

THE BOARD OF COUNTY COMMISSIONERS
OF SANTA FE COUNTY

ORDINANCE NO. 2023- 07

AN ORDINANCE
AMENDING THE SUSTAINABLE LAND DEVELOPMENT CODE, ORDINANCE NO. 2016-9 TO AMEND SECTION 12.14 (TRANSFER OF DEVELOPMENT RIGHTS) TO AMEND THE TDR RATIO TO INCREASE THE NUMBER OF ADDITIONAL DWELLING UNITS ALLOWED PER TDR; TO ESTABLISH TDR TRANSFER RATIOS FOR DIMENSIONAL STANDARDS; TO EXEMPT AFFORDABLE HOUSING FROM THE REQUIREMENT TO PURCHASE TDRS; TO MAKE MINOR TECHNICAL AND GRAMMATICAL CHANGES; TO REVISE PROCEDURAL STANDARDS; TO ADD A NEW SECTION TO ALLOW A DENSITY CHARGE OPTION IN LIEU OF TDRS; AND TO AMEND THE DEFINITION OF LOT COVERAGE IN APPENDIX A OF THE SLDC.

BE IT ENACTED BY THE BOARD OF COUNTY COMMISSIONERS
("BOARD") OF SANTA FE COUNTY ("COUNTY"):

Chapter 12, Section 12.14 of the SLDC is hereby amended and restated as follows:

12.14. TRANSFER OF DEVELOPMENT RIGHTS.

12.14.1. Purpose. The purposes of this Section are to:

12.14.1.1. promote preservation of agriculture, rural open space and character, scenic vistas, natural features, areas of special character or special historic, cultural or aesthetic interest or value, and environmental resources for the benefit of the residents of Santa Fe County. This Section will also authorize an applicant or owner of any estate or interest in property to obtain a development order granting Transfer of Development Rights ("TDR") relief pursuant to a beneficial use and value determination, to transfer or sell one or more transferrable development rights where the development order authorizes relief in the nature of a TDR;

12.14.1.2. minimize the economic impact of environmental restrictions on property owners in designated sending areas, and allow increases in development potential in receiving areas that maintain the County's overall environmental carrying capacity as defined in the SGMP;

12.14.1.3. ensure that owners of land to be preserved, conserved, or protected have reasonable use of their property by permitting a transfer of development rights to other properties;

12.14.1.4. provide a mechanism whereby development rights may be reliably transferred; and

12.14.1.5. authorize conveyances of development rights to the County or to the County development rights bank.

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12.14.2. Applicability. The procedures and regulations in this Chapter apply to the transfer of development rights from land qualifying as sending areas to land qualifying as receiving areas.

12.14.3. General Standards.

12.14.3.1. Development rights may be sent:

1. from sending areas identified by a Community Overlay District;
2. from areas designated as an environmental and resource protection overlay, historic preservation overlay or agriculture overlay;
3. from sensitive environment lands; e.g., riparian habitats, endangered or threatened species habitat, archeological sites;
4. from agricultural land;
5. from lands providing open space and preserving scenic vistas, natural features and areas of special character; and
6. through a transfer of development rights as part of a development order granting BUD relief.

12.14.3.2 Development rights may not be sent:

1. from areas of required open space within a development;
2. from areas of required setbacks within a development;
3. from MU and PD districts; and
4. from CG, I and IL districts.

12.14.3.3 A legal lot of record shall not be both a sending area and a receiving area.

12.14.3.4. Development rights may be used on receiving areas to provide additional density and greater dimensional flexibility as allowed in the zoning district with TDRs and in accordance with the TDR Transfer Ratio identified in Table 12-2 and the TDR Dimension Standards Ratio identified in Table 12-3.

12.14.4. Transferable Development Rights Certification.

12.14.4.1. A development right shall be severed and transferred only by a TDR Certificate issued by Santa Fe County. A permanent severance of transferable development rights and land use restriction agreement or other permanent and enforceable restriction on future development is required for TDR certification. The TDR Agreement shall limit future development on the sending area. The total number of development rights remaining on the property shall be established and identified in the TDR Agreement and on the TDR Sending Area Plat.

12.14.4.2. The TDR Certification results in the conveyance of TDR Certificates to the property owners and the restriction on future development imposed on the sending area pursuant to the TDR Agreement.

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1. TDR Certification requires the recordation of the following documents:
 - a. TDR Agreement; and
 - b. TDR Sending Area Plat.
2. Both the TDR Sending Area Plat and the TDR Agreement shall clearly identify the area of restricted development, and shall reference the other document. The TDR Sending Area Plat shall be approved in accordance with Chapter 4.

