

1 CITY OF SANTA FE, NEW MEXICO

2 ORDINANCE NO. 2021-13

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4
5 AN ORDINANCE

6 AMENDING SUBSECTION 14-3.7(F), NOTES 15 AND 16 OF TABLE 14-7.2-1, AND
7 SUBSECTION 14-9.6(B) TO ALLOW THE MINIMUM LOT SIZE TO BE 1.25 ACRES
8 FOR A LOT CREATED THROUGH AN INHERITANCE OR FAMILY TRANSFER
9 SUBDIVISION AND THAT RESULTS IN ONLY ONE ADDITIONAL LOT; AMENDING
10 SUBSECTION 14-7.2(B) TO REQUIRE ROUNDING DOWN OF THE CALCULATION
11 OF MAXIMUM NUMBER OF DWELLING UNITS FOR A FAMILY TRANSFER
12 SUBDIVISION WHERE NEITHER PUBLIC SEWER NOR PUBLIC WATER ARE
13 AVAILABLE; AND AMENDING SUBSECTION 14-9.6(A) TO REQUIRE PROOF OF
14 ADEQUATE SEPTIC AND WELL ASSURANCES PRIOR TO THE APPROVAL OF AN
15 INHERITANCE OR FAMILY TRANSFER SUBDIVISION THAT LACKS PUBLIC
16 SEWER AND WATER.

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

19 Section 1. Subsection 14-3.7(F) of the Land Development Code (being Ord. No.
20 2011-37 § 3, as amended) is hereby amended to read:

21 (F) Inheritance and Family Transfer Subdivisions

22 (1) Purpose

23 It is the purpose of this section to support the continuation of traditional patterns of land transfer
24 and division within families and to increase affordable housing within the *family* group. This
25 section is intended to assist in the transfer of *property* from parents to children or grandchildren

1 with only those restrictions that are essential to the health, safety and welfare of the citizens of
2 Santa Fe. There is no intention to promote the resale of such *properties* outside the *family* or to
3 create favorable opportunities for developers. Standards for inheritance and *family* transfer
4 subdivisions have been written to reflect traditional *development*.

5 (2) Applicability

6 (a) A subdivision is created by inheritance if it is created by a will
7 or order of court in probate proceedings for the purpose of transmitting *property* to heirs, but not
8 for the purpose of sale or lease and not creating more than one *lot* per *family* member or violating
9 the provisions of this section.

10 (b) A subdivision is created by *family* transfer if it is created by a
11 father or mother for the purpose of transferring a *lot* or *lots* to his or her children, natural or
12 adopted, or grandchildren, or it is created by a person who has performed the function of father,
13 mother, grandfather or grandmother for the purpose of transferring a *lot* to a person for whom
14 such person has performed that function; provided that the person proposing to create the
15 subdivision and transfer the *lot* or *lots* files appropriate documentation of conveyance along with
16 an affidavit with the *county* clerk containing the following:

17 (i) a legal description of the *property* being transferred; and
18 (ii) a statement that the transferor has not made any other
19 transfers of any other *lots* to the person receiving it that would require the filing of an affidavit
20 pursuant to this section.

21 (3) Restrictions and Requirements

22 (a) Inheritance and *family* transfer subdivisions are allowed only
23 in *residential* districts.

24 (b) Any one person may receive only one *lot* total
25 by *family* transfer.

1 (c) No sale or lease of any *lot* designated on a
2 subdivision *plat* creating an inheritance or *family* transfer subdivision shall occur within three
3 years of the date of the transfer.

4 (d) The *plat* shall show the name of each *family* member to whom
5 a *lot* is being transferred. Before the final subdivision *plat* is filed, a copy of the instrument of
6 transfer to the transferee or his authorized representative must be provided to the *city*. A
7 construction *permit* shall not be issued to a *person* other than the transferee or his authorized
8 representative until the required time period is completed.

9 (e) If the *property* is transferred to a different *family* member
10 acceptable under this section within three years, the *plat* and affidavit must be amended to reflect
11 the different transferee.

