

SANTA FE NEW MEXICAN

Condo rule change would legalize many homes

[Julie Ann Grimm The New Mexican](#)

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Julie Ann Grimm A state law that goes into effect next month will halt the creation of new condominiums that don't comply with the city zoning rules.

But most of the condos that skirted zoning rules in the city of Santa Fe during the last couple of decades won't be negatively affected by the law change. If anything, insiders say, the law and a proposed change to the city code will clear up potential problems for small-time property owners who previously faced a legal quagmire.

About one-fifth of the city's condominium associations contain dwelling units that exceed density limits for the lot size under city rules, according to a recent staff estimate. Of the roughly 4,309 condominium units that belong to 378 condominium associations in Santa Fe, officials say about 324 units exceed the maximum allowed density for the lot they were built on.

Prior to this year's session of the state Legislature, buildings and lots could be subdivided as condominiums and recorded with the county clerk absent any city review. State Sen. Peter Wirth, D-Santa Fe, succeeded after several tries to get legislators and the governor to amend state law so that cities can opt to require such a review.

City officials are taking steps to codify the change here. A proposal to amend the city Land Use code was approved Monday by the Public Works Committee and is on the agenda for the Finance Committee next Monday. A final vote and public hearing at the City Council meeting is scheduled for May 30, after which it would take effect immediately.

The practical result of the city adopting such an ordinance change would be two-fold, city Land Use Director Matt O'Reilly said.

"This ordinance, in a nutshell, is a way of addressing, within reason, the condominiums that exist illegally," he said, "and permanently stopping forever this from happening in the future."

Of the estimated 324 units that are illegal today, the city ordinance will effectively "grandfather in" about 80 to 90 percent. O'Reilly said that term actually isn't an accurate description of what would happen. The right term, he says, is that those units will become legal structures that don't conform to city zoning rules.

A small group of illegal condos would not be legalized, however. They include condominium units that were built without a building permit, and those that are still owned by the person who originally created the illegal condominium. Lots where owners have development rights but have already put up too many dwelling units under zoning rules also won't become legal under the proposed changes.

Most of the affected properties are on the north and east side of the city, and half of them were originally intended to be guest houses, he said. In those older parts of the city, O'Reilly said, there are many legally nonconforming structures already, owing largely to the fact that much of that region was developed before zoning laws were enacted in the 1960s.

Condominiums that would become legal nonconforming structures when the city approves the law change don't require any additional paperwork to get that status, but O'Reilly said owners who wonder about the status of their condominium should contact the land-use department.

"If you have reason to believe that yours was built without a permit, you might want to come see us," he said.

Permits ensure that electrical and plumbing systems are safe, among other details.

Another consequence of making the illegal condos legal is that owners who had previously run into hurdles in refinancing, sales and efforts at renovation will now be able to accomplish all of those tasks.

Jennifer Jenkins, a development consultant in Santa Fe, said she had mixed feelings when she first learned about pending changes to the state law and the city code, but she believes the city is moving in the right direction.

"We have to comply with zoning. We do. It is normal. And for somebody to purposely create a project that is a nonconformity, they are just creating problems," she said. "They are creating problems for themselves. They are creating marketing problems. They are creating future legal issues. It is in nobody's interest to intentionally do that."

Jenkins said she is pleased that the city plans to add what she called "the grandfathering language" as a consumer protection.

Wirth, an attorney, said he backed the state law change because the system was causing situations that were nearly impossible to navigate.

"We call this a legal quagmire," he said, "because you've got, oftentimes, an innocent purchaser who bought one of these things, with the title insurance, who then finds out that it was illegally zoned and that they have a piece of property that is not worth a whole bunch."

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