 changes in family size due to changes in the number of dependents in a particular household.

24 D. Any owner or agent required to provide SFHP rental units shall not
25 discriminate against a tenant for proposing to use federal or other rent subsidies[~~, nor can such~~

1 subsidies be used to achieve a required SFHP contract rent].

2 **Section 10. Section 26-1.29 of SFCC 1987 (being Ord. No. 2005-30(A) § 58, as**
3 **amended) is amended to read:**

4 **26-1.29 Term of compliance for multifamily rentals and rental manufactured home**
5 **lots.**

6 A. LPDUs. A project owner-operator subject to the compliance option set forth in
7 subsection 26-1.22(B)(2) shall comply with the requirements set forth in subsection 26-2.3(C)
8 SFCC 1987 for a minimum time period of ten (10) years from the time of each unit's initial
9 occupancy. At the end of the initial ten (10)-year tenancy, the project owner-operator shall
10 provide six (6)-months' notice of the reversion to full market rents at the end of the compliance
11 period. Owner-operators shall give priority to current renters to continue occupancy of their
12 units if they can meet all terms of tenancy.

13 B. Affordable rental set-aside units. A project owner-operator subject to the
14 compliance option set forth in subsection 26-1.22(B)(3) shall set aside affordable units for a
15 minimum of ten (10) years from the date at which the property is fully leased for the set-aside
16 units as described in subsection 26-1.23. At the end of the initial ten (10)-year tenancy, the
17 project owner-operator shall comply with a relocation plan for each subsidized tenant, as
18 developed and managed by the city's approved rental subsidy provider. No tenant's occupancy
19 may be ended without a suitable relocation option.

20 C. Rental manufactured home lots. A project owner-operator of a [~~Rental housing~~
21 developments and]rental manufactured home lot development subject to SFHP (or portions
22 thereof completed and occupied at different times) shall maintain required occupancy and
23 rental rates in SFHP units for a period of ten (10) years [~~after the date of issuance of a~~
24 certificate of occupancy for the entire development or portions thereof].

25 D. Successors in title. [~~This requirement]~~ The requirements of this subsection 26-

1.29 shall be made applicable to successors in title, if any, by means of a deed restriction.

Section 11. Section 26-2.2 of SFCC 1987 (being Ord. No. 2007-40 § 34) is amended to read:

26-2.2 Definitions.

As used in Section 26-2 SFCC 1987:

Area median income (AMI) means the median income for the Santa Fe metropolitan statistical area as adjusted for various household sizes and published and revised periodically by the United States Department of Housing and Urban Development. However, that in the event of a discrepancy between the AMI established by HUD and HUD's program income limits, the higher of the two (2) shall be used to establish AMI for the purpose of the provisions related to low-priced dwelling units.

Low-priced dwelling unit ("LPDU") means a dwelling unit as defined in Chapter 14 SFCC 1987 that complies with the requirements set forth in Section 26-2 SFCC 1987. A low-priced dwelling unit is not a Santa Fe homes program unit, unless specifically described below, or a housing opportunity program unit.

Non-profit affordable housing organization means a legally incorporated non-profit organization recognized by the city's office of affordable housing whose purpose includes providing housing or housing services to low- and moderate-income individuals and families.

Owner/builder means a person building his or her own home on property that he or she owns or which is owned by a member of their immediate family.

Project owner/operator means an entity that owns or operates a rental property that conforms to the qualifications of a low-priced dwelling unit as they pertain to rental housing.

Section 12. Section 26-2.3 of SFCC 1987 (being Ord. No. 2007-40 § 34) is amended to read:

26-2.3 Requirements for low-priced dwelling units.

1 Low-priced dwelling units qualifying for various incentives set forth in various city
2 codes, policies, and procedures shall comply with this section.

3 A. In order to qualify as a low-priced dwelling unit, the unit shall be built by one
4 of the following actors:

5 (1) A developer as part of a type A development described in a valid
6 housing opportunity program agreement;

7 (2) An owner/builder; ~~[or]~~

8 (3) A nonprofit affordable housing organization~~[-]~~; or

9 (4) A multifamily developer providing market-rate rental housing that
10 meets the criteria of LPDU as described in subsection 26-2.3(C).

11 B. Low-priced dwelling units shall meet the following criteria:

12 (1) Sale prices or rental rates ~~[shall be]~~ affordable to a household with an
13 income at or below one hundred percent (100%) of the area median income, using a
14 standard four-person household for buyers and a three-person household for renters,
15 according to the procedures established in the Santa Fe homes program;

16 (2) Buyers, renters, or the owner/builder ~~[of low-priced dwelling units]~~
17 ~~[shall]~~ who do not earn more than one hundred twenty percent (120%) of the area
18 median income, adjusted for household size;

19 ~~[For sale units and units built by an owner/builder shall be o]~~ Owner-
20 occupied for at least five (5) years, for units built by an owner/builder and for-sale
21 units;

22 ~~[For all low-priced dwelling units, a]~~ A city-placed lien ~~[shall be~~
23 ~~placed]~~ against the property for the value of all fee waivers or reductions given by the
24 city, ~~[and such lien shall]~~ to be repaid to the city when the unit and/or property is
25 refinanced or sold, with proceeds from the lien repayment being deposited into the

1 city's affordable housing trust fund; and

2 (5) At the time of initial occupancy of the low-priced dwelling unit,
3 meeting the following minimum household size, ~~[shall be met]~~ unless the city's office
4 of affordable housing approves a smaller household size upon the request of the
5 nonprofit affordable housing organization or the renter or buyer of the low-priced
6 dwelling unit. This ~~[paragraph]~~ criterion (5) does not apply to a unit built by an
7 owner/builder.

