

CHAPTER XXVI

HOUSING

26-1 SANTA FE HOMES PROGRAM.

26-1.1 Short title.

This section may be cited as the "Santa Fe Homes Program Ordinance."
(Ord. #2005-30(A), § 30)

26-1.2 Authority.

This Santa Fe Homes Program (SFHP) Ordinance is enacted pursuant to the express statutory authority conferred upon municipalities to enact a housing code (Section 3-17-6A(8) NMSA 1978), to enact ordinances pursuant to its police power (Section 3-17-1B MNSA 1978), to enact zoning ordinances in general (Section 3-21-1A NMSA 1978), to enact zoning ordinances regulating the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land (Section 3-21-1 B(2) NMSA 1978), and pursuant to any and all such other authority as may be applicable including but not limited to the city's recognized authority to protect the general welfare of its citizens. This section is adopted pursuant to the city of Santa Fe's powers under its municipal charter which was adopted effective March 15, 1998, pursuant to the Municipal Charter Act Sections 3-15-1 to 3-15-16 NMSA 1978 and Article 10, Section 6 of the Constitution of New Mexico.

(Ord. #2005-30(A), § 31)

Editor's note(s)—Former Chapter XXVI, Housing Opportunity Program, previously codified herein and containing portions of Ordinance Nos. 1998-3, 1999-42, 2001-32, 2002-32, 2003-6 and 2004-13 was repealed in its entirety by Ordinance No. 2005-30(A).

26-1.3 Purpose.

The purpose of the Santa Fe homes program is to:

- A. Increase the supply of affordable housing within the Santa Fe area for residents and businesses.
- B. Encourage the construction of affordable housing in all areas of the city in accordance with the general plan.
- C. Strengthen the unique heterogeneous character of the Santa Fe area by providing a full range of housing choices for all ages, incomes and family sizes.
- D. Ensure that residents and future generations can afford to reside within the Santa Fe area.
- E. Ensure that affordable housing opportunities are available for those who work and wish to live in the Santa Fe area.
- F. Encourage the maintenance of the long term affordability of housing units within the Santa Fe area.
- G. Provide affordable housing wherever city utilities are extended beyond the city limits.

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- H. Foster economic integration by encouraging the availability of a range of housing opportunities in new developments in the Santa Fe area.
 - I. To provide the benefit of home equity to homeowners of affordable housing similar to those in market rate housing for such purposes as college education and retirement needs and in turn encouraging pride in ownership and maintenance of the affordable housing unit by allowing access to that home equity.

(Ord. #2005-30(A), § 32; Ord. #2007-40, § 17)

26-1.4 Findings.

The governing body finds and determines that:

- A. Affordable housing furthers geographic and community balance through providing a range of housing opportunities throughout the city; and
- B. New residential development has not provided sufficient housing opportunities for households with incomes below the area median income; and
- C. The amount of land in the city available for new residential development is severely limited by geography and topography; and
- D. Inclusionary housing programs represent an extension of cities' police powers to regulate land use, ensuring that the limited supply of developable land provides housing opportunities for all incomes; and
- E. Santa Fe is facing a growing shortage of housing that is affordable to a wide range of our population affecting the ability of new graduates, senior citizens, families with children, and employees in industries and services that are vital to a healthy economy to remain living in the city; and
- F. The lack of affordable housing is detrimental to the health, safety and welfare of the city's residents; and
- G. Federal and state funds for the construction of new affordable housing are insufficient to fully address the problems of affordable housing within the city and the private housing market has not provided adequate affordable housing opportunities for persons and households with incomes below the area median income; and
- H. The city has previously adopted the housing opportunity program in an attempt to address the affordable housing needs. This program has achieved limited effectiveness in stemming the growing affordable housing crisis in the city; and
- I. The governing body in partnership with the regional planning authority established an affordable housing task force that was charged with recommending appropriate affordable housing policy and programs for the region. The task force recommendations included the implementation of a broadly applicable program to increase the supply of affordable housing particularly for those households with incomes less than the area median income; and
- J. Based on the findings of the task force the governing body finds that it is necessary to adopt a new inclusionary zoning ordinance to replace the housing opportunity program in order to address the city's housing crisis; and
- K. According to the Housing Needs Assessment, updated in 2013, the greatest mismatch between need and available services and affordable housing inventory is for renter households earning less than thirty percent (30%) of the area median income (AMI) with as many as three thousand (3,000) renter

households in Santa Fe likely to be "cost burdened" or paying more than one-third ($\frac{1}{3}$) of their incomes toward rents; and

L. The 2010 Census indicates that:

- (1) Santa Fe's population is aging, with fifty percent (50%) of the overall population aged fifty-five (55) years or older;
- (2) Households are smaller, with single person households comprising forty percent (40%) of overall households; and
- (3) The median age is forty-four (44) years old, compared to forty (40) years old in 2000.

All factors that indicate housing demand is likely to shift to smaller units that can accommodate the needs of aging households and are located close to transit, services and amenities; and

M. Home sales prices continue to rise and were sixty-five percent (65%) higher in 2010 than in 2000, increasing the gap between what buyers can afford and how much homes are priced, with only fourteen percent (14%) of current renters able to afford the median-priced home, necessitating the continued implementation of the city's inclusionary zoning and other affordable housing programs that improve the capacity of lower- and moderate-income Santa Fe residents to buy homes; and

N. The city's support of affordable housing through regulation, policy development and administrative funding has achieved significant results, serving the needs of the homeless to the homeowner.

(Ord. #2005-30(A), § 33; Ord. #2014-10, § 3)

26-1.5 Definitions.

Administrative procedures means the procedures adopted by the governing body that set forth how the Santa Fe homes program (SFHP) shall be administered.

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

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

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

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

Alternate means of compliance means that SFHP developer has proposed complying with the SFHP requirements through off-site construction, cash payment in lieu of constructing or creating the required SFHP units or manufactured home lots, or dedication of land suitable for construction or creation of inclusionary units of equivalent or greater value than would be required for onsite construction, rather than constructing the required units pursuant to subsection 26-1.33 SFCC 1987.

Applicant means a property owner or agent of a property owner who submits a development request to the city that is subject to any SFHP requirements, or any successor in title that is subject to SFHP requirements.

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 (HUD). However, 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 SFHP.

Certified is a term that describes a buyer of a SFHP unit or renter of such unit who has obtained a certificate demonstrating completion of homebuyer training courses and whose income has been verified by the city or its agent as meeting the income limits that establish eligibility to buy or rent under the program.

City means the city of Santa Fe or its agent.

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

Energy efficiency adjustment means the amount that may be added to the affordable home price of a for-sale SFHP unit that meets energy efficiency standards pursuant to subsection 26-1.16(G) SFCC 1987.

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

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

Income qualified means a buyer or renter whose household income does not exceed the amount that would establish eligibility to buy or rent a SFHP unit, within income ranges established for the program or under specific development agreements.

Income range means the range of area median incomes used in the determination of eligibility of an SFHP home buyer or an SFHP tenant.

Income range 1 means fifty percent (50%) or less of area median income.

Income range 2 means more than fifty percent (50%) but not more than sixty-five percent (65%) of area median income.

Income range 3 means more than sixty-five percent (65%) but not more than eighty percent (80%) of area median income.

Income range 4 means more than eighty percent (80%) but not more than one hundred percent (100%) of area median income.

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 SFHP unit, unless it meets the requirements of 26-2.3 or a housing opportunity program unit.

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

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

Median income means the area median income as defined.

Office of affordable housing means the department created by subsection 26-1.6 SFCC 1987 to administer the SFHP and other affordable housing programs.

Planning and Land use department means the planning and land use department of the city, its agent, or successor.

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

SFHP means Santa Fe homes program.

SFHP agreement means a contract between a property owner of record and the city, whereby the city confers benefits in the form of development incentives to the property owner in exchange for compliance with the SFHP.

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

SFHP development means a tract of land or any improvements thereon that are subject to an SFHP agreement.

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

SFHP home buyer means a purchaser of an SFHP home, the entire household occupying an SFHP home, or the purchaser or entire household occupying an SFHP manufactured home lot.

SFHP manufactured home lot means a lot that is marketed and either sold or rented for the purposes of the placement of a manufactured home and to satisfy SFHP requirements.

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

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

SFHP rental unit means a unit marketed and leased specifically to satisfy SFHP requirements.

SFHP tenant means a lessee of an SFHP rental unit a manufactured home rental lot, or the entire household occupying an SFHP rental unit or SFHP manufactured home lot.

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

Unit means a dwelling unit.

(Ord. #2005-30(A), § 34; Ord. #2007-40, §§ 18, 19; Ord. #2007-45, § 30; Ord. #2009-32, § 1; Ord. #2016-9 § 1; Ord. # 2019-30, § 1; Ord. #2020-22, § 16)

26-1.6 Creation of office of affordable housing.

- A. The office of affordable housing shall be established to administer the Santa Fe homes program in accordance with the provisions of this chapter, and to administer the city's other affordable housing programs.
- B. In administering this chapter, the office of affordable housing shall work with the planning and land use department to eliminate conflict and duplication in the permitting and development approval process.
- C. The office of affordable housing shall administer any agreements previously executed by the city and others.

(Ord. #2005-30(A), § 35; Ord. #2007-45, § 30; Ord. #2020-22, § 15)

26-1.7 Administrative procedures.

