

1 CITY OF SANTA FE, NEW MEXICO

2 ORDINANCE NO. 2012-21

3
4
5 AN ORDINANCE

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

14
15 BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:

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

17 14-3.20 [New Material] RESIDENTIAL CONDOMINIUMS

18 A. Applicability

19 The provisions of this Section 14-3.20 apply to residential condominium declarations
20 recorded on or after May 30, 2012 that create a condominium or that amend an existing
21 condominium declaration to change the number of condominium units or reserved *development*
22 rights.

23 B. Requirements

24 A residential condominium declaration shall contain written confirmation from the *land*
25 *use director* that the proposed or amended condominium declaration complies with the zoning

1 *density* requirements of Chapter 14 SFCC 1987.

2 **C. Submittals**

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

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

9 If the proposed or amended condominium declaration complies with the zoning *density*
10 requirements of Chapter 14 SFCC 1987, the *land use director* shall issue a written confirmation to the
11 condominium declarant for inclusion in the contents of the condominium declaration as required by
12 47-7B-5 NMSA 1978. The *land use director* shall maintain copies of written confirmations issued
13 pursuant to this Section 14-3.20.

14 **E. Existing Residential Condominiums**

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

18 (a) The condominium meets the zoning *density* requirements of
19 Chapter 14; or

20 (b) The condominium met the zoning *density* requirements of Chapter
21 14 when the most recent condominium declarations were recorded.

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

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

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

5 Editor's Note: For applicable state law see §47-7B-5 NMSA 1978 of the Condominium Act [47-
6 7A-1 to 47-7D-20 NMSA 1978].

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

9 (ii) *Short-term rental units* that are operated in compliance
10 with Subsection 14-6.3(D)(1) (Accessory Dwelling Units) and in compliance with this Subsection
11 14-6.2(A)(5)(b)(ii) are allowed.

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

14 **(1) Accessory Dwelling Units**

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

16 (a) Are required to meet parking standards as set forth in Section 14-8.6;
17 (b) Shall be regulated as per *City* regulations and policies regarding
18 *City* utilities;

19 (c) Are exempt from the *density* restrictions set forth in this Chapter
20 14; provided, however, that only one *accessory dwelling unit* shall be permitted per *legal lot of*
21 *record*;

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

24 (e) Shall have *lot* coverage not exceeding the square footage of the
25 *lot* coverage of the *principal dwelling unit* or not more than one thousand five hundred square feet,

1 whichever is less;

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

4 (g) Shall be of the same architectural style as the *principal dwelling*
5 *unit*;

6 (h) May be rented as follows:

7 (i) By the *owner-occupant* who may rent the *principal*
8 *dwelling unit* or the *accessory dwelling unit* as a *short-term rental unit* pursuant to Section 14-
9 6.2(A)(5) during which time, the *owner-occupant* shall occupy either the *principal dwelling unit* or
10 the *accessory dwelling unit*; or

11 (ii) By the *owner-occupant* who may rent either the *principal*
12 *dwelling unit* or the *accessory dwelling unit*; or

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

16 (i) Shall not be issued a construction *permit* until a restrictive
17 covenant is recorded at the office of the county clerk that requires the current property *owner* and
18 all future property *owners* to comply with Section 14-6.3(D)(1). The covenant shall be in a form
19 approved by the *land use director* and the city attorney and shall be notarized prior to recordation.
20 A copy of the recorded covenants shall be provided to the *land use director* with the construction
21 *permit* application. The *land use director* shall maintain copies of recorded covenants pursuant to
22 the provisions of this section. An affidavit filed prior to the adoption of Ordinance No. 2008-5
23 (ordaining Subsection 14-6.2(A)(5)) and amending Subsection 14-6.3(D)(1) remains in effect and
24 is automatically amended to reflect the provisions of Ordinance No. 2008-5.

25 (j) Shall not be subdivided from a *principal dwelling unit* or sold

1 under separate ownership from a *principal dwelling unit* unless the *accessory dwelling unit* meets
2 all applicable requirements for a *principal dwelling unit*. In such case, the restrictions set forth in
3 Section 14-6.3(D)(1) shall no longer apply and the affidavit or restrictive covenant in Section 14-
4 6.3(D)(1) may be voided upon approval of the *land use director*; and

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

9 **Section 4. A new Section 14-10.6 SFCC 1987 is ordained to read:**

10 **14-10.6 [New Material] NONCONFORMING RESIDENTIAL CONDOMINIUMS**

11 **A. Applicability**

12 This Section 14-10.6 applies to a condominium (including constructed condominium units
13 and unconstructed condominium units in the form of reserved *development* rights) if the
14 condominium declarations were recorded prior to May 30, 2012, and:

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

17 (b) The condominium did not meet the zoning *density* requirements of Chapter
18 14 when the most recent condominium declarations were recorded.

19 **B. Density Exception for Constructed Condominium Units**

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

24 **C. Unconstructed Condominium Units**

25 Unconstructed condominium units described in Section 14-10.6(A), that are in the form of

1 reserved *development* rights in excess of the zoning *density* requirements of Chapter 14, are not
2 legal and may not be developed.

3 **D. Condominium Units Owned by the Original Declarant**

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

7 **E. Condominium Units Constructed without Required Permits**

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

12 **F. Applicability of Other Regulations**

13 The *density* exception provided in Section 14-10.6(B) is not intended to provide an
14 exception to the other provisions of Article 14-10 regarding *nonconforming uses and structures*.

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

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

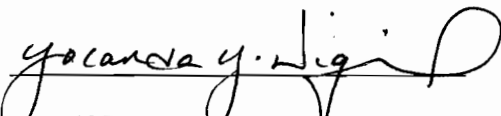
20 **Section 6. Effective Date.** This Ordinance shall be effective immediately upon
21 adoption.

22 PASSED, APPROVED AND ADOPTED this 30th day of May, 2012.

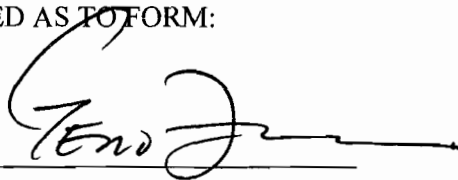
23 

24 _____
25 DAVID COSS, MAYOR

1 ATTEST:

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3 
4 VOLANDA Y. VIGIL, CITY CLERK

5 APPROVED AS TO FORM:

6 
7

8 GENO ZAMORA, CITY ATTORNEY