12.14.4.3. Transferors shall have the right to sever all or a portion of the development rights from sending areas and to sell, trade, or barter TDR Certificates to a transferee.

12.14.4.4. Any transfer of development rights pursuant to this Chapter authorizes an increase in maximum density and/or changes to dimension standards in accordance with the zoning standards for the Receiving Area as identified in Chapter 8 and in accordance with the TDR Transfer Ratio identified in Table 12-2 and the TDR Dimension Standards Ratio identified in Table 12-3. The TDR Transfer Ratio and the TDR Dimension Standards Ratio shall not alter or waive the development standards of the receiving area, nor shall they allow a use otherwise prohibited in the receiving zoning district, unless otherwise provided in the regulations applicable to the receiving area.

12.14.4.5. Transfer of development rights shall not be available for land restricted from development by covenant, easement or deed restriction.

12.14.4.6. All TDR Plats and TDR Agreements shall be recorded in the Office of the county Clerks.

12.14.4.7. Value of Transferable Development Rights. The monetary value of TDRs is completely determined between the seller and buyer.

12.14.5. Sending Areas.

12.14.5.1. Calculation of Development Rights. Calculation of development rights shall be based on the base density of the parcel and the size of the sending areas. Sending area calculations may not include any residential dwelling, in accordance with subsection 4 below. The number of development rights associated with a sending area shall be determined through the TDR Certification process, based on the following:

1. One development right for each primary residential dwelling that could potentially be constructed on the sending area.
2. Sending areas shall meet the criteria established by this Chapter 12.
3. Sending areas with valid irrigation water rights may receive one additional TDR for each acre foot of irrigation water rights only if the owner agrees to an enforceable restriction on the transfer of water rights acceptable to the County and in accordance with NMSA 1978, Sections 73-2-21(E) and 73-3-4.1 (2021). The party sending the development rights shall bear the burden of demonstrating to the County's satisfaction the validity, amount and other elements of the water rights. The TDR Agreement and the TDR Sending Area Plat shall identify the restriction on sale or transfer of irrigation water rights.
4. If the parcel with the sending areas contains any residential dwelling units, then the calculation of development rights pursuant to the sections above shall be

reduced to reflect such existing development, so that the resulting calculation reflects only additional potential primary residential development available on the property.

12.14.5.2 Development on Sending Areas. Development on a sending area shall be limited to those uses and or structures that promote the values of the site for the reason that the TDR sending area was created, so long as such development does not include any dwelling units.

12.14.6. Right to Sever and Transfer.

12.14.6.1. A development right may be severed from an approved sending site only after a restriction on future development is imposed on the sending area pursuant to Section 12.14.4.1. The TDR certificate may be transferable from one person or entity to another upon approval by the Administrator.

12.14.7. Receiving Sites.

12.14.7.1. In order to be eligible as a receiving area, a property must be located in one of the following areas or zoning districts:

1. Mixed Use (MU);
2. Planned Development (PD);
3. Industrial General (I);
4. Industrial Light (IL);
5. Commercial General (CG);
6. Designated receiving areas; or
7. A property rezoned to an eligible zoning district.

12.14.7.2. The receiving site must be served by public water and wastewater systems.

12.14.7.3. The receiving site must be accessible by public roads.

12.14.8. TDR Transfer Ratios. TDRs may be used in receiving areas per the TDR Density Transfer Ratio identified in Table 12-2 and/or the TDR Density and Dimension standards Transfer Ratio identified in Table 12-3.

Table 12-2 TDR Density Transfer Ratio

TDR Use	Additional Units allowed per TDR in Receiving Area
Residential – For Sale	5
Residential – For Rent	10

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12.14.8.1 All rental housing approved using this transfer ratio must remain as rental for a minimum of 20 years.

12.14.8.2. TDRs may be used in receiving areas to increase or decrease dimensional standards in CG, I, IL, MU and PD districts to the standards identified chapter 8, in accordance with Table 12-3 below.

Table 12-3 Transfer Ratio for Dimension Standards

Dimensional Standard	# of TDRs Required to Achieve Changes to Base Density/Dimension Standards
Nonresidential Minimum Percent Required	1 TDR per 5% decrease
Nonresidential Maximum Percent Required	1 TDR 5% increase
Frontage (minimum, feet)	1 TDR per 10 lots
Lot width (minimum, feet)	1 TDR per 10 lots
Height (maximum, feet)	1 TDR to increase height for every 25,000 sq. ft. of floor area
Lot coverage (maximum, percent)	1 TDR per 25,000 sq.