12 (f) If an *owner* of a *lot* that was part of an inheritance
13 or *family* transfer subdivision applies for a subdivision, *residential development* or PUD or other
14 rezoning, then all the provisions of Chapter 14 shall apply with no special provision for the
15 prior *family* transfer subdivision.

16 (4) Procedures

17 *Applications* for inheritance or *family* transfer subdivisions creating two or more
18 additional *lots* shall be submitted to the planning commission. Only final *plat* procedures as set
19 forth in Subsection (B) of this section are required. *Applications* creating one additional *lot* shall
20 follow summary committee procedures as set forth in Section 14-2.3(E). In all cases, proof of
21 a *legal lot of record* is required as part of the submission requirement.

22 (5) Plats and Data

23 (a) An *application* for approval of an inheritance or *family* transfer
24 subdivision final *plat* shall be filed with the *land use director* and shall consist of maps that show
25 the proposed *development* layout and the related information and drawings specified by the *land*

1 use director.

2 (b) Every final *plat* for an inheritance or *family* transfer subdivision
3 shall contain the following legend prominently portrayed:

4 "NOTICE: This subdivision has been approved pursuant to the
5 inheritance and *family* transfer provisions of the Santa Fe City Code. Procedures for inheritance
6 and *family* transfer subdivision improvements are significantly different than for other types of
7 subdivisions. No sale or lease of any *lot* designated on this subdivision *plat* shall occur within
8 three years of the date this transfer is legally made. Any person intending to purchase a *lot* within
9 this subdivision should contact the city of Santa Fe land use director. Requests for
10 construction *permits* on illegally sold *lots* shall be denied."

11 (6) Development Standards and Required Improvements
12 Proof of compliance with the following standards is required for the approval of an inheritance
13 or *family* transfer subdivision:

14 (a) Terrain Management Regulation
15 Compliance with terrain management regulation submissions as set forth
16 in Section 14-8.2 is required.

17 (b) Design Standards
18 Subdivision design standards as set forth in Section 14-9.2 apply.

19 (c) Required Improvements
20 Inheritance and *family* transfer subdivisions shall comply with the
21 required improvements set forth in Section 14-9.2.

22 (d) Density and District Regulations
23 Except as otherwise specifically provided in the Land Development
24 Code, inheritance and *family* transfer subdivisions are required to meet the standards for
25 use, *density*, *building* placement, height, *open space*, parking and other items set forth in the

1 district regulations.

2 **Section 2. The Notes of Table 14-7.2-1 of the Land Development Code (being**
3 **Ord. No. 2013-16, § 37, as amended) is amended to read:**

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1 **Table 14-7.2-1: Table of Dimensional Standards for Residential Districts**

2	NOTES:
3	1. Provisions of overlay districts, including historic, escarpment or neighborhood
4	districts may override standards in this table. Refer to Article 14-5 Overlay Zoning
5	Districts and zoning map.
6	2. See Section 14-7.2(B) Calculation of Allowable Dwelling Units, number
7	of <i>lots</i> created and number of <i>dwelling units</i> constructed cannot exceed
8	allowed <i>density</i> .
9	3. See also Section 14-7.2(C) Lot Size Averaging in Single-Family Subdivisions.
10	4. See Section 14-7.1(F)(4) Street Setback for Garage or Carport: A <i>garage</i> or carport
11	with a vehicle entrance facing the <i>street</i> must be set back 20 feet from
12	the <i>street property</i> line as shown in Illustration 14-7.1-3.
13	5. <i>side</i> and <i>rear required yards</i> , including the requirements in Note 6 of this Table
14	14-7.2-1, may be reduced with the concurrence of adjoining <i>property owners</i> as
15	shown on a recorded agreement, <i>plat</i> or other recorded declaration signed by the
16	adjoining <i>property owners</i> in a form approved by the <i>land use director</i> , and in
17	compliance with the Building Code as set forth in Article 7-1 SFCC 1987 Building
18	Codes; General Provisions. The <i>yard</i> reduction must be offset by provision of a
19	corresponding increase in the <i>yard</i> provided on the adjoining <i>lot</i> .
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1 6. Within ten (10) feet of a side or rear *property* line, no point on a *structure* shall be
2 higher than fourteen (14) feet above the finished *grade* at the closest point on the
3 perimeter of the *structure* . Within fifteen (15) feet of a side or rear *property* line, no
4 point on a *structure* shall be higher than twenty-four (24) feet above the
5 finished *grade* at the closest point on the perimeter of the *structure*. (Ord. No. 2013-
6 16 § 40)