- A. The SFHP shall be administered by the city as set forth in the administrative procedures adopted by resolution of the governing body. The administrative procedures shall set forth responsibilities, procedures and standards for administrative actions necessary to implement the SFHP and annexation agreements with affordable housing requirements, which include, without limitation, the following:
 - (1) Submitting and reviewing applicable residential development requests and determining conditions of approval related to the provision of SFHP units or alternate means of compliance.
 - (2) Reviewing and certifying SFHP proposals with property owners to ensure compliance with the SFHP and the administrative procedures.
 - (3) Monitoring the performance of property owners subject to such agreements, and any successors in title that are still subject to such agreements or other requirements of the SFHP and the administrative procedures; and taking appropriate action in the event of noncompliance.
 - (4) Collecting and distributing any payments resulting from SFHP controls on resale or alternative means of compliance with SFHP agreements or annexation agreements that have affordable housing requirements.
- B. The office of affordable housing or its agents shall be responsible for the administration of the SFHP as set forth in the applicable city ordinances and the administrative procedures.
- C. The planning and land use department staff shall:
 - (1) Administer and enforce all planning and land use ordinances that apply to development requests that are subject to this section.
 - (2) Require, as part of the development review process, the applicant to prepare and submit an SFHP proposal to the office of affordable housing to assure compliance with the SFHP Ordinance.
 - (3) Administer provisions for development incentives in the development review process as set forth in this section.
 - (4) Record the SFHP agreements with the respective subdivision plat or development plan at the county clerk's office.
 - (5) Where applicable, invoke sanctions for noncompliance with SFHP agreements at the request of the city manager.
- D. All changes to the administrative procedures other than changes to area median income and related SFHP numerical data shall be reviewed and approved by the governing body.

(Ord. #2005-30(A), § 36; Ord. #2007-45, § 30; Ord. #2007-45, § 30; Ord. #2020-22 , § 16)

26-1.8 Applicability and Amendments to Prior Agreements.

- A. The SFHP ordinance shall apply to the following actions or projects:
 - (1) any application for residential development including, but not limited to, annexation, rezoning, subdivision plat, increase in density, development plan, or extension of, or connection to, city utilities for land outside the city limits;
 - (2) building permits that propose two (2) or more dwelling units or buildings or portions of buildings that may be used for both nonresidential and residential purposes, including single family homes, multifamily housing, live/work housing, and manufactured home lots;

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- (3) new construction, the conversion of existing rental units to ownership units, and the conversion of commercial uses to residential uses;
 - (4) vacation time share projects and short term rental units, to the limited extent described in subsection 26-1.22(B)(1)(c); and
 - (5) any amendment to an SFHP agreement or HOP agreement that was entered into prior to June 8, 2011, so that the amended agreement meets the current requirements of section 26.1.
- B. The SFHP Ordinance shall not apply to the following situations:
- (1) a development or portion thereof that is subject to any formal, written, and binding agreement entered into prior to August 15, 2005, with the city or Santa Fe county in which the signatories agreed to provide affordable housing or payment in lieu thereof;
 - (2) a dwelling unit or manufactured home lot for an elementary, middle or high school; college or university; hospital; or similar institution to be used exclusively by its employees, enrolled students, patients, and their families. If the dwelling unit or lot is no longer used exclusively by such employees, enrolled students, patients, or families, the SFHP Ordinance applies at the time the units are converted;
 - (3) any non-residential portion of a development;
 - (4) a family transfer as set forth in subsection 14-3.7(F); or
 - (5) a division of land into two (2) lots as set forth in subsection 14.3.7(D).
- C. Petitioners for annexations and the office of affordable housing shall negotiate all terms for providing affordable housing on the site for which annexation is proposed, including the distribution of development types and the number of SFHP units required or alternate means of compliance. The number of SFHP units required or alternate means of compliance may be in excess of that otherwise required by the SFHP ordinance. These terms shall be included in the annexation agreement. To the extent practicable, all other SFHP requirements shall apply to annexations. In no case shall the agreement provide for less affordable housing or a lesser in-lieu contribution than required by the SFHP ordinance. As the property is developed, a SFHP developer shall record with each subdivision plat or development plan a separate SFHP agreement in compliance with the annexation agreement.
- D. All provisions of the prior ordinance, titled housing opportunity program (HOP), remain in full force and effect with respect to any and all agreements executed by the city and others that were required by HOP or incorporated HOP provisions by reference. Accordingly, the office of affordable housing will continue to use and annually update the administrative procedures for the HOP ordinance until such time as all obligations under such agreements have been satisfied.
- E. If the amendment to a SFHP agreement or HOP agreement that was entered into prior to June 8, 2011, reduces or redistributes the SFHP or HOP lots contemplated by an annexation agreement, subdivision plat, or development plan, then the annexation agreement, subdivision plat, or development plan shall be administratively amended to reflect the reduction and redistribution of SFHP or HOP lots, and the amended annexation agreement, subdivision plat, or development plan shall be recorded or filed, as applicable, by the owner or developer.
- F. The applicant is responsible for determining the applicability of the SFHP Ordinance to the proposed development and for complying with the requirements of SFHP.
- (Ord. #2005-30(A), § 37; Ord. #2007-40, § 20; Ord. #2008-45, § 4; Ord. #2011-17, § 2; Ord. #2014-10, § 4; Ord. #2019-30, § 2)

26-1.9 Presubmission conference.

Prior to the submittal of a development request to the planning and land use department or to the public utilities department, if the applicant is submitting a request for the extension of or connection to city utilities for a development located outside the city limits, to which the SFHP applies as set forth in subsection 26-1.8 SFCC 1987, a presubmission conference with the office of affordable housing is required with regard to the development proposal and SFHP requirements.

(Ord. #2005-30(A), § 38; Ord. #2007-45, § 30; Ord. #2020-22 , § 16)

26-1.10 Requirement, scope and content for SFHP proposals.

SFHP proposals shall be required by the city for all developments as set forth in subsection 26-1.8 SFCC 1987. SFHP proposals shall include the applicant's plan for providing SFHP units or alternate means of compliance as required by the SFHP Ordinance, and comply with all provisions set forth in the administrative procedures, including but not limited to a timetable for delivering SFHP units or completing alternate means of compliance.

(Ord. #2005-30(A), § 39)

26-1.11 Submission and review of SFHP proposals.

- A. An SFHP proposal shall be submitted with any development request to which SFHP applies. The office of affordable housing shall provide a form that may be used to complete SFHP proposals and advise the applicant regarding responsiveness to SFHP requirements. Each SFHP proposal shall be reviewed by the office of affordable housing. After review, the office of affordable housing shall either approve the SFHP proposal or disapprove the SFHP proposal and refer it back to the applicant with written comments regarding the proposal's deficiencies.
- B. A revised SFHP proposal shall be submitted and reviewed by the office of affordable housing if changes in the SFHP proposal are necessary because of changes in the development request as it proceeds through the development review process.

(Ord. #2005-30(A), § 40; Ord. #2007-40, § 21)

26-1.12 Appeals.

- A. Any applicant aggrieved of a decision of city staff regarding the Section 26-1 shall appeal to the governing body.
- B. The applicant may proceed with other submissions related to the development request while any appeal is being considered.
- C. Appeals shall be filed within thirty (30) days of the action appealed.

(Ord. #2005-30(A), § 41; Ord. #2009-42, § 27)

26-1.13 Processing and approval of development requests subject to SFHP.

The planning and land use department and the planning commission or the public utilities department and governing body, if the applicant is submitting a request for the extension of or connection to city utilities for a

development located outside the city limits, shall accept, review and decide on plan submissions on development requests subject to SFHP requirements as follows:

- A. No submission shall be heard by the review body unless an SFHP proposal has been approved by the office of affordable housing or the SFHP proposal has been appealed in accordance with SFHP requirements.
- B. Development incentives shall be included in SFHP developments as set forth in subsection 26-1.34 SFCC 1987.
- C. If an SFHP proposal is subject to appeal, the outcome of the appeal process may determine whether the development incentives set forth in subsection 14-8.11(G) apply. In this case, the applicant may choose one (1) of the following options with regard to continued processing of the development proposals:
 - (1) Processing may be suspended until the appeal is heard and decided; or
 - (2) Processing may be continued. In this case, the applicant may determine whether to incorporate in the development proposal any development incentives which are subject to the outcome of the appeal.

(Ord. #2005-30(A), § 42; Ord. #2007-45, § 30; Ord. #2020-22 , § 16)

26-1.14 Execution of SFHP agreements.

The governing body delegates authority to enter into SFHP agreements to the city manager. Following the final approval of the development proposal the SFHP agreement shall be executed by the city manager and the applicant. The agreement shall be referred to and recorded as set forth in subsection 26-1.10 SFCC 1987.

(Ord. #2005-30(A), § 43)

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

- A. If a SFHP developer obtains a residential building permit for a SFHP development, twenty percent (20%) of the total number of dwelling units or manufactured home lots offered for sale in an SFHP development shall be SFHP homes, sold at income range prices as follows:
 - (1) Five percent (5%) of the total dwelling units or manufactured home lots at or below the affordable home price or affordable manufactured home lot price, as applicable, for income range 2,
 - (2) Ten percent (10%) of the total dwelling units or manufactured home lots at or below the affordable home price or affordable manufactured home lot price, as applicable, for income range 3, and
 - (3) Five percent (5%) of the total dwelling units or manufactured home lots at or below the affordable home price or affordable manufactured home lot price, as applicable, for income range 4.
- B. If an applicant exceeds the percentage of units or manufactured home lots in income range 2 or income range 3 as set forth above, the requirement in any higher income range may be reduced by the same percentage.
- C. The whole number resulting from this calculation shall be the number of SFHP homes required to be constructed or SFHP manufactured home lots to be created. If the calculation results in a fraction of a unit, this obligation shall be satisfied as set forth in the administrative procedures. Nothing herein shall prohibit a developer from building a greater number of SFHP homes or creating a greater number of SFHP manufactured home lots than required. Additional units shall meet all the requirements as an SFHP home or

manufactured home lot to be considered an SFHP home or manufactured home lot. The SFHP developer shall receive the fee waivers described in subsection 14-8.11(G)(2) for such additional units so long as those units meet all SFHP requirements.

