

Daniel "Danny" Mayfield
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

Date: November 12, 2014

To: Board of County Commissioners

From: Steven Brugger, Affordable Housing Administrator *SAB*

Via: Katherine Miller, County Manager
Gregory S. Shaffer, County Attorney
Penny Ellis-Green, Growth Management Director *PEB*
Robert Griego, Planning Manager

Re: Request Authorization to Publish Title and General Summary of An Ordinance Entitled "An Ordinance Amending Ordinance No.2012-1 Pertaining to the Affordability Lien that is Executed and Recorded at the Time of Closing of an Affordable Home Sale"

Issue. Staff requests authorization to publish title and general summary for an ordinance entitled "An Ordinance Amending Ordinance No. 2012-1 Pertaining to the Affordability Lien that is Executed and Recorded at the Time of Closing of an Affordable Home Sale" This is a request to amend Ordinance 2012-1, the most recent ordinance which changed provisions of the original Affordable Housing Ordinance No. 2006-02.

This proposed ordinance amendment provides for deleting the entire Section 3A of Ordinance 2012-1 and replacing it with the original language from Section 18A of Ordinance 2006-02 which did not allow for a reduction in the affordability lien.

Background. The rationale for approving the proposed ordinance amendment is threefold: 1) As written, Section 3A of Ordinance 2012-1 allows the face value of the affordability lien to be reduced to zero the day after closing of the affordable home sale, after which time the face value of the affordability lien would be increased by 10% every year after the closing date until at the end of 10 years, the face value of the affordability lien would be restored to its original amount. This would encourage speculation and flipping of property, and eliminate long term affordability, which is the opposite of what this program intended; 2) The County has over 200 liens outstanding with a total face value of \$13,747,919 (and an estimated current value of \$11 million after factoring in an allowance for uncollectibles) which are not forgiven over time. Instituting lien forgiveness for new buyers, without extending this opportunity to previous buyers may be perceived as unequal treatment; 3) Review of the staff reports and minutes of the January 10, 2012 and January 31, 2012 BCC meetings where Ordinance 2012-1 was approved, clearly shows that the public discussion focused on reducing the affordable housing requirement from

30% to 15% for major projects and from 16% to 8% for minor projects, which is also included in this ordinance.

As recorded in the minutes, there was no discussion from the Commissioners at the BCC meetings, nor in the Affordable Housing meeting on January 31, 2012, of the proposed affordability lien reduction. Even staff commentary was limited on this issue, other than to say that this would “expand long term affordability”, as was stated in the last five words of the title of the Ordinance: ...”To Protect Long-Term Affordability”.

Forgiving the liens over a ten year period does not protect or expand long term affordability, rather it eliminates long-term affordability and provides a rather large gift to the affordable homeowner at the expense of the developer who initially provided the subsidy as required by the County inclusionary zoning program. At present, when an existing owner wants to sell the affordable unit, staff has been able to find another affordable buyer who assumes the subsidy, thereby preserving long term affordability. Approval of the proposed ordinance amendment would enable staff to continue this practice for all affordable homes sold in the future.

Fiscal Impact. Approval of this ordinance amendment would have a positive fiscal impact on the County affordable housing program. Assuming that 10 affordable homes are sold per year, with an average County-held lien of \$50,000, retention, rather than forgiveness over 10 years of the face value of the liens would create an annual asset value increase of \$50,000.

Recommendation. Staff recommends that the BCC approve the publishing of title and general summary of the proposed ordinance amendment and hold a public hearing on this item at the first BCC meeting in January, 2015.

Attachments

Exhibit A:	Proposed Ordinance No. 2014-
Exhibit C:	Ordinance 2012-1
Exhibit D:	Ordinance 2006-02
Exhibit E:	Fiscal Impact Report



EXHIBIT A
THE BOARD OF COUNTY COMMISSIONERS
SANTA FE COUNTY, NEW MEXICO

ORDINANCE NO. 2014-XXX

**AN ORDINANCE AMENDING ORDINANCE NO. 2012-1 PERTAINING TO THE
AFFORDABILITY LIEN THAT IS EXECUTED AND RECORDED AT THE TIME OF
CLOSING OF AN AFFORDABLE HOME SALE**

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY that Ordinance 2012-1 is amended as follows:

Section One. Section Three is hereby deleted and replaced with the following:

“Section One of Ordinance No. 2009-01 (amending subsection 18(A) (“Long-term Affordability”) of Ordinance No. 2006-02) shall be and hereby is repealed together with Ordinance No. 2010-09 and a new subsection 18(A) of Ordinance No. 2006-02 shall be adopted as follows:

A. Each Affordable Housing Agreement shall include a form of lien, mortgage or other instrument (hereinafter referred to as “the Affordability Mortgage or Lien”) that shall be executed and recorded along with the deed conveying the Affordable Unit to the first buyer, and that instrument shall create a mortgage or lien in favor of the County in the amount of the difference between the Maximum Target Housing Price and ninety-five percent of the unrestricted fair market value of the Affordable Unit at the time of initial sale, as determined by an appraisal approved by the County. The lien, mortgage or other instrument shall be duly executed and recorded in the Office of the County Clerk.”

Section Two. All other provisions of Ordinance 2012-1 not herein amended shall remain in full force and effect.

PASSED, APPROVED, and ADOPTED on the _____ day of _____, 2014 by the Board of County Commissioners of Santa Fe County.

**THE BOARD OF COUNTY COMMISSIONERS
OF SANTA FE COUNTY**

Daniel W. Mayfield, Chair

ATTEST:

Geraldine Salazar, County Clerk

APPROVED AS TO FORM:

Gregory S. Shaffer, County Attorney



THE BOARD OF COUNTY COMMISSIONERS
OF SANTA FE COUNTY

ORDINANCE NO. 2012-1

AN ORDINANCE CONCERNING THE COUNTY'S AFFORDABLE HOUSING PROGRAM; REPEALING SPECIFIED PORTIONS OF ORDINANCES NO. 2006-02, 2009-01 AND 2010-09; ENACTING REPLACEMENT PROVISIONS THAT REDUCE THE AMOUNT OF AFFORDABLE HOUSING FROM 30% TO 15% OF THE TOTAL HOUSING PROVIDED IN A MAJOR PROJECT, AND REDUCING FROM 16% TO 8% THE AFFORDABLE HOUSING PROVIDED IN A MINOR PROJECT; AMENDING THE AFFORDABILITY LIEN; AND PROVIDING FOR THE REMAINDER OF THE AFFORDABILITY LIEN TO DECLINE TO MATCH THE APPRECIATION SHARE LIEN TO PROTECT LONG-TERM AFFORDABILITY.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY THAT SPECIFIED PORTIONS OF ORDINANCES NO. 2006-02, 2009-01 AND 2010-09 ARE HEREBY REPEALED AND REPLACEMENT PROVISIONS ENACTED AS FOLLOWS:

Section One. Subsections 4(A) and 4(B) of Ordinance No. 2006-02 ("Affordable Housing Requirements") shall be and are repealed and new subsections 4(A) and 4(B) enacted as follows:

"Section Four. Affordable Housing Requirements.

