

CITY OF SANTA FE, NEW MEXICO

RESOLUTION NO. 2008 – _____

INTRODUCED BY:

Matthew E. Ortiz

A RESOLUTION

AUTHORIZING THE MAYOR AND THE CITY ATTORNEY TO PURSUE COMPLIANCE WITH AND/OR DECLARATORY JUDGMENT AGAINST SANTA FE COUNTY AND THE STATE OF NEW MEXICO REGARDING THE PRIMACY OF THE CITY ZONING AUTHORITY.

WHEREAS, the City of Santa Fe is proud of its cultural and historical significance among North American communities; and

WHEREAS, in order to preserve the City’s cultural and historical significance, the City of Santa Fe adopted a Historic Design Review process for certain properties within the City of Santa Fe; and

WHEREAS, the purpose of the historic district requirements set forth in Section 14-5.2 SFCC 1987 is to “... to promote the economic, cultural, and general welfare of the people of the City and to ensure the harmonious, orderly and efficient growth and development of the City, ... that the qualities relating to the history of Santa Fe, and a harmonious outward appearance, which

preserve property values and attract tourists and residents alike, be preserved...”.

WHEREAS, there are ongoing and proposed projects by Santa Fe County and by the State of New Mexico that may fall within the overlay district created by the City of Santa Fe; and

WHEREAS, municipalities may apply zoning ordinances to the State or political subdivisions of the state only if authorized by state statute; and

WHEREAS, the state enacted the Historical District and Landmark Act in 1961 authorizing municipalities to regulate and preserve historic districts; and

WHEREAS, NMSA 1978 § 3-22-2 of the Act clearly states that “it is the intention of Historic District and Landmark Act to empower counties and municipalities of this state with as full and complete powers to preserve . . . the historic areas . . . as it is possible for this legislature to permit under the constitution.”; and

WHEREAS, the constitution unquestionably permits the legislature to authorize municipalities to apply their zoning requirements to the State and its political subdivisions and that authority is necessarily subsumed in a grant of “as full and complete powers . . . as it is possible for this legislature to permit.” ; and

WHEREAS, in *City of Santa Fe v. Armijo*, 96 N.M. 663 (1981), the New Mexico Supreme Court ruled that that City could not apply historical district zoning ordinances to state land so as to enjoin the Commissioner from maintaining oil field pumping rig where there were no state statutes authorizing application of such ordinances to state property when City had enacted its historical district zoning ordinances and the City had not brought its earlier enacted ordinance under the state law; and

WHEREAS, shortly after the *Armijo* decision the City brought its historic district zoning ordinance under the state statute with the enactment of Section 14-5.2(A)(2) SFCC stating that “Pursuant to §3-22-1 through 3-22-5 NMSA 1978, it is the intent of the City of Santa Fe that the provisions of this section shall apply to the state of New Mexico and any of its agencies, political subdivisions or instrumentalities, as well as to any other entity or activity in the Historic

Districts.”; and

WHEREAS, on other occasions, the City of Santa Fe has used a declaratory judgment action to assert and to clarify its municipal powers; and

WHEREAS, there is an overarching interest by the community in preserving the integrity of the City of Santa Fe’s zoning authority and in the uniform applicability of the City of Santa Fe’s zoning authority for all properties, whether privately or publicly owned.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF SANTA FE that:

1. The City of Santa Fe intends to enforce the City’s historic district requirements set forth in Chapter 14 SFCC 1987 upon the construction of the proposed County Courthouse and that City staff is directed to inform the Board of County Commissioners of this Resolution.

2. The Governing Body hereby authorizes the Mayor and the City Attorney to ascertain, determine and report back to the Governing Body, at their earliest possible convenience, on the compliance by Santa Fe County and by the State of New Mexico to submit any current and all future projects in the jurisdiction of the City of Santa Fe Historic Design Review Ordinance.

3. Should there be a report back to the Governing Body that either or both governmental entities will not submit to the jurisdiction of the City of Santa Fe Historic Design Review Ordinance, that the City Attorney is charged to take all reasonable and immediate steps to pursue a declaratory judgment action against any such entity.

PASSED, APPROVED and ADOPTED this ____ day of _____, 2008.

DAVID COSS, MAYOR

ATTEST:

YOLANDA Y. VIGIL, CITY CLERK

APPROVED AS TO FORM:

FRANK D. KATZ, CITY ATTORNEY

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