

1 CITY OF SANTA FE, NEW MEXICO

2 ORDINANCE NO. 2023-22

3 INTRODUCED BY:

4
5 AN ORDINANCE

6 CREATING ARTICLE 18-18, THE HIGH-END EXCISE TAX FOR
7 AFFORDABLE HOUSING ORDINANCE; ESTABLISHING AN EXCISE TAX ON THE
8 TRANSFER OF CERTAIN RESIDENTIAL PROPERTY AND DEDICATING THE
9 REVENUES TO AFFORDABLE HOUSING.

10
11 BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:

12 Section 1. [NEW MATERIAL] a new Article 18-8 SFCC 1987 is ordained to read:
13 18-18 HIGH-END EXCISE TAX FOR AFFORDABLE HOUSING ORDINANCE

14 Section 2. [NEW MATERIAL] a new Section 18-18.1 SFCC 1987 is ordained to read:
15 18-19.1 Short Title.

16 This article may be cited as the High-End Excise Tax for Affordable Housing Ordinance.

17 Section 3. [NEW MATERIAL] a new Section 18-8.2 SFCC 1987 is ordained to read:
18 18-18.2 Authority.

19 The High-End Excise Tax for Affordable Housing Ordinance is enacted pursuant to the
20 express statutory authority conferred upon municipalities to enact excise taxes on the sales of
21 specific products and services in Part D of Section 3-18-2 NMSA 1978; to provide for affordable
22 housing pursuant to subsections E and F of Article 9, Section 14 of the New Mexico Constitution
23 and the Affordable Housing Act, Sections 6-27-1 to 6-27-8 NMSA 1978; and pursuant to any and
24 all such other authority as may be applicable including but not limited to the city's authority to
25 protect the general welfare of its citizens.

1 **Section 4. [NEW MATERIAL] a new Section 18-8.3 SFCC 1987 is ordained to read:**

2 **18-18.3 Legislative Findings.**

3 The governing body has determined that

4 A. Lower income renters are leaving the city and are being replaced with higher income
5 renters. Between 2015 and 2021, the share of renters with income below \$25,000
6 decreased from 37% to 24%, while the share of renters with income over \$75,000
7 increased from 18% to 30%.

8 B. A large percentage of the community’s workforce who are renting cannot afford to
9 buy: Using data on home sales from the Home Mortgage Disclosure Act, an analysis
10 of renters’ ability to buy relative to the price of units for sale estimates that in 2021,
11 66% of the city’s renters earned less than 120% of the 2-person area median income
12 and only 10% of home sales financed with a mortgage were priced affordably for such
13 households. It is likely that even higher income residents are not transitioning into
14 homeownership because of high housing sales prices and other market conditions.

15 C. To accommodate population growth, an estimated 4,668 new units (1,399 rental and
16 3,269 ownership) need to be added in Santa Fe County by 2030.

17 D. The shortage of affordable rental home purchase opportunities has significant negative
18 effects on Santa Fe's economy, as well as for families and businesses. The effects
19 include

20 1. The local economy loses revenue when employees live elsewhere and
21 commute to work rather than living in Santa Fe, because people tend to shop
22 in the community where they live.

23 2. Experience in other high-cost housing markets nationally has shown that, over
24 the long term, jobs follow employees who move away in search of housing
25 they can afford to buy.

- 1 3. Employers struggle to recruit and retain employees and must pay higher wages
- 2 to compensate for high housing or commuting costs.
- 3 4. A significant percentage of the Santa Fe workforce commutes from outside of
- 4 Santa Fe.
- 5 5. Productivity suffers when employees face commutes of two to three hours on
- 6 top of their workday.
- 7 6. Employers note that the availability of workforce housing is one of the more
- 8 serious or critical problems in the city of Santa Fe.

9 E. The city has adopted a five-year housing plan, identifying the city’s housing needs,
10 priorities, goals, and strategies.

11 F. Pursuant to the New Mexico constitution’s affordable housing exemption to the “anti-
12 donation clause” and state enabling statutes governing the use of public funds for
13 affordable housing, the city established its affordable housing trust fund in Article 26-
14 3 SFCC 1987 to provide or pay all or a portion of the costs of acquisition, development,
15 construction, renovation or conversion, financing, operation or owning affordable
16 housing or infrastructure to support affordable housing.