"A. Of the total housing provided in any Major Project, no less than fifteen percent (15%) shall be Affordable Housing as defined herein. Of the total housing provided in any Minor Project, no less than eight percent (8%) shall be Affordable Housing as defined herein.

"B. The distribution of the Affordable Units provided in connection with a Major Project shall include Affordably Priced Housing Units provided equally to Eligible Buyers in Income Range 1 (3.75%), Income Range 2 (3.75%), Income Range 3 (3.75%), and Entry Market Housing Units provided to Entry Market Buyers in Income Range 4 (3.75%). The distribution of the Affordable Units provided in connection with a Minor Project, except as otherwise set forth in Section Five of this Ordinance, shall include Affordably Priced Housing Units provided equally to Eligible Buyers in Income Range 1 (2%), Income Range 2 (2%), Income Range 3 (2%), and Entry Market Housing Units provided to Entry Market Buyers in Income Range 4 (2%)."

Section Two. Subsection 16(A) of Ordinance No. 2006-02 shall be and hereby is repealed and a new subsection 16(A) enacted as follows:

SFC CLERK RECORDED 02/05/2012

"Section Sixteen. Alternate Means of Compliance.

"A. A Project may alternatively meet all or a portion of its obligation to provide Affordable Housing by:

"1. providing Affordable Units outside the Project but within central and northern Santa Fe County, as shown on Attachment A, subject to the provisions of Section Sixteen (D) of this Ordinance;

"2. making a cash payment that is equal to or greater value than would have been required if the Project had been constructed or created Affordable Units as provided in this Ordinance, applying the methodology set forth in the Affordable Housing Regulations;

"3. dedicating property suitable for construction of Affordable Units outside the Project but within central and northern Santa Fe County, as shown on Attachment A, whose value is equal to or greater than that which would have been required if the Project had been constructed or created Affordable Units as provided in this Ordinance, applying the methodology set forth in the Affordable Housing Regulations; or

"4. otherwise providing Affordable Units in a manner that is consistent with the goals and objectives of this Ordinance (including providing rental homes in lieu of homes for purchase, so long as the initial market value rental payments do not exceed that which an affordable buyer would have to pay to purchase a home in the income ranges specified in the affordable housing regulations).

Section Three. Section One of Ordinance No. 2009-01 (amending subsection 18(A) ("Long-term Affordability") of Ordinance No. 2006-02) shall be and hereby is repealed together with Ordinance No. 2010-09 and a new subsection 18(A) of Ordinance No. 2006-02 shall be adopted as follows:

"A. Each Affordable Housing Agreement shall include a form of lien, mortgage or other instrument (hereinafter referred to as "the Affordability Mortgage or Lien") that shall be executed and recorded along with the deed conveying the Affordable Unit to the first buyer, and that instrument shall create a mortgage or lien in favor of the County in the amount of the difference between the Maximum Target Housing Price and ninety-five percent of the unrestricted fair market value of the Affordable Unit at the time of initial sale, as determined by an appraisal approved by the County, which specifies that the value of the mortgage or lien is calculated at any given point by multiplying the number of full years that have elapsed from the date of first sale of the Affordable Unit by 0.10 and then multiplying that result by the difference between the Maximum Target

SFC CLERK RECORDED 02/05/2012

Housing Price and ninety-five percent of the unrestricted fair market value of the Affordable Unit at the time of initial sale. The liens, mortgages or other instruments shall be duly executed and recorded in the Office of the County Clerk.

Section Four. All other provisions of Ordinances No. 2006-02, 2009-01 and 2010-9 shall remain in force.

PASSED, APPROVED AND ADOPTED this 31st day of January, 2012.

THE BOARD OF COUNTY COMMISSIONERS
OF SANTA FE COUNTY

By: *Liz Stefanics*
Liz Stefanics, Chair

ATTEST:
Valerie Espinoza
Valerie Espinoza, Santa Fe County Clerk



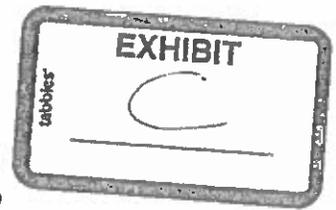
APPROVED AS TO FORM:
Stephen C. Ross
Stephen C. Ross, Santa Fe County Attorney

BCC CLERK RECORDED 02/06/2012



COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss
BCC ORDINANCE
PAGES: 3
I Hereby Certify That This Instrument Was Filed for
Record On The 6TH Day Of February, 2012 at 08:24:25 AM
And Was Duly Recorded as Instrument # 1659433
Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office
Marcella Delgado Valerie Espinoza
Deputy County Clerk, Santa Fe, NM



SANTA FE COUNTY ORDINANCE NO. 2006-02

AN ORDINANCE REQUIRING AFFORDABLE HOUSING IN PROJECTS AND MINOR PROJECTS DEVELOPED WITHIN THE NORTHERN AND CENTRAL AREA OF THE COUNTY, CREATING THE POSITION OF AFFORDABLE HOUSING ADMINSTRATOR, PROVIDING FOR ENACTMENT OF AFFORDABLE HOUSING REGULATIONS, PROVIDING FOR INCENTIVES TO AMELIORATE THE COST OF PROVIDING AFFORDABLE HOUSING, ENSURING LONG-TERM AFFORDABILITY, PROVIDING FOR ALTERNATE MEANS OF COMPLIANCE AND MEANS TO ADDRESS HARDSHIP SITUATIONS, AMENDING ORDINANCE NOS. 1996-10, 1997-03, 2000-13, 2001-7, AND 2002-1, REPEALING SECTION K OF ORDINANCE NO. 2000-12, AND REPEALING ORDINANCES NO. 1997-02, 1997-10 and 2000-11.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY:

Section One. Purpose and Intent. The purpose of this Ordinance is to provide increased housing opportunities within a broad range of incomes for current and future residents of Santa Fe County. The intent is to encourage new development to achieve a reasonable balance between market rate housing and Affordable Housing through the use of incentives and other means to help offset potential costs.

