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CITY OF SANTA FE, NEW MEXICO

ORDINANCE NO. 2020-18

AN ORDINANCE

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

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

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

14-11 ENFORCEMENT

14-11.4 REMEDIES AND PENALTIES

(A) Remedies

(1) If a *structure* is erected, constructed, reconstructed, *altered*, repaired, converted, or maintained in violation of Chapter 14; or a *structure* or *property* is used in violation of Chapter 14; or if any other violation of this chapter occurs, the *governing body*, *city attorney*, enforcement officer, or other proper *city official* may institute appropriate actions or proceedings to prevent, restrain, correct, or abate such violation or to mandate compliance.

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- (2) The *land use director* may:
 - (a) withhold or revoke permits that the director is authorized to issue, including construction *permits* and short-term rental permits, if the applicant or permittee has violated a regulation relating to the granting of the permit, or if in the judgment of the land use director or the public welfare requires that the permit be revoked or withheld ;
 - (b) withhold or revoke *certificates of occupancy*;
 - (c) withhold the recording of *plats* or *development plans*;
 - (d) order discontinuance of illegal use of land or *structures*;
 - (e) order discontinuance of any illegal work being done;
 - (f) order removal of illegal *structures* or *alterations*;
 - (g) order that any land or *structure* modified in violation of this Chapter be restored to compliance ; or
 - (h) order a one (1)-year waiting period for *application* for a short-term rental *permit* by a person who has operated a *short-term rental unit* in violation of the short-term rental ordinance, subsection 14-6.2(A)(5), or has failed to pay or report taxes on the *short-term rental unit* as required by law.

(3) The *land use director* may use one or more of the remedies and penalties provided in this Article 14-11 without limiting the authority of the *land use director* or other officials to take other enforcement actions provided in this Code, including the suspension or revocation of a *permit* by the *building official* pursuant to Chapter 7 Building and Housing, or the pursuit of other legal remedies.

(B) Fines, Imprisonment

Violations of Chapter 14 or of terms of approvals made pursuant to this chapter may be punished as provided in Section 1-3 SFCC 1987 (General Penalty).

1 (C) **Civil Penalties**

2 (1) **Assessment of Civil Fines.** In addition to other penalties or remedies,
3 the *land use director* may assess civil fine for any of the following:

- 4 (a) violation of any provision of Chapter 14;
- 5 (b) construction or other *development* without a required *permit*;
- 6 (c) rental of a *short-term rental unit* without a *permit* or
7 registration;
- 8 (d) material misrepresentation of fact on an application submitted
9 to the *land use department*; or
- 10 (e) failure to pay or report fees or taxes owed.

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

- 17 (a) a civil fine of one hundred dollars (\$100.00) for the first
18 offense;
- 19 (b) a civil fine of two hundred and fifty dollars (\$250.00) for the
20 second offense; and
- 21 (c) a civil fine of five hundred dollars (\$500.00) for the third and
22 subsequent offenses.

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

- 25 (a) **Delivery.** The civil citation shall be posted on the *property* in a

1 conspicuous place; delivered in person; or mailed by certified mail, return
2 receipt requested, to the last-known address of the *applicant*, permittee, *owner*,
3 operator of a *short-term rental unit*, and/or tenant, as applicable.

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

6 (i) the address where the violation occurred;

7 (ii) a description of the specific violation;

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

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

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

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

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

18 (4) Administrative Hearing.

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

24 (b) Deposit Pending Appeal. An amount equal to the civil fine
25 assessed must accompany a request for hearing. The *city* shall hold the payment

1 as a deposit until the hearing officer makes a decision. The hearing officer shall
2 schedule a hearing within thirty (30) days of the request for hearing. If the
3 hearing officer upholds the civil citation, the *city* shall apply the deposit toward
4 the civil citation. If the hearing officer decides in favor of the requestor, the *city*
5 shall return the deposit to the requestor.

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

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

13 (D) **Revocation of Approvals**

14 Land use and *development* approvals, including but not limited to special
15 use *permits*, *development* plan approvals, variances, design approvals by the HDRB,
16 construction *permits*, or short-term rental permits, may be revoked by whichever body or
17 official approved them, upon determining that there exists a substantial, continuing, or
18 recurring violation of any of the conditions of approval or other provisions of this Code and
19 that revocation is an appropriate remedy given the nature of the violation.

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

22 (a) For an approval that was granted by a *land use board* or
23 the *governing body*, a public hearing shall be required at the same body to
24 consider revocation. The *land use director* shall provide public notice of the
25 revocation hearing by publication of the meeting agenda and/or a public

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hearing notice and by posting the *property* as required for the approval hearing. The *land use director* shall also provide notice fifteen (15) days prior to the hearing by certified mail with return receipt requested to the permittee and to any *person* who has filed a written complaint concerning the violation.

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

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

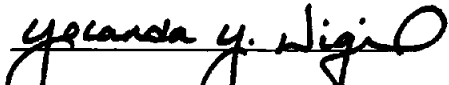
Section 2. Effective Date. This ordinance shall take effect thirty (30) days after adoption by the governing body.

PASSED, APPROVED, and ADOPTED this 12th day of August, 2020



ALAN WEBBER, MAYOR

ATTEST:


YOLANDA Y. VIGIL, CITY CLERK

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APPROVED AS TO FORM:



ERIN K. MCSHERRY, CITY ATTORNEY

Bill No. 2020-17

Legislation/2020/Bills/2020-18 Chapter 14 Civil Penalties