17 G. The affordable housing trust fund requires, but currently lacks, a meaningful dedicated
18 source of revenue, which means

- 19 1. Current requests for affordable housing funding far exceed the amount of
- 20 funding available in the Affordable Housing Trust Fund in any given year.
- 21 2. There is a significant need for additional affordable housing that is more
- 22 flexible than available through federal funds and that can better address unique
- 23 local needs.
- 24 3. Multi-year strategic funding is challenging.

25 H. The community development commission and city’s public review process involving

1 committees and governing body review provide oversight for the Affordable Housing
2 Trust Fund.

- 3 I. It is in the public interest to impose a duly approved high-end excise tax to fund the
4 affordable housing trust fund.

5 **Section 5. [NEW MATERIAL] a new Section 18-18.4 SFCC 1987 is ordained to read:**

6 **18-18.4 Purpose.**

7 The purpose of this article is to establish a dedicated and enduring source of funding for the city's
8 affordable housing fund by imposing an excise tax on the transfer of high-end residential properties.

9 **Section 6. [NEW MATERIAL] a new Section 18-18.5 SFCC 1987 is ordained to read:**

10 **26-3A.5 Definitions.**

11 For the purposes of this article, the following definitions shall apply:

12 *Consideration* means and includes the actual amount paid and/or the value of the assets
13 delivered, or contracted to be paid or delivered, in exchange for the transfer of ownership or title to
14 real property, without deduction for any lien, mortgage, contract indebtedness, or other
15 encumbrance, either given to secure the purchase price, or any part thereof, or remaining unpaid on
16 the property at the time of sale. The term does not include the amount of any outstanding lien or
17 encumbrance in favor of the United States, the State of New Mexico, or of a municipal or quasi-
18 municipal governmental corporation or district for taxes, special benefits, or improvements.

19 *Conveyance of ownership* means any transfer of title to real property and is evidenced by
20 any deed or instrument or writing wherein or whereby title to real property situated in the city is
21 granted or conveyed, subject to the exceptions provided in this article, and includes the transfer of
22 more than fifty percent of the authorized and issued shares of a corporation or majority ownership
23 interest in a pass through entity which has as its principal asset real property situated in the city.

24 *Document* means and includes any deed, instrument, or writing by which real property
25 located within the city is transferred.

1 *Person* means an individual, partnership, society, association, joint stock company,
2 corporation, estate, receiver, trustee, assignee, referee or any other person acting in a fiduciary or
3 representative capacity, whether appointed by a court or otherwise, any combination of individuals,
4 and any other form of unincorporated enterprise owned or conducted by two or more persons, but
5 does not include the United States of America, any federal agency or the state government or any
6 political subdivision of the state of New Mexico.

7 *Real property* means and includes all lands or interests in lands within the city and shall be
8 construed as coextensive in meaning with the terms "land," "tenements" and "hereditaments" and
9 as embracing all mining claims and other claims and chattels real.

10 *Title insurance agent* means a person licensed as an agent under the New Mexico Insurance
11 Code and appointed by a title insurer.

12 *Transfer* means and includes any conveyance of the ownership of a title to real property
13 and is evidenced by any deed or instrument or writing wherein or whereby title to real property
14 situated in the city is granted or conveyed, subject to the exclusions provided in this article.

15 **Section 6. [NEW MATERIAL] a new Section 18-18.5 SFCC 1987 is ordained to read:**
16 **18-18.5 Imposition of tax; timelines.**

17 A. There is imposed a three percent (3%) excise tax on the consideration exceeding one
18 million dollars (\$1,000,000) paid or to be paid in consideration, as adjusted pursuant to B
19 of this Section, for every conveyance of ownership of real property in the city not excepted
20 from the tax in this ordinance.

21 B. Beginning May 1, 2026, and each May 1 thereafter, the transfers to which the tax shall be
22 imposed shall be increased from consideration of one million dollars (\$1,000,000) to a
23 higher threshold amount by an amount corresponding with the previous calendar year's
24 increase to the consumer price index for the western region for urban workers. For
25 example, if the increase to the price index is two percent (2%) in 2025, then on May 1,

1 2026, the tax will apply to transfers having a consideration of at least one million, twenty
2 thousand (\$1,020,000), or two percent (2%) higher than one million (\$1,000,000). If the
3 consumer price index does not increase during the prior year, the transfers to which the tax
4 applies shall remain the same.

