

## CHAPTER 13 –FAIR AND AFFORDABLE HOUSING

**13.1. PURPOSE AND INTENT.** The purpose of this Chapter 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. An additional purpose is to incorporate into the SLDC the requirements of the New Mexico Human Rights Act, NMSA 1978, §§ 28-1-1 to 28-1-15, and the United States Fair Housing Act of 1968, Title VII of the Civil Rights Act of 1968, as amended, 42 US Code § 3601, *et seq.* Pursuant to these state and federal laws, no person shall refuse to sell, rent, assign, lease, or sublease or offer for sale, rental, lease, assignment, or sublease any housing in the County, including affordable housing, to a person, or to refuse to negotiate for the sale, rental, lease, assignment or sublease of any housing with a person because of race, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, family status, spousal affiliation, or physical or mental handicap, provided that the physical or mental handicap is unrelated to a person's ability to acquire or rent and maintain particular affordable housing accommodation.

### 13.2. GENERAL AFFORDABLE HOUSING REQUIREMENTS.

**13.2.1. Applicability.** Except Section 13.1, which shall apply to all housing within Santa Fe County, the affordable housing requirements of this Chapter shall apply only to subdivisions consisting of 5 or more parcels within the unincorporated areas of central and northern Santa Fe County, as shown on Appendix E.

**13.2.1.1. Required Percentage of Affordable Dwellings.** For subdivisions consisting of 5 to 24 parcels, the number of affordable dwellings shall be no less than (8%) of the total number of parcels. For subdivisions consisting of 25 or more parcels, the number of affordable dwellings shall be no less than (15%) of the total number of parcels.

**13.2.1.2. Income Range 1 Bonus.** Each affordable dwelling provided to an eligible buyer in income range 1 shall count as two affordable dwellings in any income range chosen by the applicant. For example, if two (2) affordable dwellings are provided to eligible buyers in income range 1, the applicant would receive credit for having provided four (4) affordable dwellings, which could be applied to its affordable dwelling requirements in income range 1, 2, 3, or 4 as chosen by the applicant.

**13.2.1.3. General Distribution of Affordable Dwellings.** Subject to Section 13.2.1.2, affordable dwellings shall be distributed equally among eligible buyers in each of the four income ranges, as shown on Table 13-1.

**Table 13-1 Distribution of Affordable Dwellings.**

<b>Income Range</b>	<b>Percentage of Affordable Dwellings Required for 5-24 parcels</b>	<b>Percentage of Affordable Dwellings Required for Subdivisions of 25 or More parcels</b>
Income Range 1 * (<65% AMI) and/or Income Range 2 (66% to 80%) AMI	4	7.5
Income Range 3 (81% to 100%) AMI	2	3.75
Income Range 4 (101% to 120% AMI)	2	3.75
Total percentage of affordable housing required by subdivision size	8%	15%

\* See 13.2.1.2 Income Range 1 Bonus

**13.2.1.4. Fractions.** If application of Section 13.2.1.1 does not result in a whole number, the following requirements shall apply:

1. Where the fractional remainder is greater than 0.5, one additional affordable dwelling 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 unless an additional affordable dwelling unit is provided.

**13.2.1.5 Affordable Rental Units.** An applicant may comply with this Chapter, in whole or in part, by providing affordable rental units to eligible renters. In addition to the affordable housing regulations, the following requirements shall apply to affordable rental units:

- a. For each income range, the monthly rent paid by an eligible renter shall be consistent with low-income rent required under the regulations of the United States Housing and Urban Development, as further provided in the affordable housing regulations.
- b. Single-family dwellings provided as rental units shall: (1) conform to the general distribution of affordable dwellings provided in Section 13.2.1.2; and (2) comply with the minimum size, unit type(s), and other structural requirements and have compatible exterior architectural and landscaping appearance with other units in the development, as set forth in the affordable housing regulations.
- c. The affordable rental units shall remain affordable and subject to this Chapter for at least twenty (20) years, which requirement may be imposed through a recorded covenant, plat note, or other appropriate instrument. A rental unit may be released from this requirement if the owner of the unit provides a comparable affordable dwelling, including an affordable rental unit, for the remainder of the 20-year period or pays the release fee, which shall decrease over the 20-year period, as provided in the affordable housing regulations. The affordable housing agreement shall not terminate as to the affordable rental units until expiration of the 20-year period.