- D. In any development with a mix of rental and ownership units or manufactured home lots, or including units with varying numbers of bedrooms, the number of manufactured lots or affordable units shall be distributed among these categories in numbers that are proportionate to the proposed number of market rate lots or units in each category.
- E. In any development with both detached and attached ownership units, the number of detached and attached SFHP units shall be in the same proportion as the number of detached and attached non-SFHP units.
- F. In the event that two (2) or fewer SFHP homes or SFHP manufactured home lots are required, the SFHP homes or manufactured home lots shall be sold to buyers in income range 3 or lower.
- G. If a SFHP developer obtains a residential building permit for a SFHP development with between two (2) and ten (10) total for-sale units, then the city shall assess a seventy percent (70%) reduction in fees associated with such development, and the developer may pay a fee in lieu of providing the required percentage of units.

(Ord. #2005-30(A), § 44; Ord. #2007-40, § 22; Ord. #2011-17, § 3; Ord. #2014-10, § 5; Ord. # 2019-30 , § 3)

26-1.16 Determination of affordable home price.

- A. To ensure the SFHP homes are affordable, the affordable home prices are calculated to ensure that the sum of principal and interest payments, taxes, property insurance and mortgage insurance does not exceed thirty-three percent (33%) of the monthly income of the assumed household size in each applicable income range. The affordable price shall be determined at the midpoint in each income range as determined by the current pricing schedule based on HUD's area median income (AMI) figures for Santa Fe city.
- B. The affordable manufactured home lot price shall be twenty-five percent (25%) of the affordable home price for a three-bedroom home for each applicable income range, determined by the current SFHP pricing schedule in effect at the time of the SFHP development application.
- C. Beginning in 2006 and every year thereafter, the office of affordable housing shall review and adjust the affordable home price and affordable manufactured home lot for each applicable income range and home size based on the changes in area median income from the previous twelve (12) months, as determined by HUD. The price schedule will be adjusted within thirty (30) days of the release of the HUD data. However, every three (3) years thereafter at a minimum, the governing body shall review the methodology for calculating annual increases and make appropriate adjustments if necessary. The office of affordable housing shall report to the governing body within thirty (30) days of adjusting the affordable home price and affordable manufactured home lot price.
- D. The affordable home price and affordable manufactured home lot price shall be reduced pursuant to administrative procedures in order to limit the impact on SFHP home buyers of fees assessed by condominium, common area, or homeowner associations. The affordable home price or affordable manufactured home lot price shall be reduced so that the buyer's mortgage or manufactured home loan principal amount and, accordingly, the buyer's monthly mortgage payments, are reduced by an amount equal to the assessed fee in excess of an allowable base fee, established pursuant to administrative procedures and updated annually according to the HUD's AMI figures.

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- E. Pursuant to administrative procedures, the affordable home price may be increased at the request of the SFHP home buyer by the price of allowable option upgrades, not to exceed the maximum option upgrade allowance.
 - F. Beginning in 2006 and every year thereafter, the office of affordable housing shall review and adjust the maximum option upgrade allowance based on changes in the area median income for the previous twelve (12) months. Permissible items to be included in the maximum option upgrade allowance shall be determined pursuant to administrative procedures.
 - G. Pursuant to administrative procedures, the affordable home price may be increased by the amount of the approved energy efficiency adjustment.

(Ord. #2005-30(A), § 45; Ord. #2007-40, § 23; Ord. #2009-32, § 2; Ord. #2010-13, § 1; Ord. #2014-10, § 6)

26-1.17 Design, unit types, siting, warranty requirements for SFHP homes.

- A. The SFHP homes shall be constructed according to the guidelines for bathrooms and areas of habitable residential space described in the administrative procedures and any deviation from the guideline is subject to city approval. Habitable space shall be defined and calculated in accordance with the city's building code, except that the minimum area of SFHP homes may be greater than minimum building code requirements.
- B. The distribution of SFHP homes is presented in a guideline in the administrative procedures. The SFHP developer may request approval from the office of affordable housing to provide a mix of unit sizes that varies from the guideline presented in the administrative procedures. Factors that may be considered as a basis for approving a different unit size mix include, but are not limited to:
 - (1) A different mix would better match the mix of non-SFHP homes within the development.
 - (2) A different mix would better match the consumer demand for SFHP homes.
- C. In developments where units are converted from existing rental units to ownership units, the mix of size and type of SFHP homes offered for sale shall be in proportion to the mix of non-SFHP homes offered for sale.
- D. SFHP homes at different price levels and of different home sizes shall be dispersed among the non-SFHP homes and be evidenced by designation of home lots at time of plat recording for each phase of development on the basis that the proposed dispersal takes full advantage of affordable housing opportunities that would not otherwise be maximized.
- E. The SFHP homes shall be similar in architectural and landscaping appearance to the non-SFHP homes.
- F. The seller of an SFHP home shall provide a warranty of at least one (1) year covering defects in materials and workmanship in addition to any manufacturers' warranties or warranties provided by a contractor or subcontractor, such as warranties on roofing and appliances. The minimum one (1) year warranty on defects in materials and workmanship shall not preclude the seller or any person from providing a warranty of longer period. No developer, seller, general contractor, subcontractor or other person shall be permitted to request that an SFHP homebuyer sign a waiver of the required warranty. Any such waiver shall be considered null and void.

(Ord. #2005-30(A), § 46; Ord. #2007-40, § 24; Ord. #2014-10, § 7)

26-1.18 Affordability controls on SFHP homes; rental prohibition.

- A. An SFHP developer selling a SFHP home or manufactured home lot shall cause to be recorded, in the county clerk's office, simultaneous with the recording of the deed of sale, a form of deed restriction, restrictive covenant or other legal instrument that fulfills the requirements set forth in the administrative procedures

with regard to controls placed on the occupancy and subsequent resales of SFHP homes and SFHP manufactured home lots. In order to maintain affordability, the SFHP developer shall impose resale controls consisting of mortgage liens, which include right of first refusal requirements as set forth in the administrative procedures. The effect of the recordation of said document(s) shall be to create, in accordance with state law, an obligation that runs with the property. The city shall approve the form of such documents prior to recordation. Initial affordability shall be achieved by including in the SFHP agreement terms of an escrow instruction requiring certification of SFHP compliance by the escrow agent.

- B. The amount of the above-described lien will be the difference between the SFHP price and the initial market value of the SFHP home or SFHP manufactured home lot. In order to provide additional equity to the SFHP buyer at the time of purchase, the initial market value shall be determined as ninety-five percent (95%) of the appraised value of the SFHP home or SFHP manufactured home lot.
- C. The affordability lien, as described, is non-interest bearing, no payment due until sale or transfer, and subordinate to the buyer's first position financing and other sources of subsidized assistance.
- D. Upon resale of an SFHP home or manufactured home lot, the affordability lien may be assumed by another SFHP buyer as approved by the city or its agent, or the seller must repay the SFHP lien to the city or its agent. In the event that the home has lost value, through no fault of the seller, and the sales proceeds are not enough to pay off the seller's primary financing and other assistance to which the affordability lien is subordinate, the city will reduce the amount of the lien due to ensure that all other obligations are met, however, in no event, shall the city release more than the total amount of the lien.
- E. The proceeds of repayment of SFHP liens resulting from SFHP agreements or annexations and held by the city shall be credited to a housing trust fund approved by the governing body and managed by the office of affordable housing, which may include funds from other sources. Uses of housing trust fund monies may include down payment assistance, as well as subsidies for low-income rental, emergency and special needs housing. Funding from the trust fund must be awarded through a competitive process.
- F. An SFHP home buyer or SFHP manufactured home lot buyer shall not rent the SFHP unit or manufactured home lot to a second party, except as approved in writing by the office of affordable housing for instances in which the owner is under duress by reason of unemployment, family medical emergencies, or inability to sell the home for an amount equal to or greater than the original sale price, or other unique circumstances of family hardship. The city, at its sole discretion will approve or disapprove the request to rent a SFHP home pursuant to administrative procedures.
- G. As a condition of participation in the SFHP, a SFHP home buyer or SFHP manufactured home lot buyer shall agree to fill out a brief questionnaire upon resale of the unit or lot for the purposes of assessing the effectiveness of the SFHP. Such questionnaire shall be included in the administrative procedures and referenced as Appendix E.

(Ord. #2005-30(A), § 47; Ord. #2007-40, § 25; Ord. #2014-10, § 8)

26-1.19 Enforcement of SFHP agreement.

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

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- B. *Multifamily rental projects.* At the time of final execution of a SFHP agreement, the City shall place a lien on the relevant property to capture the value of the fees waived or other quantifiable incentives provided under section 14-8.11(G) SFCC 1987 by the city for the associated project. If a project owner-operator fails to comply with the provisions of the SFHP, the city may enforce the lien as provided by law unless the noncompliance is cured.
 - C. *General enforcement provisions.* The enforcement provisions set forth in subsections 1-3 and 14-11 SFCC 1987 shall apply to all instances of noncompliance with the SFHP.

(Ord. #2005-30(A), § 48; Ord. # 2019-30 , § 4)

26-1.20 Marketing to and certifying SFHP buyers.