7 7. See also Section 14-8.4(J)(3) Buffer for Nonresidential Development Abutting
8 Residential.

9 8. See also Section 14-7.1(B) for calculation of maximum height limits.

10 9. See Section 14-7.5 for *qualifying open space* regulations.

11 10. See Section 14-7.5 (D) for amount of *open space* required for *non-*
12 *residential* uses.

13 11. See Subsection 14-7.1(B)(1) for calculation of net *lot* area.

14 12. *Street yard* requirements apply to *lot access driveways*.

15 13. The *required rear yard* is 5 feet for the types of *accessory structures* specified in
16 Subsection 14-6.3(B)(2) that are 14 feet or less in height and that are separated
17 from *principal structures* on the same *lot* by at least 10 feet.

18 14. Except as otherwise provided in this chapter, the height limit and
19 other *development* standards for *accessory structures* are the same as for the
20 associated *principal structures*. Additional *development* standards for
21 specified *accessory* uses are found in Subsections 14-6.3(B)(2) and 14-6.3(D).

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1 15. The maximum *gross density* in districts that permit *residential* use is
2 0.4 *dwelling units* per acre if neither public sewer or water is provided,
3 one *dwelling unit* per acre if either public sewer or water is provided, and 0.8
4 *dwelling units* per acre if the *lot* was created through an inheritance or *family*
5 transfer *subdivision* that resulted in only one additional *lot*.

6 16. The minimum required net *lot* area for *single-family dwellings* is 2.5 acres if
7 neither public sewer nor water is provided, and 1 acre if either public sewer or
8 water is provided, except for a *lot* that was created through an inheritance or *family*
9 transfer *subdivision* that created only one additional *lot*, which may have a
10 minimum net *lot* area of 1.25 acres if the *lot* conforms to all requirements and
11 restrictions for such subdivisions and obtains well and septic assurances from the
12 State of New Mexico.

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14 **Section 4. Subsection 14-7.2(B) of the Land Development Code (being Ord. No.**
15 **2013-16, § 37, as amended) is amended to read:**

16 (B) **Calculation of Allowable Dwelling Units**

17 Prior to any *development* approval, the maximum allowable number of *dwelling*
18 *units* shall be calculated for the site as a whole as follows:

19 (1) determine the total number of acres in the site to two decimal places, as
20 certified by a *professional land surveyor* or *professional engineer*; and

21 (2) determine the total *flood way* acres in the site to two decimal places, as
22 certified by a *professional land surveyor* or *professional engineer*; and

23 (3) subtract the sum of the *flood way* acres calculated in Subsection 14-
24 7.2(B)(2) from the total number of acres of the site calculated in Subsection 14-7.2(B)(1);

25 (4) multiply the remaining acres by the applicable *gross density* factor of the

1 district as shown in Table 14-7.2-1;

2 (5) for a *parcel*, any portion of which lies in the area labeled as *mountainous*
3 *and difficult terrain* on Exhibit "I" following Chapter 14 and where twenty-five percent or more
4 of the *parcel* has a natural *slope* greater than twenty percent, multiply the result calculated in
5 Subsection 14-7.2(B)(4) by 0.75;

6 (6) if the result is other than a whole number, the number shall be rounded
7 down to the nearest whole number except as set forth in Subsections 14-7.2(B)(7) or (8). This is
8 the allowable number of *dwelling units* for the site;