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Unit Size	Minimum Household Size
Efficiency/Studio	1-person household
1 bedroom	1-person household
2 bedrooms	1-person household
3 bedrooms	2-person household
4 bedrooms	3-person household

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16 C. If a low-priced dwelling unit is built by a for-profit multifamily developer in
17 compliance with the rental home requirements outlined in 26-1.22, then the following
18 requirements apply:

19 (1) One hundred percent (100%) LPDU required. A LPDU project owner-
20 operator shall rent one hundred percent (100%) of units or manufactured home lots to
21 income certified renters, whose incomes do not exceed one-hundred twenty percent
22 (120%) of area median income, as established by HUD. Rents will be calculated pursuant
23 to the SFHP administrative procedures and will not exceed HUD's FMR, as established
24 annually. Owner-operators shall give preference to renters certified by the office of
25 affordable housing or the city's approved subsidy provider who have federal or local

1 rental vouchers. All terms of the subsidy provided to the tenants must conform to HUD
2 standards.

3 (2) Incentives. As set forth in subsection 14-8.11 SFCC 1987, incentives
4 shall be available for LPDU rental projects, with all fees reduced by fifteen percent
5 (15%).

6 (3) Annual reporting and compliance monitoring. Project owner-operators
7 shall annually report their inventory of units rented according to income and rent
8 restrictions described in their respective SFHP agreements. The owner/operator shall
9 update income qualifications according to HUD's AMI and FMR datasets.

10 D. If the low-priced dwelling unit is built by an owner/builder, the owner/builder
11 shall submit a certified appraisal from a qualified appraiser indicating that the value of the
12 dwelling unit with the land does not exceed the price set forth in paragraph B(1) above.

13 E. If the low-priced dwelling unit is built by a nonprofit affordable housing
14 organization, the organization shall place a [~~shared equity~~] lien against the property to capture
15 any value between the actual sales price and the appraised price. This lien shall be in last
16 place and any proceeds realized from the sale shall be used for affordable housing and shall be
17 reported to the city's office of affordable housing.

18 **Section 13. Section 26-3.2 of SFCC 1987 (being Ord. No. 2007-23 § 5) is**
19 **amended to read:**

20 **26-3.2 Authority.**

21 The Affordable Housing Trust Fund Ordinance is enacted pursuant to the express
22 statutory authority conferred upon municipalities to enact a housing code pursuant to Section 3-
23 17-6A(8) NMSA 1978; to enact ordinances pursuant to its police power, Section 3-17-1(B)
24 NMSA 1978; to provide for affordable housing pursuant to subsections E and F of [~~Art. 9, §14,~~]
25 Article 9, Section 14 of the [~~N.M.~~] New Mexico Constitution and the Affordable Housing Act,

1 [(§§) Sections 6-27-1 [~~through~~] to 6-27-8 NMSA 1978[)], and in particular to provide a portion of
2 the cost of financing and/or authorizing housing assistance grants for the purpose of affordable
3 housing pursuant to Section 6-27-5 NMSA 1978 (2007), and pursuant to any and all such other
4 authority as may be applicable including but not limited to the city's recognized authority to
5 protect the general welfare of its citizens. This section is adopted pursuant to the city of Santa
6 Fe's powers under its municipal charter, which was adopted effective March 15, 1998 pursuant to
7 the Municipal Charter Act Sections 3-15-1 to 3-15-16 NMSA 1978 and Article 10, Section 6 of
8 the New Mexico Constitution [~~of New Mexico~~].

9 **Section 14. Section 26-3.2 of SFCC 1987 (being Ord. No. 2007-23 § 12) is**
10 **amended to read:**

11 **26-3.9 Affordable Housing Trust Fund Administration.**

12 A. The AHTF shall be administered by the office of affordable housing (OAH). The
13 administrative procedures for the AHTF shall be prepared by the OAH, shall be consistent with
14 the rules of the New Mexico Mortgage Finance Authority upon amendment of the rules in
15 conformity with the Act as amended in 2007 and shall be approved by the governing body.

16 B. All funds shall be allocated under a request for proposal that is conducted at least
17 annually and concurrently with the process used for the community development block grant
18 programs, [~~and is~~] unless an emerging need requires an alternate funding cycle as approved by the
19 city of Santa Fe community development commission and subject to the availability of funds. In
20 all cases, the request for proposal process will be consistent with the provisions of this section
21 and administrative guidelines. Loans and grants shall be disbursed according to standard city
22 procurement practices.

23 C. Applications for funding shall be reviewed according to evaluation criteria
24 contained within the administrative procedures.

1 APPROVED AS TO FORM:

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4 ERIN K. McSHERRY, CITY ATTORNEY

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25 *Legislation/2019/Bills/2019-27 SFHP Rental Requirements Amendment*