5 C. The tax is due and payable by the purchaser at the time of transfer.

6 D. The tax shall be paid or an exception shall be documented within thirty days after the
7 delivery of the documents by the grantor to the grantee and before recording a document
8 regarding transferring title to real property situated in the city.

9 **Section 7. [NEW MATERIAL] a new Section 18-18.6 SFCC 1987 is ordained to read:**

10 **18-18.6 Dedication of funds.**

11 All funds received by the city of Santa Fe pursuant to this Article 18-18 shall be deposited
12 into the Affordable Housing Trust Fund and shall be used only in the manner permitted by Section
13 6-27-5 NMSA 1978 of the state's Affordable Housing Act and Section 26-3.7 of the city's
14 Affordable Housing Trust Fund Ordinance.

15 **Section 8. [NEW MATERIAL] a new Section 18-18.7 SFCC 1987 is ordained to read:**

16 **18-18.7 Exemptions.**

17 The tax imposed by this section shall not apply to any of the following transfers:

18 A. Any conveyance of ownership of a dwelling unit that is sold subject to liens, deeds of
19 trust, land use restrictions, or other instruments that ensure the unit will remain
20 affordable;

21 B. Any conveyance of ownership of property wherein the United States, or any agency or
22 instrumentality thereof, the state of New Mexico, any county, municipality, district or
23 other political subdivision of this state, is either the grantor or grantee;

24 C. Any conveyance of ownership of property wherein the grantee corporation, association
25 or trust has been organized, operated and maintained solely and exclusively for

1 charitable or religious purposes;

2 D. Any conveyance of ownership of real property as a gift, where no consideration other
3 than love and affection, charitable donation, or nominal compensation is evidenced by
4 the terms of the instrument of transfer;

5 E. Any termination of a joint tenancy in real property except where additional
6 consideration of value is paid in connection with such termination, or a decree or
7 agreement partitioning real property held under common ownership unless a
8 consideration of value is paid in connection with the transfer of title;

9 F. Transfer of title or change of interest in real property by reason of death, will,
10 or decree of distribution;

11 G. Transfers made pursuant to mergers or consolidations of corporations, or by a
12 subsidiary to a parent corporation for no consideration other than cancellation or
13 surrender of the subsidiary's stock;

14 H. Any deed or conveyance made and delivered without consideration for the purpose of
15 confirming, correcting, modifying, or supplementing a transfer previously recorded;
16 making minor boundary adjustments, removing clouds on titles; or granting easements,
17 rights-of-way or licenses;

18 I. Any decree or order of a court of record determining or resting title, including a final
19 order awarding title pursuant to a condemnation proceeding;

20 J. Any deed granting or conveying title to cemetery lots;

21 K. Any lease of any real property (or assignment or transfer of any interest in any such
22 lease) provided such lease by its terms does not constitute a de facto conveyance of the
23 subject property. In the latter event, the tax shall be based upon the capitalization at
24 five percent of the average annual rental over the entire term of the lease, including
25 any renewal term, plus the actual consideration, other than rent, paid or to be paid;

- 1 L. Any mineral deed or royalty deed;
- 2 M. Transfers to secure a debt or other obligation, or transfers or release of property that is
3 security for a debt or other obligation;
- 4 N. Any executory contract for the sale of real property under which the vendee is entitled
5 to or does take possession thereof without acquiring title thereto, or any assignment or
6 cancellation of any such contract;
- 7 O. Any deed or conveyance under execution, sale, or foreclosure sale under a power of
8 sale or court decree of lien foreclosure, sheriff's deed, public trustee deed, or treasurer's
9 deed;
- 10 P. Any deed or conveyance of commercial property;
- 11 Q. Any deed or conveyance of undeveloped land;
- 12 R. Any deed or conveyance reflecting an interspousal transfer of real property; or
- 13 S. Any deed or conveyance of real property that is the principal residence of an eligible
14 transferor in the case of a family transfer between parents and their children or between
15 grandparents and their grandchild or grandchildren.