9 (7) if the calculation is for a *family* transfer subdivision as set forth in
10 Subsection 14-3.7(F)(2)(b) and the result in Subsection 14-7.2(B)(6) is other than a whole
11 number, the number may be rounded up if it is five-tenths or more except that the number will
12 be rounded down if neither public sewer nor water is provided;

13 (8) if the result in Subsection 14-7.2(B)(6) is other than a whole number, the
14 number may be rounded up if it is five-tenths or more; provided that the additional unit resulting
15 from the rounding up meets the requirements of *Santa Fe Homes Program (SFHP)* set forth
16 in Section 26-1 SFCC 1987 (Santa Fe Homes Program) or is a low-priced *dwelling unit* meeting
17 the requirements set forth in Section 26-2.3 SFCC 1987 (Requirements for Low-Priced Dwelling
18 Units);

19 (9) *SFHP development* incentives pursuant to Section 14-8.11(G) may
20 increase the maximum number of *dwelling units* allowed on any site; however, if
21 a *development* plan has been approved, in no case shall more *dwelling units* be constructed than
22 described on the approved *development* plan.

23 (10) The minimum net *lot* area requirement for *single-family dwellings* shall
24 be as established in Subsection 14-7.1(B)(1), Table 14-7.2-1 and Subsection 14-7.2(C); however,
25 the number of *dwelling units*, and the number of *lots* occupied by *single-family dwellings* in

1 a residential subdivision shall not exceed the number provided by this Subsection 14-7.2(B).

2 (11) The allowable number of *dwelling units* shall not be exceeded for the site
3 as a whole, regardless of subdivisions or *lot splits*. In the event of subdivision, including *lot split*,
4 the allowed number of *dwelling units* shall be allocated among all resulting *parcels* so that
5 no *parcel* exceeds the allowable number of units for that *parcel* calculated separately and the
6 total number of units on all *parcels* shall not exceed that of the original site as a whole. A note
7 shall be placed on the *plat* or *development* plan prior to recording the first and each subsequent
8 subdivision or *lot split* that prohibits a further increase in the number of *dwelling units* for each
9 portion of the site unless approved by the *governing body* as a rezoning action or other action
10 authorized by Chapter 14.

11 **Section 4. Section 14-9.6 of the Land Development Code (being Ord. No. 2011-**
12 **37 § 12) is hereby amended to read:**

13 **14-9.6 STANDARDS FOR INHERITANCE OR FAMILY TRANSFER SUBDIVISIONS**

14 (A) **Installation of Improvements**

15 Any improvements required to be constructed on inheritance or *family* transfer
16 subdivisions are only required to be completed at the time a construction *permit* is issued on
17 any *lot* contained in the subdivision, and not at the time of *plat* approval or recordation. A
18 financial guarantee is not required at the time of *plat* recordation. If an inheritance or family
19 transfer *subdivision* will result in the creation of only one additional *lot* and will not have public
20 sewer or water available, the *applicant* will be required to provide proof of appropriate well and
21 septic assurances from the State of New Mexico prior to approval of the *subdivision*.

22 (B) **Density and District Regulations**

23 Except as otherwise specifically provided in the Land Development Code, inheritance
24 and *family* transfer subdivisions are required to meet the standards for
25 use, *density*, *building* placement, height, *open space*, parking and other items set forth in the

1 district regulations. *Densities* for newly annexed areas must conform to the *density* range
2 provisions set forth in the *general plan*.

3 PASSED, APPROVED, AND ADOPTED this 9th day of June, 2021.

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7 ALAN WEBBER, MAYOR

8 ATTEST:

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11 [Kristine Mihelcic \(Jun 10, 2021 16:48 MDT\)](#)
12 KRISTINE MIHELICIC, CITY CLERK

13 APPROVED AS TO FORM:

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15 ERIN K. MCSHERRY, CITY ATTORNEY

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24 *Bill No. 2021-13*

25 *Legislation/2021/Ordinances/2021-13 Family Transfer Minimum Lot Size*