12.14.9 Affordable Housing.

1. Affordable housing units for sale or rental as a primary residence are exempt from the TDR requirements and can increase density to the maximum amount allowed with TDRs in each zoning district without purchasing TDRs.
2. For the purpose of this subsection, “Affordable Housing” is defined as any housing unit built to benefit households whose gross income is 120% or less of the area median income for Santa Fe County and whose monthly housing payment would not cause the household to be “housing cost burdened” pursuant to HUD guidelines.
3. An eligible buyer or renter for an Affordable Housing unit must meet Affordable Housing qualification requirements in Chapter 13 of this SLDC for approval by the County Affordable Housing Administrator.
4. An Affordable Housing Agreement shall be approved by the Board prior to or with the final plat or development plan, to be signed by the County Affordable Housing Administrator and Board of County Commissioners and recorded in the office of the County Clerk with the final plat or development plan.

12.14.10. A property is not eligible as a receiving area if the transfer of development rights to the property would adversely impact regionally or locally significant historical resources or naturally sensitive areas.

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12.14.11. If a receiving area has any outstanding code violations and/or unpaid taxes, the owner shall resolve these violations, including any required abatement, restoration, or payment of penalties or taxes, before the property may be qualified as a receiving area in the transfer of development rights program.

12.14.12. Development Approval Procedure. The procedures for review and approval of an application including the use of TDRs shall be the same as those procedures that would apply if no TDRs were being used. A rezoning of the receiving area shall not be required for use of TDRs consistent with the provisions of this Chapter unless it is part of a rezoning to a qualifying district. If the County approves the proposed development, the documentation of the approval shall include the numbers of TDRs required to support the number of residential dwelling units, nonresidential square footage and/or adjustments to dimension standards required for the development.

12.14.12.1. TDR certificates shall be acquired prior to recordation of a final plat or Development Plan.

12.14.12.2. TDR certificates will be extinguished at the time of the plat or Development Plan recordation.

12.14.12.3. A conceptual plan shall establish the number of TDRs required for the development. A receiving area may be established by a conceptual plan, including location, size and general development parameters. The normal subdivision and rezoning processes, if needed, will be required in addition to the conceptual plan approval.

12.14.13. Reinstitution of development rights. Reinstitution of development rights on a sending area is prohibited.

12.14.14. Notification of the County Assessor. The County Assessor may review and adjust a property's valuation in accordance with NMSA 1978, Chapter 7, Articles 35-38 to reflect valuation changes arising from the TDRs to or from a particular parcel. The County shall notify the County Assessor of the transfer or purchase of TDRs within thirty (30) days of any of the following:

12.14.14.1. Recordation of a TDR Agreement and TDR Sending Area Plat;

12.14.14.2. Purchase of development rights by the County for the County development rights bank;

12.14.14.3. The receipt by the County or the County development rights bank of a donation of development rights; and

12.14.14.4. The sale, lease or conveyance of development rights by the County development rights bank.

12.14.15. Establishment of the County Transferrable Development Rights (TDR) Bank.

12.14.15.1. The Board has established a County TDR Bank via resolution.

12.14.15.2. The County TDR Bank Administrator shall be appointed by the County Manager and shall have the power and authority to negotiate a purchase and/or sale of development rights, subject to the approval of the Board.

12.14.15.3. The County TDR bank may, for conservation or other purposes, hold indefinitely any TDRs it possesses.

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12.14.16. Funding, Management. The County TDR bank may receive funds from the proceeds of a voter approved open space bond issue; from the general fund of the County, whether through issuance of general obligation bonds or from general fund revenues; from the proceeds of the sale of TDRs by the County TDR bank or any revenue from a public improvement district bond issue; or grants or donations from any source. A separate interest bearing trust fund shall be established for the County TDR bank, into which all receipts shall be deposited and from which payments shall be made.

12.14.17. Program Development. The Board may further development of the County's TDR program by adopting resolutions not inconsistent with Section 12.16.

12.14.18. Development Transfer Charge Option.

12.14.18.1. Development Transfer Charges (DTCs) are payments in lieu of TDRs that provide the same adjustments to Receiving Area base standards as TDRs and at the same ratios as TDRs. This option is available only if there are no TDRs in the TDR Bank.

12.14.18.2. In lieu of the TDRs that would otherwise be required to approve a proposed development, a Receiving Area developer using the DTC Option shall submit a DTC payment determined by multiplying the number of required TDRs times the sales price established for each TDR through the TDR Bank.

12.14.18.3. DTC payments shall be made prior to recordation of the final plat on the Receiving Area.

12.14.18.4. DTC payments shall be used exclusively to acquire TDRs on land qualified as Sending Areas under the provisions of Section 12.16 to include costs incurred in confirming the qualifications of a proposed Sending Area and recording permanent and enforceable restrictions on the Sending Area.