Section Two. Applicability. This Ordinance shall apply to each Project and Minor Project within the unincorporated areas of central and northern Santa Fe County shown on Attachment A not otherwise governed by the Santa Fe County Exterritorial Zoning Ordinance, Ordinance No. 1997-4, as amended. This Ordinance shall apply to an existing approved master plan and shall apply to an application for approval of master plan, preliminary development plan or preliminary plat.

Section Three. Definitions. For purposes of this Ordinance, the following definitions shall apply:

A. "Affordable Housing" means an Eligible Housing Type or Unit that is sold at or below the Maximum Target Housing Price to an Eligible or Entry Market Buyer, where the Eligible Housing Unit is occupied by the Eligible or Entry Market Buyer as a primary residence.

B. "Affordably Priced Housing Unit" means an Eligible Housing Type or Unit that is sold at or below the Maximum Target Housing Price to an Eligible Buyer within Income Ranges 1, 2, or 3 respectively.

C. "Affordable Housing Administrator" means the County employee charged with administering this Ordinance, making recommendations and taking other actions as set forth in this Ordinance.

D. "Affordable Housing Plan" means a written plan that describes how an applicant intends to comply with the Affordable Housing requirements of this Ordinance, and which specifies the general location, number and types of Affordable Units that will be built.

SFC CLERK RECORDED 02/20/2006

E. "Affordable Housing Regulations" refers to regulations developed and updated periodically by the Board of County Commissioners to govern implementation and administration of this Ordinance.

F. "Affordable Unit" means an Affordably Priced Housing Unit or an Entry Market Housing Unit.

G. "Appreciation" means the amount an Affordable Unit has increased in value since the first sale of the unit to an Eligible Buyer using an initial sales price that has been adjusted by an index specified in the Affordable Housing Regulations.

H. "Area Median Income" means the median income of the Santa Fe Metropolitan Statistical Area, adjusted for various household sizes, published by the United States Department of Housing and Urban Development and amended annually pursuant to data published by the United States Department of Housing and Urban Development.

I. "Code Administrator" means the Santa Fe County Land Use Director, or his/her designee.

J. "Community Water System" has the same meaning as that phrase is given in the Land Development Code, Ordinance No. 1996-10 (as amended), a water supply system that serves five (5) or more dwelling units or commercial units through facilities that are under central or common ownership and/or management and that utilize permitted water rights instead of a domestic well, including public water supply systems such as those operated by Santa Fe County and the City of Santa Fe.

K. "Eligible Buyer" means the buyer of an Eligible Housing Unit whose Annual Gross Income is one hundred percent (100%) or less than the Area Median Income.

L. "Eligible Housing Type" or "Unit" means a housing unit, attached or detached, that is constructed in compliance with applicable codes. Design standards for an Eligible Housing Type or Unit shall be further categorized within the Affordable Housing Regulations according to housing type, number of bedrooms, number of bathrooms and minimum square footages of heated residential area.

M. "Entry Market Buyer" means a buyer of an Eligible Housing Type or Unit whose Annual Gross Income is between 101% to 120% of the Area Median Income.

N. "Entry Market Housing Unit" means an Eligible Housing Type or Unit that is sold at or below the Maximum Target Housing Price to an Entry Market Buyer within Income Range 4 respectively.

O. "Income Range" means the income range used to determine the Maximum Target Home Price for each Eligible Housing Type. For purposes of this Ordinance, the Income Ranges are as follows:

1. Income Range 1: 0% to 65% of the Area Median Income.
2. Income Range 2: 66% to 80% of the Area Median Income.
3. Income Range 3: 81% to 100% of the Area Median Income.
4. Income Range 4: 101% to 120% of the Area Medium Income.

P. "Maximum Target Housing Price" means the highest price at which an Eligible Housing Type or Unit may be sold to an Eligible or Entry Market Buyer in the appropriate Income Range and otherwise satisfy the affordable housing requirements of this Ordinance. The Maximum Target Housing Prices for each Eligible Housing Type and Income Range shall be included in the Affordable Housing Regulations, and the

Maximum Target Housing Prices shall be amended from time to time as the Area Median Income, interest rates, or other appropriate indices change. The Maximum Target Housing Price shall not include any options, lot premiums or upgrades chosen by the Eligible or Entry Market Buyer so long as the options, premiums and upgrades are published by the seller in advance as part of its marketing efforts and so long as the options are reasonably comparable to those offered to other buyers of the same housing type and do not exceed the sum of \$2,000 in total.

Q. "Major Project" means any division of property into twenty-five (25) or more parcels for purpose of sale, lease or other conveyance of one or more single-family residences.

R. "Minor Project" means subdivision of a parcel or parcels into between five (5) and no more than twenty-four (24) or parcels (inclusive of any Affordable Housing provided as a result of the application of requirements of this Ordinance) for purpose of sale, lease or other conveyance of one or more single-family residences.

S. "Project" means any Major Project or Minor Project.

Section Four. Affordable Housing Requirements.

A. Of the total housing provided in any Major Project, no less than thirty percent (30%) shall be Affordable Housing as defined herein. Of the total housing provided in any Minor Project, no less than sixteen percent (16%) shall be Affordable Housing as defined herein.

B. The distribution of the Affordable Units provided in connection with a Major Project shall include Affordably Priced Housing Units provided equally to Eligible Buyers in Income Range 1 (7.5%), Income Range 2 (7.5%), Income Range 3 (7.5%), and Entry Market Housing Units provided to Entry Market Buyers in Income Range 4 (7.5%). The distribution of the Affordable Units provided in connection with a Minor Project, except as otherwise set forth in Section Five of this Ordinance, shall include Affordably Priced Housing Units provided equally to Eligible Buyers in Income Range 1 (4%), Income Range 2 (4%), Income Range 3 (4%), and Entry Market Housing Units provided to Entry Market Buyers in Income Range 4 (4%).

C. If a fractional portion of an Affordable Unit remains when determining the required number of Units, the following requirements apply:

1. Where the fractional remainder is greater than 0.5, an additional unit shall be required.

2. Where the fractional remainder is 0.5 or less, a residual fee shall be required in accordance with the Affordable Housing Regulations.

D. Affordable Housing shall be integrated into the overall design and layout of the Project, and the Affordable Units shall be reasonably dispersed within the Project. An appropriate mix of housing types and sizes may be included in the Project so long as it otherwise complies with this Ordinance. At a minimum, the general location, total number of units, a description as to the type and design of those units, the general pricing structure, and the proposed phasing of the Affordable Housing shall be identified in the Affordable Housing Plan and the exact location of the Affordable Units shall be identified in the Affordable Housing Agreement.