d. The affordable housing agreement shall include appropriate requirements specific to affordable rental units, including the following:

i. The owner of an affordable rental unit shall only lease the unit to eligible renters within the appropriate income range, shall provide the County proof of income for the initial and each subsequent prospective tenant, and shall not execute any lease agreement until the County certifies that the prospective tenant is an eligible renter and that the lease agreement complies with this Chapter and the affordable housing agreement.

ii. The lease agreement shall include provisions granting the County the right to conduct annual inspections, to verify each tenant's income, and to verify the rent amount.

iii. The County shall have the right to inspect the rental unit annually to assure that it complies with the housing standards set out in the affordable housing regulations. The owner of the unit shall reimburse the County for the cost of each annual inspection at rates set out in the affordable housing regulations.

iv. If the owner of a rental unit breaches the affordable housing agreement, the County shall, at the County's option, be entitled to liquidated damages or specific performance. The amount of liquidated damages shall not exceed the fee that is paid in lieu of providing an affordable dwelling under the affordable housing regulations.

v. Each affordable dwelling provided to an eligible renter in income range 1 shall count as two affordable dwellings in any other income range as established by the affordable housing regulations.

vi. The owner of the rental unit shall notify the Administrator of the sale of the unit within thirty (30) days of the sale and shall provide a copy of the affordable housing agreement to the buyer.

### **13.2.2. Integration; Phasing; Affordable Housing Plan; Affordable Housing Agreement.**

**13.2.2.1. Integration.** Affordable dwellings shall be integrated into the overall design and layout of a subdivision and shall be reasonably dispersed within the subdivision pursuant to an approved affordable housing plan and affordable housing agreement.

**13.2.2.2. Phased Developments.** Affordable dwellings shall be constructed and offered for sale in each phase of a phased development in approximately the same ratio as the number of parcels to be developed in a given phase bears to the total number of parcels in a phased development.

**13.2.2.3. Affordable Housing Plan.** An applicant shall submit a proposed affordable housing plan as part of the applicant's first application for development approval for a subdivision. The affordable housing plan shall describe, in detail, how the applicant intends to comply with the affordable housing requirements of this Chapter, and shall specify whether alternative means of compliance or hardship conditions will be claimed and, if so, the grounds for doing so. The Administrator may request additional

information from the applicant, or may reject or require amendments to a proposed affordable housing plan if the proposed plan is incomplete or fails to meet the requirements of this Chapter or the affordable housing regulations.

**13.2.2.4. Affordable Housing Agreement.** The affordable housing plan shall form the basis of an enforceable affordable housing agreement between the County and the owner of the subdivision. The finally executed affordable housing agreement must be filed in the records of the County Clerk prior to or along with the final subdivision plat. The final plat shall reference the affordable housing agreement but shall not otherwise identify the lots on which affordable housing is located. Unless the Board delegates its authority, affordable housing agreements, including any amendments thereto, shall be executed by the Board.

### **13.3. AFFORDABLE HOUSING REGULATIONS.**

**13.3.1. Recommendation by Administrator.** The Administrator shall recommend and present to the Board proposed affordable housing regulations and appropriate amendments.

**13.3.2. Contents.** The affordable housing regulations shall include, at a minimum, the following provisions:

**13.3.2.1.** Application submittal requirements to comply with this Chapter, including minimum requirements for affordable housing plans and affordable housing agreement.

**13.3.2.2.** A form of affordable housing agreement, which shall specify the location of affordable housing, housing type(s) and size(s), the maximum target housing prices of the proposed affordable dwellings, a description of how the affordable dwellings will be marketed and sold to eligible buyers, and a requirement that the affordable housing agreement be filed and recorded with the final plat.

**13.3.2.3.** A reasonable process for certifying eligible buyers that, to the extent possible, takes no more than fifteen (15) business days from the date a potential buyer submits a complete application for certification to the County.