- A. SFHP developers shall market SFHP homes and SFHP manufactured home lots in accordance with the requirements set forth in the administrative procedures. Any marketing materials shall clearly state the policies of the SFHP program with regard to pricing of SFHP homes and manufactured home lots and buyer eligibility.
- B. In marketing SFHP homes and SFHP manufactured home lots the city or seller shall give preference to individuals who are citizens of Santa Fe county and/or are presently employed or under contract with an employer within Santa Fe county as may be limited by federal programs.
- C. The city or its agent shall maintain lists of prospective SFHP buyers who have passed preliminary prequalifications for financing. The city or its agent shall maintain information on basic homebuyer characteristics, such as household size and income by AMI to monitor the match between production and affordable housing demand. For SFHP developments for which the city or its agent expects immediate effective demand to outstrip the supply, the city or its agent may establish and maintain a fair and competitive process for allocating rights to purchase the homes or manufactured home lots. In developments where the city or its agent has established such a process, the developer shall be required to follow the process when selecting SFHP buyers. For developments other than those described above, the developer shall establish and maintain an equitable process of marketing homes and manufactured home lots, including waiting lists where demand exceeds supply.
- D. For each development with SFHP homes or SFHP manufactured home lots for sale, including annexations subject to SFHP, the office of affordable housing shall designate a qualified organization(s) to provide income certifications and maintenance of waiting lists. The office of affordable housing shall establish an equitable process for selecting the organization or organizations providing these services, which process shall provide an opportunity for the developer to provide input as to the organization(s) selected. The organization and the SFHP developer shall enter into a written agreement that describes the scope of services and, if appropriate, fee structure. The SFHP developer may not terminate such agreement with the organization without the consent of the office of affordable housing. Notwithstanding those requirements, and in order to assure access to SFHP homes and manufactured home lots by all potentially qualified SFHP buyers, any other service provider operating a homebuyer training, counseling and certification program approved by the office of affordable housing may refer its clients to the selected organization for possible purchases of the SFHP homes or manufactured home lots. A SFHP developer may enter into agreements with outside entities to provide marketing or other services, which agreement shall not require approval from the office of affordable housing.
- E. Prior to executing a purchase contract for any SFHP home or SFHP manufactured home lot, the prospective SFHP buyer shall be certified as meeting SFHP requirements by the city or its agent. The certification shall be as set forth in the administrative procedures. SFHP developers and SFHP buyers may execute only purchase agreements that are approved as to form by the city and include language provided by the city which shall require that an appropriate disclosure form be provided to and explained to the SFHP buyer prior to

execution of the contract. The disclosure form shall explain any deed restrictions, restrictive covenants and/or liens that are placed on the SFHP home or lot to ensure long-term affordability.

(Ord. #2005-30(A), § 49; Ord. #2007-40, § 26)

26-1.21 Eligibility of SFHP buyers.

- A. The household income of an SFHP homebuyer shall not exceed the defined income ranges as set forth in subsection 26-1.5 SFCC 1987 except as set forth in paragraph E below.
- B. The household income of an SFHP manufactured home lot buyer shall not exceed the defined income ranges as set forth in subsection 26-1.5 SFCC 1987 for a three-person household, regardless of the household size of the SFHP buyer except as set forth in paragraph E below.
- C. SFHP homebuyers and SFHP manufactured home lot buyers shall also meet additional eligibility criteria established in the administrative procedures.
- D. Household sizes are provided as a guideline for SFHP homes in the administrative procedures unless the office of affordable housing approves in writing a smaller minimum household size.
- E. An eligible buyer meeting the criteria of armed services veteran, emergency worker, first responder, teacher or related educational employees in Santa Fe county whose household income exceeds one hundred percent (100%) of area median income (AMI) but does not exceed one hundred twenty percent (120%) of AMI shall be eligible to purchase an SFHP unit in income range 4.
 - (1) The status of the buyer as a veteran, emergency worker or first responder shall be verified by the office of affordable housing.
 - (2) The office of affordable housing shall maintain a list of occupations that meet the requirement of emergency worker, first responder or essential worker, and the verification of veteran status pursuant to administrative procedures.
 - (3) All other eligibility requirements shall apply.

(Ord. #2005-30(A), § 50; Ord. #2007-40, § 28; Ord. #2014-9 § 1; Ord. #2014-10, § 9)

26-1.22 Requirements for SFHP rental units.

- A. If a SFHP developer obtains a residential building permit for multifamily residential development between January 1, 2016, and December 31, 2019, then a fee associated with such development shall be assessed in accordance with SFHP administrative procedures. If applicable, an annexation agreement, subdivision plat, or development plan shall be administratively amended to reflect the updated requirement and the amended document shall be recorded or filed, as applicable, by the owner or development. Incentives for SFHP developers as set forth in subsection 14-8.11 SFCC 1987 will not be available for these projects, other than the density bonus pursuant to subsection 14-8.11(G)(1).
- B. Effective January 1, 2020, and thereafter, a SFHP developer that obtains a building permit for a multifamily residential development shall comply with the SFHP ordinance by either paying a fee, creating LPDUs, or affordable on-site units as follows:
 - (1) *Fee in lieu.* The SFHP developer may pay of a fee in lieu of providing on-site units, assessed according to an "affordability gap" calculation that determines the base fee, which is the difference between a FMR and the rent affordable to a renter earning sixty-five percent (65%) of the AMI.

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- (a) The steps of the calculation of the base fee amount, as more fully described in the administrative procedures, are as follows:
 - (i) multiply the total number of units (broken out by number of bedrooms) by fifteen percent (15%) to determine the number of affordable units;
 - (ii) multiply the number of affordable units by the base fee associated with each type of unit (broken out by number of bedrooms) to determine the monthly fee; and
 - (iii) multiply the monthly fee by twenty-four (24) months to determine the total project fee.
 - (b) HUD's FMR will be used to establish the affordability gap ("base fee amount") relative to HUD's AMI data. Developers shall pay phased fee increases according to when projects are permitted as follows:
 - (i) for units permitted on or before June 30, 2020, the base fee amount;
 - (ii) for units permitted between July 1, 2020, and June 30, 2021, the base fee, increased by twenty percent (20%) fee increase;
 - (iii) for units permitted between July 1, 2021, and June 30, 2022, the base fee, increased by forty percent (40%) fee increase;
 - (iv) for units permitted between July 1, 2022, and June 30, 2023, the base fee, increased by sixty percent (60%) increase;
 - (v) for units permitted between July 1, 2023, and June 30, 2024, the base fee, increased by eighty percent (80%) increase; and
 - (vi) for units permitted on or after July 1, 2024, the base fee, increased by one hundred percent (100%).
 - (c) A SFHP developer that creates a vacation time share project or short term rental units shall be subject to the fees set forth in this subparagraph 26-1.22(B)(1);
 - (d) A small multifamily rental project that consists of twelve (12) or fewer units shall pay the base fee amount, which shall be calculated as the difference between a FMR and the rent affordable to a renter earning sixty-five percent (65%) of the AMI, and shall not be subject to the phased fee increases set forth in subsection 26-1.22(B)(1)(b).
 - (e) No later than July 1, 2022 staff shall initiate a review of the provisions of subsection 26-1.22(B)(1), as established by ordinance no. 2019-30, and shall present the findings to the governing body within six (6) months.
- (2) *One-hundred percent (100%) LPDUs.* An SFHP developer may create a development that consists of one-hundred percent (100%) LPDUs that shall comply with the requirements set forth in subsection 26-2.3;
 - (3) *Fifteen percent (15%) affordable rental units.* An SFHP developer may set aside of fifteen percent (15%) of on-site rental units for income certified renters as described in subsection 26-1.23(A); or
 - (4) *Combination.* An SFHP developer may combine two (2) or more of the preceding three (3) options if such a combination provides an equivalent and beneficial impact toward meeting identified housing needs, subject to approval by the office of affordable housing. If a developer chooses to provide a combination of the options, then the city shall provide the developer incentives set forth in subsection 14-8.11(G), as approved by the land use director.
- C. The marketing, leasing, and occupancy of either an SFHP rental unit or an SFHP manufactured home lot that is rented shall conform to the criteria set forth in the administrative procedures. Rental rates shall comply

with the rates set forth in subsection 26-1.24 SFCC 1987. SFHP rental units shall comply with the minimum size, unit type(s), and other structural requirements set forth in subsection 26-1.25 SFCC 1987. SFHP developers must obtain approval for the location of SFHP rental units. The units or manufactured home lots shall have compatible exterior architectural and landscaping appearance with other units in the development.

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

(Ord. #2005-30(A), § 51; Ord. #2014-10, § 10; Ord. #2016-9 § 2; Ord. # 2019-30 , § 5)

26-1.23 Compliance Requirements for Set Aside of Affordable On-Site Units for Income Certified Renters.

- A. An SFHP developer that chooses the compliance option described in subsection 26-1.22(B)(3) shall set aside at least fifteen percent (15%) of units or manufactured home lots for income certified renters, as described in the administrative procedures developed by the office of affordable housing. These units shall be set aside for renters earning no more than eighty percent (80%) of the AMI, and affordable rental rates shall be determined pursuant to section 26-1.24. Renters who are certified by the office of affordable housing or the city's approved subsidy provider to receive federal or local rental vouchers will have preference for access to SFHP units. All terms of the subsidy provided to income certified renters must conform to HUD standards, as verified by the office of affordable housing.
- (1) *Incentives for SFHP developers.* Projects that include on-site affordable rental units shall receive the incentives set forth in subsection 14-8.11(G). The city shall provide the development fee waivers and other cost reductions in an amount that is double the percentage of affordably priced units (e.g., the reduction would be applied to thirty percent (30%) of the total units if the developer provides fifteen percent (15%) affordable units).
- (2) *Annual reporting and compliance monitoring.* Project owner-operators shall report their inventory of units rented according to income and rent restrictions described in their respective SFHP agreements, including certifications of income qualification, to the city on an annual basis.
- B. The whole number resulting from applying the percentage calculation to the total number of units as specified in the SFHP proposal and agreement shall be the number of required SFHP rental units or rental manufactured home lots. If the calculation described results in a fraction of a unit or manufactured home lot, the minimum SFHP unit obligation shall be satisfied as set forth in the administrative procedures. Nothing herein shall prohibit a developer from building a greater number of SFHP rental units or creating a greater number of SFHP rental manufactured home lots than required. Such additional units shall meet all the requirements as an SFHP rental unit or manufactured home lot. The SFHP developer shall receive the fee waiver described in subsection 14-8.11(G)(2) for such additional units so long as the units meet all SFHP requirements.