E. Affordable Housing shall be provided in phases if the Project is otherwise to be phased, but the proportion of Affordable Units offered for sale within any

phase must not be less than the proportion of the total number of lots to be developed within all phases of the Project and the total number of Affordable Units to be offered within all phases of the Project.

F. An applicant shall submit an Affordable Housing Plan as a part of the application for approval of a Project. The Affordable Housing Plan shall describe, in detail, how the applicant intends to comply with the Affordable Housing requirements of this Ordinance, and shall specify whether alternative means of compliance or hardship conditions will be claimed and, if so, the grounds for doing so. The Affordable Housing Plan shall be submitted at the earliest phase of the review process and shall be included as a part of the development review for that development. The Affordable Housing Administrator may request additional information from the applicant, or reject or require amendments to a proposed Affordable Housing Plan if the proposed Affordable Housing Plan fails to meet the requirements of this Ordinance or the Affordable Housing Regulations. The Affordable Housing Plan will be incorporated into the Affordable Housing Agreement that shall be filed and recorded with a final development plan or a final plat, whichever instrument is the first to be recorded.

G. A final plat shall not be recorded until the applicant has entered into an Affordable Housing Agreement with the County.

Section Five. [Reserved]

Section Six. Affordable Housing Regulations.

A. The Affordable Housing Administrator shall recommend and present to the Board of County Commissioners proposed Affordable Housing Regulations contemporaneous with consideration of this Ordinance.

B. The Affordable Housing Regulations ultimately adopted by the Board of County Commissioners shall include, at a minimum, the following:

1. The application submittal requirements necessary to reasonably evaluate compliance with this Ordinance, the requirements governing the Affordable Housing Plan and Affordable Housing Agreement.

2. The form of the Affordable Housing Agreement, including standard terms and conditions for providing Affordable Housing within a Project, the location, housing type(s) and size(s) and the Maximum Target Housing Price(s) of the proposed Affordable Units, a description of how the Affordable Units will be marketed and sold to Eligible Buyers or Entry Market Buyers, and a requirement that the Affordable Housing Agreement be filed and recorded with the Final Plat;

3. A reasonable process for certifying Eligible or Entry Market Buyers by the County or its agent that, to the extent possible, takes no more than fifteen (15) business days from the date a potential buyer applies for certification;

4. Reasonable fees to be charged for certification of Eligible or Entry Market Buyers;

5. The form of the Certificate of Compliance to be issued upon compliance with the terms of this Ordinance;

6. A Maximum Target Housing Price for each income range;

7. Minimum design requirements including the number of bathrooms and the minimum residential square footages of heated area according to the number of bedrooms;

8. [Reserved]

9. The method used to determine and periodically adjust the Maximum Target Housing Price, including the methodology to be used to determine the initial market price for each Eligible Housing Type and a means to discount the market price by the same percentages to determine the price for each category of Eligible Housing Type and for each Income Range;

10. The method for determining fees associated with this Ordinance, including cash payments as an alternative means of compliance and residual fees;

11. Rules for applying the residual fee standards in Section 4(C)(2) of this Ordinance;

12. A methodology for evaluating cash payments pursuant to Section 16(A)(2) of this Ordinance;

13. A methodology for evaluating property dedications pursuant to Section 16(A)(3) of this Ordinance;

14. A methodology for evaluating proposed cash payments for alternative means of compliance pursuant to Section 16(F)(1) of this Ordinance;

15. A methodology for evaluating property dedications for alternative means of compliance pursuant to Section 16(F)(3) of this Ordinance;

16. Criteria and procedures for reducing the County's share of the Appreciation and the Affordability Mortgage or Lien pursuant to Section 18(C) of this Ordinance; and

17. Any other matter deemed necessary by the Board of County Commissioners.

C. The Affordable Housing Regulations shall be adopted by resolution of the Board of County Commissioners, and shall be amended from time to time as deemed necessary and to account for changes in indices used to make calculations required by this Ordinance and the Affordable Housing Regulations.

Section Seven. Rental of Affordable Units. An Eligible or Entry Market Buyer shall not lease an Affordable Housing Unit that is provided pursuant to this Ordinance unless the proposed tenant is an immediate family member of the Eligible or Entry Market Buyer, the Eligible or Entry Market Buyer is under duress by reason of unemployment, family medical emergency, is unable to sell the Affordable Unit for an amount equal to or greater than the original sale price or other unique circumstances of hardship, and the proposed lease of the premises is approved in writing by the Affordable Housing Administrator.

Section Eight. Water for Affordable Housing. Notwithstanding the provisions of Article V, Section 5.2.2.g.(9) of the Santa Fe Land Development Code and Ordinance No. 2005-02 (Master Plan Procedures), or any Resolution governing operations of the Santa Fe County Water Resources Department, a Project shall not be required to transfer water rights to the County for the Affordably Priced Housing Units as required by

application of Section 4(A) of this Ordinance, so long as at the time of application the County holds adequate water rights to supply the Affordably Priced Housing Units and is otherwise capable of supplying the Affordably Priced Housing Units.

Section Nine. Density Bonus for Affordable Housing.

A. A Major Project that utilizes a Community Water System may receive increased density to accommodate the Affordably Priced Housing Units pursuant to the requirements contained within this Ordinance.

B. A Minor Project may receive increased density to accommodate the Affordably Priced Housing Units pursuant to the requirements contained within this Ordinance so long as the Project provides no less than thirty percent (30%) Affordable Housing, and so long as: (i) the Project utilizes a Community Water System, and (ii) clustering concepts are incorporated into the Project.

C. The density bonus permitted by this Section shall not exceed 2/3 unit for each Affordably Priced Housing Unit provided and as otherwise permitted by application of the Land Development Code, not to exceed an increased density of fifteen percent (15%) attributable to the Project in total.

D. The affordability requirements for a Project shall be determined prior to applying any density bonus.

E. Density bonuses of not more than twenty percent (20%) attributable to the Project as a whole may be approved by the Board of County Commissioners on a case-by-case basis, so long as the Project remains compatible with surrounding uses and the impacts to adjacent areas are minimal.

Section Ten. Incentives for Energy Efficiency. A Project that provides energy efficiency measures within the Project as a whole shall be permitted to apply all the incentives described in this Ordinance to each Entry Market Housing Unit. The criteria to evaluate a proposal to provide energy efficiency measures shall be more specifically described in the Affordable Housing Regulations.