**13.3.2.4.** Reasonable fees to be charged for certification of eligible buyers.

**13.3.2.5.** The form of the certificate of compliance to be issued upon compliance with the terms of this Chapter.

**13.3.2.6.** A maximum target housing price for each income range.

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

**13.3.2.8.** 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.

**13.3.2.9.** The method for determining fees associated with this Chapter, including cash payments as an alternative means of compliance and residual fees.

**13.3.2.10.** A methodology for evaluating property dedications as an alternative means of compliance.

**13.3.2.11.** A methodology for determining incentives for energy efficiency.

**13.3.2.12.** Any other matter deemed necessary by the Board including but not limited to subdivision and housing development practices consistent with fair housing principles.

**13.3.3. Adoption.** The affordable housing regulations shall be adopted by resolution of the Board 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 Chapter and the affordable housing regulations.

**13.4. RENTAL OF AFFORDABLE UNITS.** An eligible buyer shall not lease an affordable dwelling that is provided pursuant to this Chapter unless the proposed tenant is an immediate family member of the eligible buyer, the eligible buyer is under economic duress by reason of unemployment, family medical emergency, or is unable to sell the affordable dwelling for an amount equal to or greater than the original sale price, or other unique circumstances of hardship exist. Any proposed lease of the premises must be approved in writing by the Administrator.

**13.5. WATER FOR AFFORDABLE HOUSING.** A subdivision in which affordable housing is provided pursuant to this Chapter shall not be required to transfer water rights to the County for any required affordable housing within the subdivision. However, notwithstanding the forgoing, the County shall have no obligation to provide water unless it possesses sufficient water rights, capacity, and infrastructure to supply the required affordable dwellings within the subdivision.

#### **13.6. AFFORDABLE HOUSING INCENTIVES.**

**13.6.1. Density Bonus.** A subdivision of 25 or more parcels that utilizes a community water system may receive increased density to accommodate affordable dwellings required under this Chapter. A subdivision of 5 to 24 parcels may receive increased density to accommodate affordable dwellings required under this Chapter so long as the affordable housing agreement requires the subdivider to provide no less than fifteen percent (15%) affordable housing, and so long as: (i) a community water system will provide water service to the subdivision, and (ii) clustering concepts are incorporated into the subdivision.

**13.6.1.1.** The density bonus permitted by this Chapter shall not exceed 2/3 unit for each affordable dwelling provided and provided the subdivision with such increased density complies with the non-density requirements of the SLDC and otherwise permitted by application of the SLDC, not to exceed an increased density of fifteen percent (15%) attributable to the subdivision in total.

**13.6.1.2.** The affordability requirements for a subdivision shall be determined prior to applying any density bonus.

**13.6.1.3.** Density bonuses of not more than twenty percent (20%) attributable to the subdivision as a whole may be approved by the Board on a case-by-case basis, so long as the subdivision complies with the non-density requirements of the SLDC and remains compatible with surrounding uses and the impacts to adjacent areas are minimal.

**13.6.2. Incentives for Energy Efficiency.** A subdivider that provides energy efficiency measures within a subdivision as a whole shall be permitted to apply all the incentives described in this Chapter to each affordable dwelling in income range 4. The criteria to evaluate energy efficiency proposals may be further described in the affordable housing regulations.

**13.6.3. Relief from Development Fees.** Notwithstanding the provisions of the SLDC, a subdivision that provides affordable housing as required by this Chapter shall be relieved of the obligation to pay development fees for each required affordable dwelling.

**13.6.4. Relief from Additional County Water Utility Connection Charges.** A subdivision that provides affordable housing as required by this Chapter shall be exempt from the obligation to pay water service connection fees for each required affordable dwelling. This exemption does not include any other service charges or fees and does not exempt the subdivider or any other person from paying for required meters, line extensions, or other infrastructure.

**13.6.5. Reduction of Lot Size for Affordable Dwellings.** A subdivision of 5 to 24 parcels that is not eligible for a density bonus under Section 13.6.1, may reduce the lot area for each affordable dwelling to the minimum permitted by applicable regulations of the New Mexico Environmental Department, so long as the affordable dwelling whose lot sizes are reduced pursuant to this Section are reasonably dispersed throughout the subdivision.