(Ord. #2005-30(A), § 52; Ord. # 2019-30 , § 6)

Editor's note(s)—Formerly entitled "Required number of SFHP rental units in a development," which was amended by Ord. # 2019-30 .

26-1.24 Determination of affordable rent.

- A. To ensure that rental rates do not exceed thirty percent (30%) of the monthly income for both rent and utilities for households according to the occupants applicable income range, as certified by a HUD-compliant income certification, the affordable rent for SFHP rental dwelling units shall be determined annually, based on HUD income limits.
- B. The required rental rates include utilities and shall be adjusted if utilities are provided separately.
- C. The affordable rent for manufactured home lots shall not exceed thirty percent (30%) of the affordable rent for a three (3)-bedroom dwelling unit.
- D. Beginning in 2006 and every year thereafter, affordable rent and affordable manufactured home lot rent shall be adjusted by the percentage change in area median income from the previous twelve (12) months, as per HUD's annual determination of income limits, and the office of affordable housing shall issue an updated schedule of affordable rents and affordable manufactured home lot rent for qualified income ranges. The office of affordable housing shall report to the governing body within thirty (30) days of adjusting affordable rents and affordable manufactured home lot rent.

(Ord. #2005-30(A), § 53; Ord. #2007-40, § 28; Ord. #2014-10, § 11; Ord. # 2019-30 , § 7)

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

On-site affordable SFHP rental dwelling units created pursuant to subsection 26-1.23 shall be constructed according to the following guidelines for bathrooms and area of habitable residential space:

| 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 |

Habitable space shall be defined and calculated in accordance with the city's building code.

(Ord. #2005-30(A), § 54; Ord. # 2019-30 , § 8)

26-1.26 Marketing to and certifying SFHP tenants.

- A. Owners of SFHP developments for rental housing or rental manufactured home lots shall market the SFHP rental units to ensure that the target market, income-qualified renters, are reached. Marketing materials shall clearly state the policies of the SFHP program with regard to pricing of SFHP rental units and tenant eligibility. For developments with SFHP rental units for which the city or its agent expects immediate effective demand to outstrip the supply, the city or its agents shall establish and maintain a fair and competitive process for allocating rights to lease the SFHP rental units. In developments where the city or its agent has established such a process, the developer shall follow the process when selecting SFHP tenants. For developments besides those described above, the developer shall establish and maintain an equitable process of marketing SFHP rental units, including waiting lists where demand exceeds supply.

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- B. When renting SFHP rental units, the landlord shall give preference to individuals who are residents of Santa Fe county or are presently employed or under contract with an employer within Santa Fe county, as may be limited by federal programs.
 - C. Prior to executing a lease for any SFHP rental unit, the prospective SFHP tenant shall be certified as meeting the SFHP requirements by the city or its agent. Nothing, however, in this chapter or administrative procedures shall be construed so as to penalize qualifying renters for changes in family size due to changes in the number of dependents in a particular household.
 - D. Any owner or agent required to provide SFHP rental units shall not discriminate against a tenant for proposing to use federal or other rent subsidies.

(Ord. No. 2005-30(A), § 55; Ord. # 2019-30 , § 9)

26-1.27 Eligibility of SFHP tenants.

- A. The household income of an SFHP tenant renting an SFHP rental dwelling unit shall not exceed the defined income ranges as set forth in subsection 26-1.5 SFCC 1987.
- B. The household income of an SFHP tenant renting an SFHP rental manufactured home lot shall not exceed the defined income ranges as set forth in subsection 26-1.5 SFCC 1987 for a three-person household regardless of the household size of the SFHP tenant.
- C. SFHP tenants and SFHP manufactured home lot tenants shall also meet additional eligibility criteria established in the administrative procedures.
- D. An SFHP rental unit may not be rented to a household which is smaller than the following household sizes unless the office of affordable housing approves in writing a smaller minimum household size:

| 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 |

(Ord. #2005-30(A), § 56)

26-1.28 Allowed and disallowed uses of subsidies.

Prospective tenants who may be income eligible and have rent subsidy, such as a Section 8 Voucher, are eligible to rent a SFHP unit; however, under no circumstances shall rents in excess of fair market rent (FMR) as established annually by HUD, be charged. Developers of SFHP rental units may use any type of capital development subsidy to achieve the required rents.

(Ord. #2005-30(A), § 57; Ord. #2007-40, § 29; Ord. #2014-10, § 12)

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

- A. *LPDUs.* A project owner-operator subject to the compliance option set forth in subsection 26-1.22(B)(2) shall comply with the requirements set forth in subsection 26-2.3(C) SFCC 1987 for a minimum time period of ten (10) years from the time of each unit's initial occupancy. At the end of the initial ten (10)-year tenancy, the project owner-operator shall provide six (6)-months' notice of the reversion to full market rents at the end of the compliance period. Owner-operators shall give priority to current renters to continue occupancy of their units if they can meet all terms of tenancy.
- B. *Affordable rental set-aside units.* A project owner-operator subject to the compliance option set forth in subsection 26-1.22(B)(3) shall set aside affordable units for a minimum of ten (10) years from the date at which the property is fully leased for the set-aside units as described in subsection 26-1.23. At the end of the initial ten (10)-year tenancy, the project owner-operator shall comply with a relocation plan for each subsidized tenant, as developed and managed by the city's approved rental subsidy provider. No tenant's occupancy may be ended without a suitable relocation option.
- C. *Rental manufactured home lots.* A project owner-operator of a rental manufactured home lot development subject to SFHP (or portions thereof completed and occupied at different times) shall maintain required occupancy and rental rates in SFHP units for a period of ten (10) years.
- D. *Successors in title.* The requirements of this subsection 26-1.29 shall be made applicable to successors in title, if any, by means of a deed restriction.

(Ord. #2005-30(A), § 58; Ord. #2014-10, § 13; Ord. # 2019-30 , § 10)

26-1.30 Monitoring by the city of SFHP leases and enforcement of agreements.

SFHP agreements involving SFHP rental units shall provide for annual monitoring and certification of leased SFHP rental units by the city or its agents, as set forth in the administrative procedures. The city shall have the right to inspect and photocopy all accounting and occupancy records with regard to any SFHP rental unit. It shall further have the right to contact and interview any SFHP tenant with regard to compliance issues. Owners of SFHP rental units shall keep adequate records of all payments of rent and data concerning tenants, in accordance with standard practices of the rental housing industry. If disputes arise over what constitutes adequate record keeping, the city or its agents under its SFHP agreement shall have the right to require owners to adopt financial and information management practices that are recommended by a certified public accountant and/or property management manuals published by the institute of real estate management. The city, or its agents shall have access to all relevant financial and tenant information records during normal business hours, upon providing verbal or written notice at least two (2) business days prior to a proposed monitoring visit. Upon completion of this annual monitoring activity, the city, or its agents shall certify that the property owner is in compliance with the SFHP agreement, or shall issue findings of noncompliance. Upon findings of noncompliance with the SFHP agreement, the city, or its agents shall issue orders for bringing the SFHP development into compliance. Such orders shall give the property owner twelve (12) months to reach compliance, but may also require actions to compensate for noncompliance. If a property owner willfully and continually refuses to comply with SFHP agreements or related orders from the city, the city or its agents may invoke sanctions set forth in subsection 26-1.19 SFCC 1987.

(Ord. #2005-30(A), § 59; Ord. #2014-10, § 14)

26-1.31 Simplified compliance and low-income housing tax credit projects.

Notwithstanding any other terms of SFHP or a SFHP agreement, if rental units in a SFHP development have been awarded tax credits under the federal low-income housing tax credit program, or have received substantial subsidy under another local, state or federal funding program that enables the project to serve renters or meets other emerging needs as identified in the city's annual action plan and approved by HUD, such units shall be deemed to comply with all tenant certification and rental requirements of the SFHP program, so long as the project is in good standing with regard to the monitoring standards of that program. For such projects in good standing, the only monitoring required by the city shall be delivery to the office of affordable housing, within ten (10) days of receipt, all copies of the monitoring agency's reports and correspondence with regard to compliance monitoring.

(Ord. #2005-30(A), § 60; Ord. #2014-10, § 15)

26-1.32 Timing of compliance; for sale and for-rent housing.

- A. In an SFHP development, completed SFHP homes or SFHP manufactured home lots shall be made available for sale in proportion to the offering for sale of unimproved lots or non-SFHP units or non-SFHP manufactured home lots as set forth in the administrative procedures. In an SFHP development, the required number of SFHP rental units shall be leased as each building or phase of the project is offered for rent as set forth in the administrative procedures. A phase shall be defined as a group of units or manufactured home lots which is completed and ready for occupancy within a period of one (1) year. A developer may sell or lease SFHP units or manufactured home lots earlier than required herein.
- B. Fee in lieu of contributions approved as an alternate means of compliance shall be due and deliverable as provided in the administrative procedures. An applicant may, at the applicant's option, propose an alternative to this requirement in which staged payments are made upon the predicted occurrence of certain events as set forth in the administrative procedures. The value of each contribution shall be determined as set forth in the administrative procedures.

(Ord. #2005-30(A), § 61; Ord. #2007-40, § 30)

26-1.33 Alternate means of compliance.