Section Eleven. Relief from Development Fees. Notwithstanding the provisions of Article V, Section 6 ("Fees and Levies") Article XII of the Santa Fe County Land Development Code, a Project that provides Affordable Housing as required by this Ordinance shall be relieved of the obligation to pay development fees for each Affordably Priced Housing Unit provided within the Project.

Section Twelve. Relief from Additional Santa Fe County Water Utility Connection Charges. A Project that provides Affordable Housing as required by this Ordinance shall be relieved of the obligation to pay additional water connection charges (excluding the costs of creating a line extension pursuant to a Water Service Agreement) for each of the Affordably Priced Housing Unit that exceed the cost of the water meter.

Section Thirteen. Reduction of Lot Size for Affordable Units. A Minor Project that is not eligible for a water rights transfer waiver (Section Eight, herein) or a water allocation or density bonus (Section Nine, herein), may reduce the lot area for each Affordably Priced Housing Unit to the minimum permitted by applicable Regulations of

the New Mexico Environmental Department, so long as the Affordably Priced Housing Unit whose lot sizes are reduced pursuant to this Section are reasonably dispersed throughout the Project. The reduction in lot size shall not alter the hydrologic standards set forth in the Santa Fe County Land Development Code.

Section Fourteen. [Reserved.]

Section Fifteen. Other Incentives Authorized by Article 27, New Mexico Affordable Housing Act. The County may donate land for construction of affordable housing or an existing building for conversion or renovation into affordable housing or may provide or pay the costs of infrastructure necessary to support affordable housing projects if permitted under the terms of a separate ordinance enacted pursuant to NMSA 1978, Section 6-27-1 et seq.

Section Sixteen. Alternate Means of Compliance.

A. A Project may alternatively meet all or a portion of its obligation to provide Affordable Housing by:

1. providing Affordable Units outside the Project but within central and northern Santa Fe County, as shown on Attachment A, subject to the provisions of Section Sixteen (D) of this Ordinance;
2. making a cash payment that is equal to or greater value than would have been required if the Project had been constructed or created Affordable Units as provided in this Ordinance, applying the methodology set forth in the Affordable Housing Regulations; or
3. dedicating property suitable for construction of Affordable Units outside the Project but within central and northern Santa Fe County, as shown on Attachment A, whose value is equal to or greater than that which would have been required if the Project had been constructed or created Affordable Units as provided in this Ordinance, applying the methodology set forth in the Affordable Housing Regulations.

B. Review and approval of a proposal to use an alternative means of compliance provided by this Section shall be conducted during the review of application for approval of the master plan, preliminary plat or development plan, as appropriate. Alternatively, a person desiring to develop a Project may apply for concept approval of a proposed Affordable Housing Plan prior to applying for approval of a Project, in which case the application shall be processed in the same manner as an application for a master plan is processed. Concept approval of an alternative means of compliance shall not imply nor commit to an approval for future development.

C. Where an alternative means of compliance pursuant to Section 16 (A)(1) is proposed, both the Project and its off-site affordable housing component shall be considered and processed as a single Project, except as provided in Section 16 (D) of this Ordinance.

D. Where an alternative means of compliance pursuant to Section 16 (A)(1) is proposed (hereinafter referred to as "the sending project") but the off-site Affordable Units (hereinafter referred to as "the receiving project") are to be located within an area governed by the Santa Fe County Exterritorial Zoning Ordinance,

Ordinance No. 1997-4, as amended, or the platting and planning jurisdiction of any municipality (hereinafter referred to collectively as "the Extraterritorial Zone"), the provisions of Section 16 (C) shall not apply. The receiving project must receive final development plan and plat approval from the Extraterritorial Zoning Authority or, in areas without an extraterritorial zoning ordinance or regulations, from the appropriate municipality, prior to the approval of the final development plan and plat for the sending project.

E. In deciding whether to accept a proposed alternative means of compliance pursuant to Section 16 (A)(1), the County shall consider the following where applicable:

1. whether implementation of a proposed alternative means of compliance would overly concentrate Affordable Units in an area or within the proposed Project in a location where such a concentration would be inappropriate given present or future conditions;

2. if the proposal involved providing Affordable Units outside the Project area, whether the cumulative number of Affordable Units required of both the sending and receiving projects is met;

3. if the proposal involves providing Affordable Units outside the Project area, whether there is adequate existing infrastructure, including water systems, liquid waste facilities and transportation systems, to support the Affordable Units in the proposed location, whether infrastructure for water and liquid waste disposal systems can serve the proposed alternative site or project, and whether the commitment to provide such service has been confirmed in a commitment letter, or water or wastewater service agreement;

4. if the proposal involves providing Affordable Units outside the Project area, whether there is a specific need or market for Affordable Units in the location where proposed;

5. if the proposal involves providing Affordable Units outside the Project, whether the property where the Affordable Units are proposed to be located is suitable for residential use and residential development; and

6. if the proposal provides an overall greater public benefit than if the Affordable Units were constructed within the Project or Minor Project.

F. In deciding whether to accept a proposed alternative means of compliance pursuant to Sections 16 (A)(2) or (A)(3), the County shall consider the following where applicable:

1. whether the proposed cash payment is equal to or greater than the cost of constructing equivalent Affordable Units within the Project, applying the methodology set forth in the Affordable Housing Regulations;

2. whether a proposed cash payment or dedication of property creates a substantial surplus of funds within the dedicated housing fund or trust specific to that purpose;

3. whether the appraised value of the property proposed to be dedicated is equal to or greater than the total estimated value of the affordable units that would have been constructed within the Project, applying the methodology set forth in the Affordable Housing Regulations; and

4. whether a cash payment or property provides a greater overall public benefit than if the Affordable Units were constructed within the Project or Minor Project that would have otherwise provided for mixed-income development.

G. The method for determining whether the total cash payment amount or value of property proposed for transfer is sufficient shall be established in the Affordable Housing Regulations.

H. Incentives described in Sections 8 through 15 of this Ordinance may only be applied to a Project utilizing alternative means of compliance if the Board of County Commissioners specifically finds that this Ordinance, when applied to the Project, would result in economic infeasibility of the Project.

Section Seventeen. Hardship Conditions.

A. The Board of County Commissioners or, if a Board of Adjustment is created by the Board of County Commissioners of Santa Fe County, then the Board of Adjustment, may waive one or more of the requirements set forth in this Ordinance if a condition of hardship exists as set forth in this Section.

B. A condition of hardship shall exist for purposes of this Section, as follows:

1. A condition of hardship exists where the Project fails to qualify for any incentive set forth herein, where the Project fails to demonstrate eligibility for an alternative means of compliance, where application of the provisions of this Ordinance would result in economic infeasibility of the Project, and where complying with the requirements of this Ordinance would deprive a property owner of substantially all economically viable use of the subject property taken as a whole contrary to the Constitution of the United States or the Constitution of the State of New Mexico.