**13.6.6. Other Incentives Authorized by the 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 pursuant to Ordinance No. 2009-14, as amended or replaced, and the Affordable Housing Act, NMSA 1978, § 6-27-1 et seq.

### **13.7. ALTERNATIVE MEANS OF COMPLIANCE.**

**13.7.1.** A subdivision may alternatively comply with all or part of this Chapter by:

**13.7.1.1.** providing affordable dwellings outside the subdivision but within central and northern Santa Fe County, as shown on Map 14-1;

**13.7.1.2.** making a cash payment, calculated by applying the methodology set forth in the affordable housing regulations;

**13.7.1.3.** dedicating property suitable for construction of affordable dwellings outside the subdivision but within central and northern Santa Fe County, as shown on Map 14-1, whose value is equal to or greater than the required minimum value calculated by applying the methodology set forth in the affordable housing regulations; or

**13.7.1.4.** otherwise providing affordable dwellings in a manner that is consistent with the goals and objectives of this Chapter.

**13.7.2.** Proposed alternative means of compliance, if any, shall be incorporated into, reviewed, and approved as part of the proposed affordable housing plan. If the County approves an affordable housing plan that includes alternative means of compliance, the affordable housing agreement shall describe the alternative means of compliance with specificity.

**13.7.3.** Where the proposed alternative means of compliance is off-site affordable housing, both the subdivision and the proposed off-site affordable housing shall be considered and processed as a single subdivision, except as otherwise provided in this Chapter.

**13.7.4.** In deciding whether to accept the provision of off-site affordable dwellings as an alternative means of compliance, the County shall consider the following where applicable:

**13.7.4.1.** whether implementation of a proposed alternative means of compliance would overly concentrate affordable dwellings in an area or within the proposed subdivision in a

location where such a concentration would be inappropriate given present and anticipated future conditions if the proposal involves providing affordable dwellings outside the subdivision;

13.7.4.2. whether there is adequate existing infrastructure, including water systems, liquid waste facilities and transportation systems, to support the affordable dwellings in the proposed location;

13.7.4.3. whether public facilities can serve the proposed offsite affordable dwellings, and whether the commitment to provide such service has been confirmed;

13.7.4.4. whether there is a specific need or market for affordable dwellings in the location proposed;

13.7.4.5. whether the property where the affordable dwellings are proposed to be located is suitable for residential use and residential development; and

13.7.4.6. whether the proposed alternative means of compliance provides an overall greater public benefit than if the affordable dwellings were constructed within the subdivision.

13.7.5. In deciding whether to accept a cash payment or property as an alternative means of compliance, the County shall consider whether:

13.7.5.1. the proposed cash payment or appraised value of property to be dedicated is equal to or greater than the cost of constructing equivalent affordable dwellings within the subdivision, applying the methodology set forth in the affordable housing regulations;

13.7.5.2. the proposed cash payment or value of property to be dedicated creates a substantial surplus of funds within the dedicated housing fund or trust specific to that purpose;

13.7.5.3. the cash payment or property provides a greater overall public benefit than if the affordable dwellings were constructed within the subdivision that would have otherwise provided for mixed-income development.

13.7.6. The method for determining whether the total cash payment amount or value of property to be dedicated is sufficient shall be established in the affordable housing regulations.

13.7.7. Incentives described in this Chapter may only be applied to a subdivision utilizing alternative means of compliance if the Board specifically finds that this Chapter, when applied to the subdivision with such alternative means of compliance, would result in economic infeasibility.

### **13.8. HARDSHIP CONDITIONS.**

13.8.1. The Board may waive one or more of the requirements set forth in this Chapter if a condition of hardship exists as set forth in this Section.

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

13.8.2.1. where the subdivision fails to qualify for any incentive set forth herein;

13.8.2.2. where the subdivision fails to demonstrate eligibility for an alternative means of compliance;

**13.8.2.3.** where application of the provisions of this Section would result in economic infeasibility of the subdivision; or

**13.8.2.4.** where fully complying with this Chapter would result in a constitutional taking of property.

**13.8.3.** A condition of hardship exists for a subdivision of 5 to 24 parcels when an affordable dwelling (or lot) cannot be sold within a reasonable period of time without causing a loss on the subdivision taken as a whole.