- A. One of the goals and purposes of the SFHP is to foster economic integration by requiring that developers provide required SFHP units and manufactured home lots on the property proposed for development. However, it is recognized that at times this approach may not be feasible for a variety of reasons. In this event, the applicant may seek permission from the governing body to comply with the SFHP through any one or combination of the following alternative means acceptable to the city in its sole discretion: off-site construction, cash payment in lieu of constructing or creating the required SFHP units or manufactured home lots or dedication of land suitable for construction or creation of inclusionary units of equivalent or greater value than would be required for onsite construction.
- B. The city may approve an alternate means of compliance for the following, provided that any approval must be based on a finding that the purposes of this chapter would be better served by implementation of the proposed alternative(s). In determining whether the purposes of this chapter would be better served under the proposed alternative, staff from the planning and land use department and the office of affordable housing shall consider the factors listed in subsection 26-1.33C below. Consideration of these factors will provide basis for staff's recommendation regarding the approval or denial of alternate compliance to the governing body.

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- (1) SFHP for-sale projects;
 - (2) SFHP rental projects; and
 - (3) SFHP projects that meet the definition of a vacation time share project as set forth in Section 14-12 SFCC 1987.
- C. In determining whether the purposes of this chapter would be better served under the proposed alternative, the city shall consider the following:
- (1) The extent to which the proposed alternate results in a benefit that responds directly to a community-wide documented need as determined by the governing body;
 - (2) Whether implementation of an alternative would overly concentrate SFHP units within any specific area and if so must reject the alternative unless the undesirable concentration of the SFHP units is offset by other identified benefits that flow from implementation of the alternative in issue; and
 - (3) The extent to which other factors affect the feasibility of prompt construction of the SFHP units on the property, such as costs and delays, the need for appraisal, site design, zoning, infrastructure, clear title, grading and environmental review; and
 - (4) The potential of leveraging funds for other needed affordable housing programs described in the city's housing plans.
- D. The value of the fee in lieu contribution shall be established pursuant to administrative procedures.
- E. The governing body, at its sole discretion, may grant a waiver of the SFHP requirements. Any approval of a waiver for any sized project shall be based on the finding that the condition of extreme hardship, as defined, cannot be sufficiently alleviated by the alternate means of compliance described in paragraph B.
- (Ord. #2005-30(A), § 62; Ord. #2007-40, § 31; Ord. #2008-45, § 5; Ord. #2014-10, § 16; Ord. #2016-9 § 3; Ord. #2020-22, § 16)

26-1.34 Incentives for SFHP developers.

Incentives for SFHP developers shall be as set forth in subsection 14-8.11 SFCC 1987.

(Ord. #2005-30(A), § 63)

26-1.35 Separability.

The provisions of this chapter are separable and invalidity of any part of this chapter shall not affect the validity of the rest of the chapter.

(Ord. #2005-30(A), § 64)

26-1.36 Effective date.

The effective date of this chapter shall be February 20, 2016, (ten (10) days after passage of this chapter).

(Ord. #2005-30(A), § 65; Ord. No. 2016-9 § 4)

26-1.37 Annual review.

The governing body shall review this chapter twelve (12) months after the effective date and each year thereafter. The purpose of the review is to evaluate the effectiveness of the chapter. The review shall include at a minimum the number of SFHP units or manufactured lots created, the number of qualified households placed and the number of density bonus units approved. The review shall also include an economic analysis regarding the impact on the city's revenues due to the fee waivers and other development incentives granted. The analysis should include options of how the city could recover such loss in revenue in order to continue paying for necessary infrastructure and services.

(Ord. #2005-30(A), § 66)

26-2 LOW PRICED DWELLING UNITS.

26-2.1 Purpose.

The purpose of Section 26-2 SFCC 1987 is to establish appropriate requirements and proper safeguards for low-priced dwelling units which qualify for incentives set forth in various city codes, policies and procedures.

(Ord. #2007-40, § 33)

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.

(Ord. #2007-40, § 34; Ord. # 2019-30 , § 11)

26-2.3 Requirements for low-priced dwelling units.

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

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- A. In order to qualify as a low-priced dwelling unit, the unit shall be built by one of the following actors:
- (1) A developer as part of a type A development described in a valid housing opportunity program agreement;
 - (2) An owner/builder;
 - (3) A nonprofit affordable housing organization; or
 - (4) A multifamily developer providing market-rate rental housing that meets the criteria of LPDU as described in subsection 26-2.3(C).
- B. Low-priced dwelling units shall meet the following criteria:
- (1) Sale prices or rental rates affordable to a household with an income at or below one hundred percent (100%) of the area median income, using a standard four-person household for buyers and a three-person household for renters, according to the procedures established in the Santa Fe homes program;
 - (2) Buyers, renters, or the owner/builder who do not earn more than one hundred twenty percent (120%) of the area median income, adjusted for household size;
 - (3) Owner-occupied for at least five (5) years, for units built by an owner/builder and for-sale units;
 - (4) A city-placed lien against the property for the value of all fee waivers or reductions given by the city, to be repaid to the city when the unit and/or property is refinanced or sold, with proceeds from the lien repayment being deposited into the city's affordable housing trust fund; and
 - (5) At the time of initial occupancy of the low-priced dwelling unit, meeting the following minimum household size, unless the city's office of affordable housing approves a smaller household size upon the request of the nonprofit affordable housing organization or the renter or buyer of the low-priced dwelling unit. This criterion (5) does not apply to a unit built by an owner/builder.

| 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 |

- C. If a low-priced dwelling unit is built by a for-profit multifamily developer in compliance with the rental home requirements outlined in 26-1.22, then the following requirements apply:
- (1) *One hundred percent (100%) LPDU required.* A LPDU project owner-operator shall rent one hundred percent (100%) of units or manufactured home lots to income certified renters, whose incomes do not exceed one-hundred twenty percent (120%) of area median income, as established by HUD. Rents will be calculated pursuant to the SFHP administrative procedures and will not exceed HUD's FMR, as established annually. Owner-operators shall give preference to renters certified by the office of affordable housing or the city's approved subsidy provider who have federal or local rental vouchers. All terms of the subsidy provided to the tenants must conform to HUD standards.
 - (2) *Incentives.* As set forth in subsection 14-8.11 SFCC 1987, incentives shall be available for LPDU rental projects, with all fees reduced by fifteen percent (15%).
 - (3) *Annual reporting and compliance monitoring.* Project owner-operators shall annually report their inventory of units rented according to income and rent restrictions described in their respective SFHP

agreements. The owner/operator shall update income qualifications according to HUD's AMI and FMR datasets.

- D. If the low-priced dwelling unit is built by an owner/builder, the owner/builder shall submit a certified appraisal from a qualified appraiser indicating that the value of the dwelling unit with the land does not exceed the price set forth in paragraph B(1) above.
- E. If the low-priced dwelling unit is built by a nonprofit affordable housing organization, the organization shall place a lien against the property to capture any value between the actual sales price and the appraised price. This lien shall be in last place and any proceeds realized from the sale shall be used for affordable housing and shall be reported to the city's office of affordable housing.

(Ord. #2007-40, § 34; Ord. # 2019-30 , § 12)

26-3 AFFORDABLE HOUSING TRUST FUND.

26-3.1 Short title.

This section may be cited as the "Affordable Housing Trust Fund Ordinance."

(Ord. #2007-23, § 4)

26-3.2 Authority.

The Affordable Housing Trust Fund Ordinance is enacted pursuant to the express statutory authority conferred upon municipalities to enact a housing code pursuant to Section 3-17-6A(8) NMSA 1978; to enact ordinances pursuant to its police power, Section 3-17-1(B) NMSA 1978; to provide for affordable housing pursuant to subsections E and F of Article 9, Section 14 of the New Mexico Constitution and the Affordable Housing Act, Sections 6-27-1 to 6-27-8 NMSA 1978, and in particular to provide a portion of the cost of financing and/or authorizing housing assistance grants for the purpose of affordable housing pursuant to Section 6-27-5 NMSA 1978 (2007), and pursuant to any and all such other authority as may be applicable including but not limited to the city's recognized authority to protect the general welfare of its citizens. This section is adopted pursuant to the city of Santa Fe's powers under its municipal charter, which was adopted effective March 15, 1998 pursuant to the Municipal Charter Act Sections 3-15-1 to 3-15-16 NMSA 1978 and Article 10, Section 6 of the New Mexico Constitution.

(Ord. #2007-23, § 5; Ord. # 2019-30 , § 13)

26-3.3 Legislative findings.

The governing body has determined that:

- A. The city should actively participate in the creation of a comprehensive housing services delivery system that addresses the full continuum of housing needs from the homeless to the homebuyer;
- B. The cost of financing is an important factor in the total cost of housing;
- C. The lack of affordable capital can be a significant barrier to the creation and preservation of affordable housing and can be an obstacle in providing housing that addresses multiple community housing needs and priorities; and
- D. It is in the public interest to create the affordable housing trust fund.

(Ord. #2007-23, § 6)

26-3.4 Purpose.

The purpose of the Affordable Housing Trust Fund Ordinance is to identify the initial source of funds which shall be dedicated to the affordable housing trust fund (AHTF) and to restrict allowable uses of the AHTF to provide or pay all or a portion of the costs of acquisition, development, construction, renovation or conversion, financing, operation or owning affordable housing or infrastructure to support affordable housing which meets agreed upon community housing goals and objectives. The AHTF is not intended to be the sole source of funding for affordable housing and any activity or project eligible for support from the AHTF is expected to develop additional sources of funds.

(Ord. #2007-23, § 7)

26-3.5 Definitions.

AHTF means the affordable housing trust fund.

Administrative procedures refer to the administrative procedures adopted by resolution that outline application, evaluation, and all other administrative procedures associated with the AHTF.

Affordable housing means residential housing primarily for persons or households of low or moderate income.

Allowable uses means those uses for the AHTF which are set forth in subsection 26-3.4 SFCC 1987.

Community housing priorities means priorities established from time to time by the governing body to guide the allocation of funds from the AHTF.

Comprehensive housing strategy means a services delivery system that addresses the full continuum of housing needs from the homeless to the homebuyer.

Eligible households means a person or households of low or moderate income as defined in rules adopted by the New Mexico Mortgage Finance Association.