2. A condition of hardship exists for a Minor Project when an Affordable Unit (or lot created for an Affordable Unit) cannot be sold within a reasonable period of time without causing a loss on the Minor Project taken as a whole.

Section Eighteen. Long-term Affordability.

A. Each Affordable Housing Agreement shall include a form of lien, mortgage or other instrument (hereinafter referred to as "the Affordability Mortgage or Lien") that shall be executed and recorded along with the deed conveying the Affordable Unit to the first buyer, and that instrument shall create a mortgage or lien in favor of the County in the amount of the difference between the Maximum Target Housing Price and ninety-five percent of the unrestricted fair market value of the Affordable Unit at the time of initial sale, as determined by an appraisal approved by the County. The lien, mortgage or other instrument shall be duly executed and recorded in the Office of the County Clerk.

B. The lien, instrument, or mortgage shall contain a provision that creates a right of first refusal in favor of the County to purchase the Affordable Unit or the right to broker resale of the Affordable Unit to an Eligible or Entry Market Buyer at the then fair market value of the Affordable Unit. This instrument shall require the owner of an Affordable Unit to provide the County with fifteen (15) days written notice of intent to sell the Affordable Unit during which period the County may indicate its intent to purchase the unit or broker a purchase and sale of the unit to an Eligible Buyer. The

instrument shall further provide the County with an additional 60 days after it has notified the owner of its intent to purchase the unit or broker a purchase and sale of the unit to complete the transaction. If the County fails to notify the owner of its intent to purchase the unit or broker a purchase of the unit within the allotted time period, or if it does not complete the transaction within the allotted time period, the owner shall have the right to sell the unit to any buyer at an unrestricted price.

C. The lien, mortgage or other instrument shall also provide that if the Affordable Unit is sold or refinanced during the ten year period beginning on the date of sale of the Affordable Unit to the first buyer thereof, the County shall share in any Appreciation; the seller's share of the resulting appreciation shall be measured by multiplying the number of full years that have elapsed from the date of first sale of the Affordable Unit by 0.10 and then multiplying that result by the Appreciation. If the sale price is insufficient to close the transaction and satisfy the County's share of the Appreciation and the Affordability Mortgage or Lien, the County's share shall be reduced according to criteria set forth in the Affordable Housing Regulations.

D. The form of the instrument described in subsection 18(A), above, and the methodology for determining the initial market value of the Affordable Unit shall be specified in the Affordable Housing Regulations.

E. Any lien, mortgage, or other instrument referred to in this Section shall be released and satisfied through an appropriate instrument at the time of sale of the Affordable Unit and the appropriate instrument shall be recorded in the Office of the County Clerk documenting the release and satisfaction thereof. Any amounts collected from application of any affordability mortgage or lien pursuant to Section 18(A), above, shall be paid to the County contemporaneously with release of said instrument.

F. An Affordability Mortgage or Lien may be temporarily released for the limited purpose of closing a subsequent purchase and sale of an Affordable Unit so long as an affordability mortgage or lien is executed by the buyer and recorded as provided in this Section.

G. Any amounts collected from application of any Affordability Mortgage or Lien shall be deposited into a fund created in the County treasury or separate trust whose sole purpose shall be to support Affordable Housing within Santa Fe County or, alternatively, transferred to the Santa Fe County Housing Authority to support Affordable Housing within Santa Fe County. The fund or trust shall be governed by rules and requirements set forth in a separate Ordinance enacted pursuant to NMSA 1978, Section 6-27-1 et seq.

H. [Reserved]

I. Where the then owner of an Affordable Unit is under extreme duress by reason of unemployment, family medical emergency, divorce, or death and is unable to sell the Affordable Unit for an amount equal to or greater than the original sale price or for other unique and extreme circumstances of hardship, the Affordable Lien may be compromised or released.

Section Nineteen. Affordable Housing Administrator. The position of Affordable Housing Administrator is established. The Affordable Housing Administrator shall administer the Affordable Housing Ordinance, manage the fund or trust established pursuant to Section 17(G) of this Ordinance and a separate ordinance enacted pursuant to

NMSA 1978, Section 6-27-1 et seq., act as an ombudsman to the development review process, and have other responsibilities set forth in this Ordinance. The salary and benefits of the Affordable Housing Administrator shall be paid from proceeds collected pursuant to Paragraph 17(G) of this Ordinance and a separate ordinance enacted pursuant to NMSA 1978, Section 6-27-1 et seq., to the extent permitted by law.

Section Twenty. Affordable Housing Ordinance Review. The Affordable Housing Administrator shall prepare an Affordable Housing Report and present it to the Board of County Commissioners by the first anniversary of the effective date of this Ordinance. The purpose of the report is to measure the overall effectiveness of the Ordinance and to identify any deficiencies. In the report, the Affordable Housing Administrator shall recommend any amendments necessary to rectify those deficiencies. A similar report shall be developed and presented annually thereafter. If, at a future date, the provisions contained herein no longer meet the purpose and intent provided in Section One of this Ordinance, the Board of County Commissioners may consider appropriate amendments to this Ordinance or may repeal this Ordinance in whole or in part.

Section Twenty-One. Repeal and Amendment of Existing Ordinances.

A. Upon the effective date of this Ordinance, Ordinance Nos. 1997-02, adopted March 5, 1997, 1997-10, adopted August 12, 1997, and 2000-11, adopted September 26, 2000, shall be and hereby are repealed.

B. Upon the effective date of this Ordinance, Ordinance No. 1996-10 (the "Santa Fe County Land Development Code"), first adopted September 10, 1996, as amended, shall be and hereby is amended, as follows:

1. A new subsection 2.4.1a(1)(a)(vii) is adopted which shall provide as follows: "2.4.1a(1)(a)(vii). Submittals required by Ordinance No. 2006-02 ("Affordable Housing")."

2. A new subsection 2.4.2b(1)(a)(vii) is adopted which shall provide as follows: "2.4.2b(1)(d): Submittals required by Ordinance No. 2006-02 ("Affordable Housing")."

3. Art. III, Section 11.1 shall be amended with the following additional language, to be placed at the end of the Section: "... except as otherwise provided by application of the density bonus set forth in Ordinance No. 2006-02 ("Affordable Housing")."

4. Art. III, Section 11.2 shall be amended with the following additional language, to be placed at the end of the Section: "... except as otherwise provided by application of the density bonus set forth in Ordinance No. 2006-02 ("Affordable Housing")."