Appendix A of the SLDC is hereby amended as follows:

Lot Coverage: Lot coverage shall be calculated as follows:

Nonresidential and Mixed Uses. Lot coverage for nonresidential uses and for mixed uses (nonresidential and residential) includes all impervious areas; i.e., hard-surfaced, human-made area that does not readily absorb or retain water, including but not limited to building roofs, parking and driveway areas, swimming pools, sidewalks and paved recreation areas. Lot coverage for nonresidential uses is calculated by dividing the total area of all impervious surfaces on the site by the gross lot area. $\text{Nonresidential Lot Coverage} = \text{Impervious Area} \div \text{Gross Lot Area}$.

The effective date of this Ordinance shall be thirty (30) days after this Ordinance is recorded with the County Clerk.

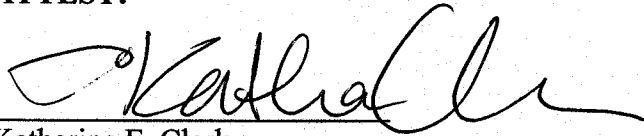
PASSED, APPROVED AND ADOPTED THIS 14 DAY OF November, 2023.

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

By: Anna Hansen
Anna Hansen, Chairperson

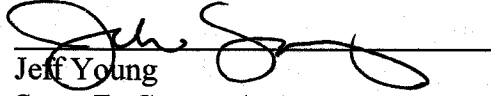
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ATTEST:



Katharine E. Clark
County Clerk

APPROVED AS TO FORM:



Jeff Young
Santa Fe County Attorney

COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

BCC ORDINANCE
PAGES: 15

I Hereby Certify That This Instrument Was Filed for
Record On The 21ST Day Of November, 2023 at 04:12:27 PM
And Was Duly Recorded as Instrument # 2023959
Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office
Katharine E. Clark
Deputy Dasty Romero County Clerk, Santa Fe, NM



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SANTA FE NEW MEXICAN

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SF COUNTY
PO Box 276
Santa Fe, NM 87504-0276

ACCOUNT:	S2438	
AD NUMBER:	61968	
LEGAL NO	91792	P.O.#:240235
3 TIME(S)	603.72	
AFFIDAVIT	10.00	
TAX	50.25	
TOTAL	663.97	

AFFIDAVIT OF PUBLICATION

STATE OF NEW MEXICO
COUNTY OF SANTA FE

I, Veronica Gonzalez, being first duly sworn declare and say that I am Legal Advertising Representative of THE SANTA FE NEW MEXICAN, a daily newspaper published in the English language, and having a general circulation in the Counties of Santa Fe, Rio Arriba, San Miguel, and Los Alamos, State of New Mexico and being a newspaper duly qualified to publish legal notices and advertisements under the provisions of Chapter 167 on Session Laws of 1937; that the Legal No 91792 a copy of which is hereto attached was published in said newspaper 3 day(s) between 10/12/2023 and 11/06/2023 and that the notice was published in the newspaper proper and not in any supplement; the first date of publication being on the 12th day of October, 2023 and that the undersigned has personal knowledge of the matter and things set forth in this affidavit.

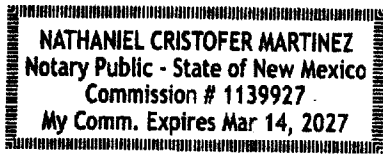
ISI 

LEGAL ADVERTISEMENT REPRESENTATIVE

Subscribed and sworn to before me on this 6th day of November, 2023

Notary 

Commission Expires: March 14, 2027


NATHANIEL CRISTOFER MARTINEZ
Notary Public - State of New Mexico
Commission # 1139927
My Comm. Expires Mar 14, 2027

SFC CLERK RECORDED 11/21/2023

LEGAL #61968

LEGAL #91792

Ordinance no. 2023-____. An ordinance amending the Sustainable Land Development Code (SLDC), Ordinance No. 2016-9 to amend Section 12.14 (Transfer of Development Rights) to amend the TDR ratio to increase the number of additional dwelling units allowed per TDR; to establish TDR transfer ratios for dimensional standards; to exempt affordable housing from the requirement to purchase TDRs; to make minor technical and grammatical changes; to revise procedural standards; to add a new section to allow a density charge option in lieu of TDR(s); and to amend the definition of lot coverage in appendix a of the SLDC.