Leverage means the dollar value of other resources committed to projects for which an application and approval has been received for a loan or grant from the AHTF. Each dollar committed to the project that is not generated from the AHTF shall be considered as leverage.

Office of affordable housing means the division of the city of Santa Fe or its successor administering affordable housing programs.

(Ord. #2007-23, § 8; Ord. #2020-22 , § 16)

26-3.6 Dedication.

The following shall be dedicated to the affordable housing trust fund:

A. Tierra Contenta:

- (1) All payments received from the sale of property in Tierra Contenta that has been reserved for affordable housing as of the date of the passage of the ordinance from which this section is derived;

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- (2) Thirty-five percent (35%) of all payments received from the sale of property in Tierra Contenta received after the date of the passage of this section; and
 - (3) All interest earned from the above.
 - B. All proceeds of loans that have been recorded against various affordable housing units through the capital improvements program funds—infrastructure loan funds.
 - C. Principal and interest payments made by the borrowers to the city for outstanding AHTF loans.
 - D. Proceeds from shared equity loans which are realized when a housing opportunity program home or Santa Fe homes program unit is sold on the open market.
 - E. All in-lieu-of contributions or fractional payments received from developers as an option to meet the Santa Fe Homes requirements.
 - F. All in-lieu-of contributions received from developers of qualifying residential projects within the Midtown LINC overlay district, as defined in section 14-5.5(D) SFCC 1987, but only applied within the following locations:
 - (1) The Midtown LINC overlay district;
 - (2) Qualified census tracts (as defined by the United States department of housing and urban development) adjacent to the boundaries of the Midtown LINC overlay district; or
 - (3) Existing residential developments adjacent to the boundaries of the Midtown LINC overlay district.
 - G. Proceeds from the occupancy tax that are collected based on the thirty-first (31st) and subsequent days a vendee rents lodgings in taxable premises shall be dedicated to the affordable housing trust fund pursuant to subsection 18-11.17(A)(6) SFCC 1987.
 - H. Other funds that may be identified from time to time that are suitable and appropriate for allocation to the AHTF. These may include on-going, dedicated funding sources as well as one-time funding that is specifically approved by the governing body.

(Ord. #2007-23, § 9; Ord. #2016-39 § 21; Ord. #2021-10 , § 2; Ord. #2021-11 , § 5)

Editor's note(s)—Section 26-3 was originally adopted July 11, 2007, and amended in its entirety October 26, 2016, by Ord. No. 2016-39.

26-3.7 Use of the affordable housing trust fund.

The city shall provide loans or housing assistance grants by using the AHTF to:

- A. Donate, provide or pay all, or a portion, of the costs of land for the construction on the land of affordable housing;
- B. Donate, provide or pay all or a portion of the costs of conversion or renovation of existing buildings into affordable housing;
- C. Provide or pay the costs of financing or infrastructure necessary to support affordable housing projects; or
- D. Provide or pay all or a portion of the costs of acquisition, development, construction, financing, operating or owning affordable housing.

(Ord. #2007-23, § 10)

26-3.8 Other requirements.

Use of the affordable housing trust fund shall comply with the following:

- A. *Location.* Financing for projects shall be limited to developments located within the city limits of Santa Fe or those properties which will be annexed into the city within six (6) months of application for funds.
- B. *Beneficiaries.* The beneficiaries of the housing shall be limited to households of low or moderate incomes. Lower income requirements may be established for specific projects to meet community housing goals.
- C. *Leverage.* All loans or housing assistance grants from the AHTF shall have a minimum one dollar (\$1.00) to three dollars (\$3.00) leverage requirement. Sources of leverage may include other project financing, federal community development block grants, federal HOME investment funds, low-income housing tax credits and owner equity or any other sources which are in accordance with the approved administrative procedures. Financing and funding from other sources must be committed prior to the release of AHTF funds.
- D. *Terms of the Loan.* Loan terms will vary with the type of development proposal. Loan terms and conditions will be outlined in the administrative procedures, which may be amended and approved by the governing body from time to time.
- E. *Restriction.* Funds loaned to an organization shall only be used for the activity or project for which the loan was approved. The funds cannot be expensed (thereby reducing the amount of the asset on the organization's balance sheet) except in cases where an unpreventable loss occurs and when approved by the governing body.

(Ord. #2007-23, § 11)

26-3.9 Affordable Housing Trust Fund Administration.

- A. The AHTF shall be administered by the office of affordable housing (OAH). The administrative procedures for the AHTF shall be prepared by the OAH, shall be consistent with the rules of the New Mexico Mortgage Finance Authority upon amendment of the rules in conformity with the Act as amended in 2007 and shall be approved by the governing body.
- B. All funds shall be allocated under a request for proposal that is conducted at least annually and concurrently with the process used for the community development block grant programs, unless an emerging need requires an alternate funding cycle as approved by the city of Santa Fe community development commission and subject to the availability of funds. In all cases, the request for proposal process will be consistent with the provisions of this section and administrative guidelines. Loans and grants shall be disbursed according to standard city procurement practices.
- C. Applications for funding shall be reviewed according to evaluation criteria contained within the administrative procedures.

(Ord. #2007-23, § 12; Ord. # 2019-30 , § 14)

26-3.10 Community development commission.

The community development commission will provide funding recommendations to the governing body concerning all loans and grants to be allocated under this section.

(Ord. #2007-23, § 13)

26-4 FAIR HOUSING.

26-4.1 Short title.

This section may be cited as the "Fair Housing Ordinance".

(Ord. #1999-10, § 2; Ord. #2008-1, § 28)

26-4.2 Purpose.

The purpose of this section is to protect the health, safety and general welfare of all the inhabitants of the city by prohibiting discrimination in housing based upon race, color, religion, gender, sexual orientation, national origin, familial status, or disability.

(Ord. #1999-10, § 3; Ord. #2008-1, § 28)

26-4.3 Definitions.

As used in this section

Disability (does not include the current illegal use of, or addition to, a controlled substance as defined in Section 102 of the Federal Controlled Substance Act) means:

A physical or mental impairment that substantially limits one (1) or more of the major life activities of such individual;

A record of such an impairment; or

Being regarded as having such impairment.

Dwelling means:

A. Any building, structure, or part of a building or structure that is occupied as, or designed or intended for occupancy as, a residence by one (1) or more families; or

B. Any vacant land that is offered for sale or lease for the construction or location of a building, structure or part of a building or structure described in subsection A above.

Familial status means:

The status resulting from one (1) or more persons who are under the age of eighteen (18) years being domiciled with an individual who is either:

The parent of the persons under age eighteen (18);

The legal guardian of the persons under age eighteen (18); or

The designee (with written authorization) of the parent or legal guardian or custodian of the persons under age eighteen (18);

The status resulting from being pregnant; or

The status resulting from being in the process of securing legal custody of any person who is under the age of eighteen (18).

Family means:

An individual;

Two (2) or more persons related by blood, marriage, legal guardianship or adoption, plus resident domestic servants; or

Any group of not more than five (5) persons living together in a dwelling unit.

Housing for older persons means housing:

That the housing is specifically designed and operated to assist elderly persons under a federal or state program;

Intended for, and solely occupied by persons sixty-two (62) years of age or older; or

Intended and operated for occupancy by at least one (1) person fifty-five (55) years of age or older in at least eighty percent (80%) of the occupied units, and adheres to a policy that demonstrates an intent to house persons who are fifty-five (55) years or older.

Person includes one (1) or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11, receivers, and fiduciaries.

To rent includes to lease, sublease, to let, or to otherwise grant for a consideration the right to occupy premises not owned by the occupant.

(Ord. #1999-10, § 4; Ord. #2008-1, § 28)

26-4.4 Certain sales and rental exemptions.

A. Pursuant to paragraph B below, subsections 26-4.8 through 26-4.14 SFCC 1987 do not apply to the following:

(1) The sale or rental of a single-family house sold or rented by an owner if:

(a) The owner does not:

(i) Own more than three (3) single-family houses at any one (1) time; or

(ii) Own any interest in, nor is there owned or reserved on his or her behalf, under any express or voluntary agreement, title or any right to any part of the proceeds from the sale or rental of more than three (3) single-family houses at any one (1) time; and

(b) The house was sold or rented without:

(i) The use of the sales or rental facilities or services of a real estate broker, agent, or salesman licensed under the Real Estate License Act or an employee or agent of a licensed broker, agent, or salesman, or the facilities or services of the owner of a dwelling designed or intended for occupancy by five (5) or more families; or

(ii) The publication, posting, or mailing of a notice, statement or advertisement prohibited by subsection 26-4.9 SFCC 1987; or

(2) The sale or rental of rooms or units in a dwelling containing living quarters occupied, or intended to be occupied, by no more than four (4) families living independently of each other if the owner maintains and occupies one (1) of the living quarters as the owner's residence.

B. The exemption in paragraph A of this section applies only to one (1) sale or rental over a twenty-four-month period if the owner did not reside in the house at the time of sale or rental or was not the most recent resident of the house prior to the sale or rental.

(Ord. #1990-10, § 5; Ord. #2008-1, § 28)

26-4.5 Religious organization and private club exemption.

- A. This section does not prohibit a religious organization, association, or society, or a nonprofit institution or organization operated, supervised, or controlled by, or in conjunction with, a religious organization, association, or society, from the following:
- (1) Limiting the sale, rental, or occupancy of dwellings that it owns or operates for other than a commercial purpose to persons of the same religion unless membership in the religion is restricted because of race, color or national origin; or
 - (2) Giving preference for such dwellings to persons of the same religion.
- B. This section does not prohibit a private club not in fact open to the public that, as an incident to its primary purpose, provides lodging that it owns or operates for other than a commercial purpose from limiting the rental or occupancy of that lodging to its members or from giving preference to its members.