5. A new subsection 7.1.2(dd) of Art. V shall be and hereby is adopted which shall provide as follows: "7.1.2(dd): Submittals required by Ordinance No. 2006-02 ("Affordable Housing")."

C. Upon the effective date of this Ordinance, Section 10.1.2 of Ordinance No. 1997-03, as amended, shall be and hereby is amended with the following additional

language, to be placed at the end of the Section: "... except as otherwise provided by application of the density bonus set forth in Ordinance No. 2006-02 ("Affordable Housing")."

D. Upon the effective date of this Ordinance, Art. XV, Section K, Section 3.B., Exhibit 1 ("Zoning Matrix"), Col. N, 1b, 5b, 6b, 8b of Ordinance No. 2000-12 ("the Community College District Ordinance"), adopted December 11, 2000, shall be and hereby are repealed.

E. Upon the effective date of this Ordinance, a new Section 3.4.1.c(2) of Ordinance 2000-13 (the "Tesuque Community Zoning District"), adopted December 11, 2000, shall be and hereby is amended as follows: "2) where affordable housing that is provided pursuant to Ordinance No. 2006-02 ("Affordable Housing")."

F. Upon the effective date of this Ordinance, a new Section 4.4.2 of Ordinance 2002-1 ("Madrid Community Planning District"), adopted January 8, 2002, shall be and hereby is adopted which shall provide as follows: "... except as otherwise provided by application of the density bonus set forth in Ordinance No. 2006-02 ("Affordable Housing")."

G. Any ordinance, regulation or policy that is inconsistent with this Ordinance shall be, and hereby is, repealed.

Section Twenty-Two. Severability. The provisions of this Ordinance are severable and if any individual provision of this Ordinance is held invalid by a Court of Law, then the offending provision shall be stricken but the remaining provisions shall remain in full force and effect.

PASSED AND ENACTED THIS 14th DAY OF FEBRUARY, 2006.

THE BOARD OF COUNTY COMMISSIONERS
OF SANTA FE COUNTY, NEW MEXICO

By *[Signature]*
Harry B. Montoya, Chair

ATTEST:
[Signature]
Valerie Espinoza, County Clerk



Approved as to form:

[Signature]
Stephen C. Ross, County Attorney

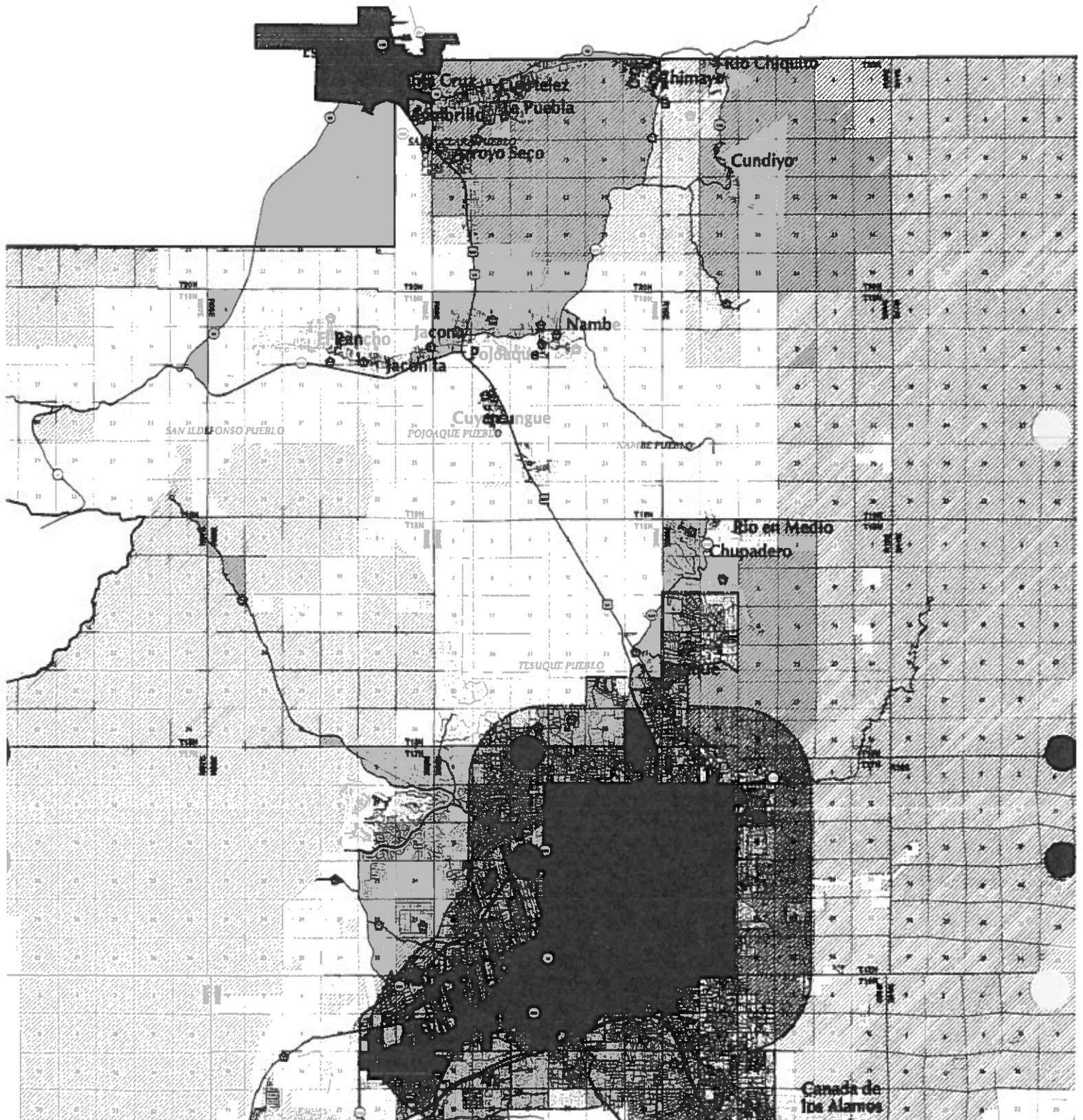


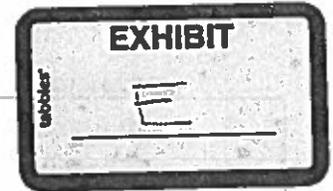
COUNTY OF SANTA FE) BCC ORDINANCE
STATE OF NEW MEXICO) 55 PAGES: 14
I Hereby Certify That This Instrument Was Filed for
Record On The 20TH Day Of February, A D , 2006 at 08 46
And Was Duly Recorded as Instrument # 1420817
Of The Records Of Santa Fe County
Witness My Hand And Seal Of Office
Valerie Espinoza
Deputy *[Signature]* County Clerk, Santa Fe, NM