Notice is hereby given that the Santa Fe County Planning Commission (Planning Commission) and Board of County Commissioners (BCC) of Santa Fe County (County) will conduct public hearings on the above-titled ordinance (Proposed Ordinance). The Planning Commission public hearing will be held no earlier than 4:00 p.m. on October 19, 2023. The Planning Commission will make a recommendation to the BCC concerning the Proposed Ordinance prior to the BCC public hearing. The BCC public hearing will be held no earlier than 5:00 p.m. on November 14, 2023.

Both public hearings will be held virtually.

Members of the public can listen and participate in the virtual public hearings via WebEx, either by telephone or the internet. The final agenda for the Planning Commission and BCC meetings and the County's website (<https://www.santafecountynm.gov/>) will have details about how the public can join the meeting by telephone and the internet.

General Summary of Proposed Ordinance. The proposed ordinance would amend the TDR Transfer Ratio Table 12-2 to increase the number of dwelling units allowed from 1 TDR = 4 Additional Dwelling Units to 1 TDR = 5 Additional Dwelling Units and add an additional category for TDR Transfer Ratio for Residential Rental to allow 1 TDR = 10 Residential Rental Units. The additional section will exempt affordable housing units as defined as any housing unit built to benefit households whose gross income is 120% or less of the area median income for Santa Fe County and whose monthly housing payment would not cause the household to be "housing cost burdened" pursuant to US Housing and Urban Development Department (HUD) guidelines. TDR Dimension Transfer Ratio Standards will be added for each Receiving Area Zoning District to allow greater dimensional flexibility according to the provisions in the SLCD Chapter 8, Zoning. Proposed technical changes include amending Section 12.14 to address changes in procedural

standards based on TDR Program operations. Add a new section to allow payments in lieu of TDRs and at the same ratios as TDRs. Density payments in lieu of TDRs would be deposited in the TDR Bank. Amend Section 12.14.11 to clarify language and to indicate that the County has established a TDR Bank by Resolution and to provide the Bank Administrator the authority to negotiate sale of development rights subject to approval of the Board.

This is only a general summary of the proposed amendment. Interested persons must consult the proposed ordinance itself for the details of the proposed zoning and other regulations.

Possible Board Action on November 14, 2023. After the public hearing on November 14th, 2023, the Board may adopt the proposed ordinance, with or without changes, vote not to adopt the proposed ordinance, recess the public meeting in accordance with the Open Meetings Act, or postpone the public hearing or delay action on the proposed ordinance until a future meeting of the Board. Further newspaper publication of a recessed meeting or postponed hearing or action is not legally required. Interested parties not in attendance at or watching the November 14th, 2023, public hearing where recessing or postponement might be announced should thus inquire of the County as to whether the Board took action to recess

or postpone.

Public Comment. All comments, questions, and objections concerning the proposed ordinance may be submitted to the County Land Use Administrator in writing to P.O. Box 276, Santa Fe, New Mexico 87504-0276 or via email at abordegaray@santafecountynm.gov, or presented in person at the hearing. Comments, questions, and objections submitted in advance of the public hearing must be received by 1:00 p.m. on Friday, October 13, 2023 for the Planning Commission hearing and by 1:00 p.m. on Friday November 3, 2023, to ensure that they are provided to the Board before the public hearing.

For questions, please call the County Land Use Administration Office at (505) 986-6225.

Pub: Oct 12, 30, Nov 6, 2023

SFC CLERK RECORDED 11/21/2023

AFFIDAVIT OF PUBLICATION

STATE OF NEW MEXICO

County of Bernalillo SS

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Wayne Barnard, the undersigned, authorized Representative of the Albuquerque Journal, on oath states that this newspaper is duly qualified to publish legal notices or advertisements within the meaning of Section 3, Chapter 167, Session Laws of 1937, that payment therefore has been made of assessed as court cost; and that the notice, copy of which is hereto attached, was published in said paper in the regular daily edition, for 3 time(s) on the following date(s):

10/12/2023, 10/30/2023, 11/06/2023



Sworn and subscribed before me, a Notary Public, in and for the County of Bernalillo and State of New Mexico this

7 day of November of 2023

PRICE \$535.24

Statement to come at the end of month.

ACCOUNT NUMBER 1059085

STATE OF NEW MEXICO
NOTARY PUBLIC
DAVID LINDSEY MONTOYA
COMMISSION NUMBER 1140229
EXPIRATION DATE 04-26-2027

David L Montoya

SEC CLERK RECORDED 11/21/2023

the authority to negotiate sale of development rights subject to approval of the Board.

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Journal: October 12, 30, November 6, 2023

AFFIDAVIT OF PUBLICATION

STATE OF NEW MEXICO

County of Bernalillo SS

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For questions, please call the County Land Use Administration Office at (505) 986-6225.

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