### **13.9. LONG-TERM AFFORDABILITY.**

**13.9.1.** Each affordable housing agreement shall include as an attachment a form of lien or other instrument (herein after referred to as "the affordability lien") that shall be executed and recorded along with the deed conveying an affordable dwelling to the first eligible buyer. Affordability liens shall create a lien in favor of the County in the amount equal to the difference between the maximum target housing price and ninety-five percent of the fair market value of the affordable dwelling at the time of initial sale, as determined by an appraisal approved by the County.

**13.9.2.** The affordability lien shall contain a provision that creates a right of first refusal in favor of the County to purchase the affordable dwelling or the right to arrange resale of the affordable dwelling to an eligible buyer at the then fair market value of the affordable dwelling. The owner of an affordable dwelling shall be required to provide the County with fifteen (15) days written notice of the owner's intent to sell the affordable dwelling during which period the County may indicate its intent to purchase the unit or arrange a purchase and sale of the dwelling to another eligible buyer. The affordability lien shall further provide the County with an additional 60 days after it has notified the owner of its intent to purchase the dwelling or arrange a purchase and sale of the dwelling to complete the transaction. If the County fails to notify the owner of its intent to purchase the unit or arrange 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, subject to the affordability lien.

#### **13.9.2.1 Exceptions to the Affordability Lien**

**a. Market Rate Transactions.** No affordability lien shall be required where the contract sales price is equal to or less than the maximum target housing price for the appropriate income range. The County may require the applicant to provide water rights or pay a connection fee in addition to all other fees generally applicable to market rate dwellings.

**b. Lien Held by Non-Profit Housing Organization.** No affordability lien shall be required where a non-profit housing organization (1) is the seller of an affordable dwelling to an eligible buyer certified by the County, (2) provides financing to the eligible buyer, (3) contributes funds or otherwise subsidizes the eligible buyer through below-market rates, (4) holds a lien equivalent to the County's affordability lien or has other enforceable means in place to reasonably assure long-term affordability of the dwelling; (5) and the sale otherwise complies with the affordable housing agreement.

**c.** To be eligible for an exception under "a" or "b", the affordable dwelling must be sold to an eligible buyer at or below maximum target housing prices estab-



lished by the affordable housing regulations and located on a lot designated in the affordable housing agreement. The affordable housing regulations and affordable housing agreement may include additional requirements, not inconsistent with this Chapter, to reasonably assure long-term affordability and fulfill the other objectives of this Chapter. All other provisions of this Chapter and the affordable housing regulations shall remain applicable to sales of affordable dwellings that are exempt from affordability lien requirements.

**13.9.3.** The form of affordability lien and the methodology for determining the initial market value of the affordable dwelling shall be specified in the affordable housing regulations.

**13.9.4.** When the conditions set forth in the affordability lien, this Chapter, and the affordable housing regulations have been satisfied, the County shall release the affordable dwelling from the lien and file an appropriate release in the records of the County Clerk. Any amounts owed to satisfy the affordability lien shall be paid to the County before or contemporaneously with the release.

**13.9.5.** An affordability lien may be temporarily released without payment of any sums to the County so long as a new affordability lien is executed by a new eligible buyer in the same amount of the original lien and duly recorded with the County Clerk. Alternatively, and in the sole discretion of the County, the County may approve an assignment of the affordability lien to a new eligible buyer.

**13.9.6.** All amounts collected from application of an affordability lien shall be deposited into a fund created in the County treasury for the sole purpose of supporting 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, § 6-27-1 et seq.

**13.9.7.** Where an owner of an affordable dwelling is under extreme duress by reason of unemployment, family medical emergency, divorce, or death, and is unable to sell the affordable dwelling for an amount equal to or greater than the original sales price, or if other unique and extreme circumstances of hardship exist, the affordable lien may be compromised or released by the County.

**13.10. AFFORDABLE HOUSING ORDINANCE REVIEW.** The Administrator shall prepare an affordable housing report and present it to the Board of County Commissioners annually. The purpose of the report is to measure the overall effectiveness of the affordable housing provisions of the SLDC and to identify any deficiencies. In the annual report, the Administrator shall recommend any amendments necessary this Chapter.