SFC CLERK RECORDED 02/20/2006

Santa Fe County Affordable Housing Ordinance 2006-2

Northern and Central Santa Fe County





SANTA FE COUNTY FISCAL IMPACT REPORT (FIR)

This Fiscal Impact Report (FIR) shall be completed for each proposed ordinance or resolution as to its direct impact upon the County's operating budget and is intended for use by staff of the Human Resources and Finance Divisions, the County Manager and the governing body of Santa Fe County. Ordinances/resolutions with a fiscal impact must be reviewed by the Finance Division Director or the Budget Administrator. Ordinances/resolutions with proposed staffing increases must be reviewed and approved by the Human Resources staff and approved by the County Manager before presentation to the Board of County Commissioners (BCC).
Please refer to the instructions on how to complete this form.

Section A. General Information

Ordinance Resolution Other

A single FIR may be used for related ordinances and/or resolutions.

Short Title(s):	Amendment of Ordinance No. 2012-1 Pertaining to Affordability Lien
Reviewing Division(s):	Growth Management, Planning Division
Person Completing FIR:	Steve Brugger
Date: 11/12/2014	Phone: 992-6752

Section B. Summary

Briefly explain the purpose and major provisions of the ordinance/resolution.

Remove the provision for affordability lien reduction and elimination in Ordinance 2012-1 and restore original language in Ordinance 2006-02 regarding preservation of affordability lien.

Section C. Fiscal Impact

NOTE: Financial information on this FIR does not directly translate into a Santa Fe County budget increase.

- a. The item must be presented to the Finance Division for analysis and recommendation as a potential request to increase the existing budget for the county.
- b. Detailed budget information must be included, such as funding source, amounts and justification.

c. Detailed salary and benefit for new full-time equivalents (FTE's) must be included. The request must be approved by the staff of the Human Resources Division for each new FTE request.

1. Projected Expenditures:

- a. Indicate Fiscal Year(s) affected – the current fiscal year and the following three fiscal years, where applicable
- b. Indicate: "A" if current budget and level of staffing will absorb the costs
"N" if new, additional, or increased budget or staffing will be required
- c. Indicate: "R" if recurring annual costs
Indicate: "NR" if one-time, non-recurring costs, such as start-up, contract or equipment costs
- d. Attach additional projection schedules if four years does not adequately project revenue and costs patterns
- e. Costs may be netted or show as an offset if some cost savings are projected (please explain further in Section 3 Narrative)
- f. Please provide additional fiscal impact information for years 3 and 4 in the Expenditure/Revenue Narrative.
- g. This form allows for information related to two fiscal years. Please note *info* relation to other fiscal years in narrative 3.

Exp. Classification	FY 2015	"A" or "N"	"R" or "NR"	FY 2016	"A" or "N"	"R" or "NR"	Funds affected
Salary and Benefits	\$0	A	NR	\$0	A	NR	Special Revenue _
Maintenance	\$0	A	NR	\$0	A	NR	Special Revenue _
Other Operating	\$0	A	NR	\$0	A	NR	Special Revenue _
Contractual Services	\$0	A	NR	\$0	A	NR	Special Revenue _
Capital Requirements	\$0	A	NR	\$0	A	NR	Special Revenue _
Total	\$0			\$0			

*Any indication that additional staffing would be required must be reviewed and approved in advance by the County Manager by attached memo before release of FIR to the Board of County Commissioners (BCC).

** For salary and benefit information contact the Finance Division, or attach the New FTE Request form to provide necessary information.

2. Revenue Sources:

- a. To indicate new revenues and/or
- b. Required for costs for which new expenditure budget is proposed above in item 1.
- c. Please provide additional fiscal impact information for years 3 and 4 in the Expenditure/Revenue Narrative.

Type of Revenue	FY 2015	"R" or "NR"	FY 2016	"R" or "NR"	Funds Affected
n/a	\$0	NR	\$0	NR	Special Revenue _
Total	\$0		\$0		

3. Expenditure/Revenue Narrative:

Explain expenditures, grant match requirements, justify salary and benefit costs for new FTE request, detail capital and operating uses, etc. Explain revenue source(s). Include revenue calculations, grant(s) available, anticipated date of receipt of revenues/grants, etc. (Attach supplemental page, if necessary). Also, provide expanded information for fiscal year three and four impact for both revenue and expenditures.

No additional expenditures or immediate revenues will be received from approval of this ordinance. The only impact would be on the face value of the paper assets, the affordability liens, that the County retains. Assuming 10 affordable homes are sold per year with an average lien of \$50,000, retention of the liens, rather than forgiveness of the face value over 10 years, would create an annual asset value increase of \$50,000 (\$5,000 value per yr. times 10 affordable homes)

Section D. General Narrative

1. Conflicts:

Does this proposed ordinance/resolution duplicate/conflict with/companion to/relate to any County code, approved ordinance or resolution, other adopted policies and legislation? Include details of county adopted ordinances/resolutions and dates. Summarize the relationships, conflicts or overlaps.

The proposed ordinance would eliminate provisions of Ordinance 2012-1 and would restore original provisions of Ordinance 2006-02 which addressed the issue of affordability liens.

2. Consequences of Not Enacting This Ordinance/Resolution:

Are there consequences of not enacting this ordinance/resolution? If so, describe.

Not enacting this ordinance would result in the elimination of the face value of new affordability liens over a ten year period, which would encourage speculation and flipping of real estate and the loss of long-term affordability, all of which is counter to the goal of inclusionary zoning.

3. Technical Issues:

Are there incorrect citations of law, drafting errors or other problems? Are there any amendments that should be considered? Are there any other alternatives which should be considered? If so, describe.

This ordinance would eliminate a section of Ordinance 2012-1 which had an unintended math error. This amendment would restore the original language from Ordinance 2006-02 which enabled the inclusionary zoning program, and which was based on the Community College District Affordable Housing Ordinance and Regulations.

4. Community Impact:

Briefly describe the major positive or negative effects the ordinance/resolution might have on the community including, but not limited to, businesses, neighborhoods, families, children and youth, social service providers and other institutions such as schools, churches, etc.

This ordinance would preserve long-term affordability of the affordable housing stock so that original subsidies can be assumed in the future by income qualified buyers at the time of resale of the affordable homes.

No file attached

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