16 **Section 9. [NEW MATERIAL] a new Section 18-18.8 SFCC 1987 is ordained to read:**
17 **18-18.8 Finance Director to Enforce.**

- 18 A. The city's finance director is charged with the enforcement of the provisions of this section
19 and is hereby authorized and empowered to prepare such forms and adopt and enforce such
20 rules and regulations consistent with this section, as the finance director deems necessary
21 to implement the same.
- 22 B. At the time of any transfer upon which a tax is imposed by this section, the grantee's title
23 insurance agent shall make a notarized report to the finance director on forms prescribed
24 by the officer, attesting to the true, complete and actual consideration for the transfer, the
25 names of the parties thereto, the location of the real estate transferred, and such other

1 information as may be required, along with payment of the tax. If the conveyance does not
2 involve a title insurance agent, then the purchaser shall make the report to the finance
3 director and submit payment of the tax, if applicable.

4 C. For exempt transactions, the grantee's title insurance agent shall submit a notarized report
5 to the finance director on forms prescribed by the officer, attesting to the nature of the
6 exception. If the grantee does not have a title insurance agent, then the grantee shall submit
7 the report. The finance director may require supporting documentation from the title
8 insurance agent or grantee before accepting the report.

9 D. For the purpose of collection of the taxes imposed by this section, the finance director may

10 1. Appoint as authorized agents for the city for the collection of said tax the
11 office of the Santa Fe County clerk, and all banks, title companies, escrow
12 companies, building and loan institutions, and real estate agencies
13 permitted as such to do business under the laws of the state of New Mexico
14 and maintaining offices within the city.

15 2. Enter cooperative agreements with other governments.

16 **Section 10. [NEW MATERIAL] a new Section 18-18.9 SFCC 1987 is ordained to read:**
17 **18-18.9 Lands Affected.**

18 When a conveyance subject to this section includes property located within the city of
19 Santa Fe and property located outside the city of Santa Fe, the tax imposed under this section shall
20 be computed only with respect to the portion of the property located within the city of Santa Fe and
21 the tax owed shall be assessed based on that part of the consideration fairly attributable to the
22 portion of the property located within the city.

23 **Section 11. [NEW MATERIAL] a new Section 18-18.10 SFCC 1987 is ordained to**
24 **read:**

25 **18-18.10 Penalties and Liens.**

1 A. All taxes imposed by this section, if not paid when due, shall bear interest at the internal
2 revenue service's rate for underpayments, as updated. The amount of tax imposed by
3 this section and interest due thereon is hereby assessed against the property upon the
4 transfer of which said tax is imposed, and if not paid when due, such tax and interest,
5 if any, shall constitute a lien on the property for the amount thereof, which lien shall
6 continue until the amount thereof is paid or until it is discharged of record by
7 foreclosure or otherwise.

8 B. Any person who shall fail or refuse to pay any tax due hereunder shall be subject to the
9 general penalty under SFCC 1987, Section 1-3.1.

10 C. Any remedies provided for herein shall be cumulative, not exclusive, and in addition
11 to any other remedies provided by law.

12 **Section 12. [NEW MATERIAL] a new Section 18-18.11 SFCC 1987 is ordained to read:**

13 **26-3A.11 Confidentiality.**

14 It is unlawful to reveal any information contained in a return or audit of any taxpayer,
15 except as required to administer the collection and enforcement of the tax or under one of the
16 following circumstances:

17 A. to a court of competent jurisdiction in response to an order thereof;

18 B. to the taxpayer or the taxpayer's authorized representative; or

19 C. for statistical purposes in such manner that the information revealed is not identifiable
20 as applicable to any individual taxpayer.


21 **Section 13. [NEW MATERIAL] A new Section 18-18.12 SFCC 1987 is ordained to read:**

22 **18-18.12 Effective Date.**

23 The provisions of this Article 18-18 shall be effective six months from the date when the
24 results of the election are certified to be in favor of the ordinance's adoption.

25 PASSED, APPROVED, and ADOPTED this 22nd day of August, 2023.

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ALAN WEBBER, MAYOR

ATTEST:



KRISTINE MIHELIC, CITY CLERK

APPROVED AS TO FORM:



[Erin McSherry \(Aug 28, 2023 16:55 MDT\)](#)

ERIN K. McSHERRY, CITY ATTORNEY

BILL NO. 2023-23

Legislation/2023/Ordinances/2023-22 (O) High-End Excise Tax for Affordable Housing