(Ord. #1999-10, § 6; Ord. #2008-1, § 28)

26-4.6 Housing for the elderly exempted.

The provisions of this section relating to familial status do not apply to "housing for older persons" as defined.

(Ord. #1999-10, § 7; Ord. #2008-1, § 28)

26-4.7 Appraisal exemption.

This section does not prohibit a person engaged in the business of furnishing appraisals of residential real property from taking into consideration factors other than race, color, religion, gender, sexual orientation, disability, familial status, or national origin.

(Ord. #1999-10, § 8; Ord. #2008-1, § 28)

26-4.8 Discrimination in sales or rental of housing.

- A. A person may not refuse to sell or rent a dwelling to a person who has made a bona fide offer; refuse to negotiate for the sale or rental of a dwelling; or otherwise make unavailable or deny a dwelling to any person because of race, color, religion, gender, sexual orientation, familial status, or national origin.
- B. A person may not discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling or providing services or facilities in connection with the sale or rental because of race, color, religion, gender, sexual orientation, familial status, or national origin.
- C. This section does not prohibit discrimination against a person because the person has been convicted under federal law or the law of any state of the illegal manufacture or distribution of a controlled substance as defined in Section 102 of the Federal Controlled Substance Act.

(Ord. #1999-10, § 9; Ord. #2008-1, § 28)

26-4.9 Publication indicating discrimination.

A person may not make, print, or publish or cause to be made, printed, or published any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, gender, sexual orientation, disability, familial status, or national origin, or an intention to make such a preference, limitation, or discrimination.

(Ord. #1999-10, § 10; Ord. #2008-1, § 28)

26-4.10 Availability for inspection.

A person may not represent to any person because of race, color, religion, gender, sexual orientation, disability, familial status, or national origin that a dwelling is not available for inspection, sale or rental when the dwelling is available.

(Ord. #1999, § 11; Ord. #2008-1, § 28)

26-4.11 Entry into neighborhood.

A person may not, for profit, induce or attempt to induce a person to sell or rent a dwelling by representations regarding the entry or prospective entry into a neighborhood of a person of a particular race, color, religion, gender, sexual orientation, familial status, national origin, or disability.

(Ord. #1999-10, § 12; Ord. #2008-1, § 28)

26-4.12 Disability.

- A. A person may not discriminate in the sale or rental or otherwise make unavailable or deny a dwelling to a buyer or renter because of a disability of:
 - (1) A buyer or renter;
 - (2) A person residing in, or intending to reside in, that dwelling after it is sold, rented, or made available; or
 - (3) Any person associated with a buyer or renter.
- B. A person may not discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling or in the provision of services or facilities in connection with the dwelling because of a disability of:
 - (1) A buyer or renter;
 - (2) A person residing in, or intending to reside in, that dwelling after it is sold, rented, or made available; or
 - (3) Any person associated with that person.
- C. For purposes of this section only, discrimination includes the following:
 - (1) Refusing to permit, at the expense of the person with the disability, reasonable modifications of existing premises occupied or to be occupied by the person if the modifications may be necessary to afford the person full enjoyment of the premises of a dwelling, provided that, in the case of a rental, a landlord may:

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- (a) Reasonably condition permission for modifications upon the renter's agreement to restore the interior of the premises to its premodification condition, reasonable wear and tear excepted, and
 - (b) Reasonably condition such permission on the renter providing a reasonable description of the proposed modifications and reasonable assurances that all work will be done in a workmanlike manner and that all required permits will be obtained.
- (2) Increasing for persons with a disability any customarily required security deposit except that to ensure available funds for restorations, if any, a landlord may negotiate an agreement that the renter deposit into an interest-bearing escrow account, over a reasonable period, a reasonable amount not to exceed the cost of restorations where it is necessary in order to ensure with reasonable certainty that funds will be available to pay for the restoration. All interest shall accrue to the renter's benefit.
 - (3) Refusing to make reasonable accommodations in rules, policies, practices, or services, when the accommodations may be necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling, including public and common use areas.
 - (4) Failing to design or construct covered multi-family dwellings for first occupancy after March 13, 1991, in a manner that:
 - (a) The public use and common use portions of the dwellings are readily accessible to, and usable by, persons with a disability;
 - (b) All the doors designed to allow passage into and within all premises within the dwellings are sufficiently wide to allow passage by persons in wheelchairs; and
 - (c) All premises within the dwellings contain the following features of adaptive design:
 - (i) An accessible route into and through the dwelling;
 - (ii) Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;
 - (iii) Reinforcements in bathroom walls to allow later installations of grab bars; and
 - (iv) Usable kitchens and bathrooms so that an individual in a wheelchair can maneuver about the space; or
 - (5) Making any inquiry to determine whether an applicant for a dwelling, a person intending to reside in that dwelling or any person associated with that person, has a disability or to determine the nature or severity of any disability, except that the following inquiries may be made if these inquiries are made of all applicants, regardless of disability:
 - (a) Inquiry into an applicant's ability to meet the requirements of ownership or tenancy;
 - (b) Inquiry to determine whether an applicant is qualified for a dwelling available only to persons with disabilities or to persons with a particular type of disability;
 - (c) Inquiry to determine whether an applicant for a dwelling is qualified for a priority available to persons with disabilities or to persons with a particular type of disability;
 - (d) Inquiring whether an applicant for a dwelling is a current illegal user or addict of a controlled substance;
 - (e) Inquiring whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance.
- D. Compliance with the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for person with physical disabilities, commonly cited as "ANSI A 117.1," suffices to satisfy the requirements of paragraph C(4)(c) above.

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- E. As used in this section, the term "covered multi-family dwellings" means:
- (1) Buildings consisting of four (4) or more units if the buildings have one (1) or more elevators; and
 - (2) Ground-floor units in other buildings consisting of four (4) or more units.
- F. Nothing in this section requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

(Ord. #1999-10, § 13; Ord. #2008-1, § 28)

26-4.13 Residential real estate-related transactions.

- A. A person whose business includes engaging in residential real estate-related transactions may not discriminate against a person in making a real estate-related transaction available or in the terms or conditions of a real estate-related transaction because of race, color, religion, gender, sexual orientation, disability, familial status, or national origin.
- B. In this section, "residential real estate-related transaction" means the following:
- (1) Making or purchasing loans or providing other financial assistance:
 - (a) To purchase, construct, improve, repair, or maintain a dwelling; or
 - (b) Secured by residential real estate; or
 - (2) Selling, brokering, or appraising residential real property.

(Ord. #1999-10, § 14; Ord. #2008-1, § 28)

26-4.14 Restrictive covenants.

- A. Any restrictive covenant restricting occupancy or ownership of property on the basis of race, color, religion, national origin, gender, sexual orientation, familial status or disability, whether included in an instrument affecting the title to real or leasehold property, is declared to be null, void and of no effect, and contrary to the public policy.
- B. Any person who is asked to accept a document affecting title to real or leasehold property may decline to accept the same if it includes such a covenant until the covenant has been removed from the document. Refusal to accept delivery of an instrument for this reason shall not be deemed a breach of contract to purchase, lease, mortgage or otherwise deal with such property.

(Ord. #1999-10, § 15; Ord. #2008-1, § 28)

26-4.15 Brokerage service.

A person may not deny any person access to, or membership or participation in, a multiple-listing service, real estate brokers' organizations or other service, organization, or facility relating to the business of selling or renting dwellings, or discriminate against a person in the terms of conditions of access, membership, or participation in such an organization, service, or facility because of race, color, religion, gender, sexual orientation, disability, familial status, or national origin.

(Ord. #1999-10, § 16; Ord. #2008-1, § 28)

26-4.16 Administration.

- A. The department as designated by the city manager, or its delegate, shall be responsible for the administration of this section. The city shall:
 - (1) Provide a copy of the complaint to the city attorney if the city attorney is not the designated administrator;
 - (2) Investigate complaints of violations of this section;
 - (3) Notify the person against whom the complaint is made and identify the aggrieved person who filed the complaint;
 - (4) Dismiss the complaint if after investigation finds that there is no merit in the complaint; and
 - (5) Endeavor to eliminate the alleged discriminatory practice by conference and conciliation if after investigation finds that there is merit in the complaint.
- B. The city may adopt administrative procedures to follow in the administration of this section.
- C. The city shall advise the person filing a complaint that in order to preserve his or her rights under the federal regulations, the person shall simultaneously file a housing discrimination complaint with the U.S. department of housing and urban development. The city will provide information to the person regarding how to file the complaint. This paragraph does not apply to complaints regarding sexual orientation.

(Ord. #1999-10, § 17; Ord. #2008-1, § 28)

26-4.17 Enforcement.

- A. If conference and conciliation do not eliminate the alleged discriminatory practice, the city shall refer the complaint to the secretary of the department of housing and urban development for an alleged discriminatory housing practice under the Federal Fair Housing Act. This paragraph does not apply to complaints regarding sexual orientation.
- B. The city may file a complaint in municipal court if conference and conciliation do not eliminate the alleged discriminatory practice. Noncompliance with this section is subject to fines and imprisonment as set forth in Section 1-3 SFCC 1987.
- C. The city may pursue other enforcement remedies as may be authorized by law.

(Ord. #1999-10, § 18; Ord. #2008-1, § 28)

26-4.18 Effect.

Nothing contained in this section shall be deemed to repeal any other ordinance of the city relating to discrimination because of race, color, religion, national origin, gender, sexual orientation, familial status or disability; but all such ordinances and portions thereof in conflict herewith are repealed to the extent of such conflict.

(Ord. #1999-10, § 19; Ord. #2008-1, § 28)

26-4.19 Separability.

The provisions of this section are separable and the invalidity of any part of this section shall not affect the validity of the rest of the section.

(Ord. #1999-10, § 20; Ord. #2008-1, § 28)