

Table of Contents

Short Name.....	page 2
Legal Authority.....	page 2
Overview of the High-End Excise Tax for Affordable Housing Ordinance.....	page 2
Effective Date.....	page 2
Definitions.....	page 2
Application of Tax.....	page 4
Tax Rates and Calculation.....	page 6
Filing and Payment Requirements.....	page 6
Required Documentation.....	page 7
Administration and Enforcement.....	page 8
Appeals Process.....	page 9
Miscellaneous Provisions.....	page 10

High-End Excise Tax for Affordable Housing Ordinance Administrative Rule

I. Short Name

This rule may be referred to as the “Excise Tax Rule.”

II. Legal Authority

Section 18-18.9 SFCC authorizes and empowers the city’s finance director to adopt and enforce rules and regulations consistent with the High-End Excise Tax for Affordable Housing Ordinance.

III. Overview of the High-End Excise Tax for Affordable Housing Ordinance

In the November 2023 general election, Santa Fe residents overwhelmingly supported a ballot measure to adopt the High-End Excise Tax for Affordable Housing Ordinance. The purpose of the ordinance is to establish a dedicated and enduring source of funding for the city's affordable housing fund by imposing an excise tax on the conveyance of high-end residential properties. The ordinance imposes a 3% excise tax on the portion of consideration over \$1,000,000 paid for the conveyance of title to residential property located in the city. The non-taxable consideration amount of \$1,000,000 will increase annually beginning May 1, 2026, by an amount corresponding with the previous calendar year's increase to the consumer price index for the western region for urban workers.

IV. Effective Date

This rule is effective May 28, 2024*.

V. Definitions

- a. “Charitable Purpose” (Ordinance Section 8, Subsection C) means an intent held by an organization that has received 501(c)(3) designation from the internal revenue service.
- b. “City” means City of Santa Fe, New Mexico.
- c. “Commercial property” (Ordinance Section 8; Subsection P) means real property other than residential property as defined by this rule.
- d. “Concession” means a benefit or discount provided by the buyer or seller as part of a property transfer transaction. Examples include payment of the other party’s tax lien or realtor commission, covering the costs of new appliances, or providing an allowance for repairs to the property.
- e. “Consideration” (Ordinance Section 5) means and includes the actual amount paid and/or the value of the assets delivered, or contracted to be paid or delivered, in exchange for the transfer of ownership or title to real property, without deduction for any lien, mortgage, contract indebtedness, or other encumbrance, either given to secure the purchase price, or any part thereof, or remaining unpaid on the property at the time of sale. The term does not include the amount of any outstanding lien or encumbrance in favor of the United States, the State of New Mexico, or of a municipal or quasi-municipal governmental corporation or district for taxes, special benefits, or

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improvements. The value of concessions shall be included in the calculation of total consideration.

- f. "Department" means the Finance Department of the City of Santa Fe, New Mexico.
- g. "Director" means the Director of the Finance Department of the City of Santa Fe, New Mexico.
- h. "Effective date" (Ordinance Section 13) means May 28, 2024*.
- i. "Exemption or Exception" (*or being consistent if there is no difference*) means a set of circumstances that relieves a purchaser from the duty to pay the tax.
- j. "Grantee" (Section 8) means a person to whom property is conveyed. As used in this rule the purchaser is equivalent to a grantee.
- k. "Grantor" means a person who conveys property to another person.
- l. "Grantee's title insurance agent" (Ordinance Section 9; Subsection B) means the title insurance agent of the grantee.
- m. "High-End Excise Tax Report and Payment Voucher form" means the form prescribed by the Finance Director for use by grantees to report information required by the ordinance and this rule.
- n. "Mixed Use" means a tract of land, building or structure with two or more different uses, including residential, office, manufacturing, retail, public use, light industrial or entertainment.
- o. "Non-taxable Consideration"
 - i. From May 28, 2024*, through April 30, 2026, non-taxable consideration means one million dollars (\$1,000,000.00).
 - ii. Beginning May 1, 2026, and each May 1 thereafter, non-taxable consideration means one million dollars (\$1,000,000.00) increased by an amount corresponding with the previous calendar year's increase to the consumer price index for the western region for urban workers. If the consumer price index does not increase during the prior year, non-taxable consideration shall remain the same as the prior year's non-taxable consideration.
- p. "Other instruments" (Ordinance Section 8; Subsection A) means a legally enforceable restriction on real property that ensures the property will remain affordable.
- q. Other Obligation (Ordinance Section 8; Subsection M) means a formal, binding agreement or acknowledgment of a liability to pay a certain amount.
- r. "Ordinance" means Section 18-18 of the Santa Fe City Code, the High-End Excise Tax for Affordable Housing Ordinance.
- s. "Person" means an individual, partnership, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, any combination of individuals, and any other form of unincorporated enterprise owned or conducted by two or more persons, but does not include the United States of America, any federal agency, the state government, or any political subdivision of the state of New Mexico.

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- t. Principal residence means a dwelling unit having one or more of the following characteristics:
 - 1. The principal place of abode of the owner's family members;
 - 2. The address listed on the owner's federal and state tax returns, driver's license, automobile registration, and voter registration card;
 - 3. The owner's mailing address for bills and correspondence.
- u. "Purchaser" (Ordinance Section 6, subsection C & Section 9, subsection B) means someone who obtains property for money or other valuable consideration. As used in this rule the purchaser is equivalent to a grantee.
- v. "Residential Property" means real property located in the geographic boundaries of the city of Santa Fe with one or more dwelling units, or, if the real property is mixed-use, then the portion of the real property associated with the dwelling units, other than multiple family dwelling with sixteen or more units on one lot and owned by one owner.
- w. Undeveloped land (Ordinance Section 8; Subsection Q) means Real Property that lacks improvements, including structures.
- x. 30 days (Ordinance Section 6; Subsection D) means 30 calendar days, excluding the date that the documents enacting the conveyance of title from the grantor to the grantee are fully executed by final approval of all parties.

VI. Application of Tax

- a. Taxable event
 - i. The taxable event is the conveyance of real property by a grantor to a grantee.
- b. Conveyances affected
 - i. All conveyances of real property located within the geographical boundaries of the City are subject to this Rule.
 - ii. When a conveyance subject to this Rule includes property located both within the geographic boundaries of the city and outside the geographic boundaries of the city, the tax imposed under this section shall be computed only with respect to the part of the consideration fairly attributable to the portion of the property located within the City.
- c. Exemptions and exclusions (Pursuant to Section 18-18.8 Santa Fe City Code)
 - i. Any conveyance of ownership of a dwelling unit that is sold subject to liens, deeds of trust, land use restrictions, or other instruments that ensure the unit will remain affordable;
 - ii. Any conveyance of ownership of property wherein the United States, or any agency or instrumentality thereof, the state of New Mexico, any county, municipality, district or other political subdivision of this state, is either the grantor or grantee;
 - iii. Any conveyance of ownership of property wherein the grantee corporation, association or trust has been organized, operated, and maintained solely and exclusively for charitable or religious purposes;

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- iv. Any conveyance of ownership of real property as a gift, where no consideration other than love and affection, charitable donation, or nominal compensation is evidenced by the terms of the instrument of transfer;
- v. Any termination of a joint tenancy in real property except where additional consideration of value is paid in connection with such termination, or a decree or agreement partitioning real property held under common ownership unless a consideration of value is paid in connection with the transfer of title;
- vi. Transfer of title or change of interest in real property by reason of death, will, or decree of distribution;
- vii. Transfers made pursuant to mergers or consolidations of corporations, or by a subsidiary to a parent corporation for no consideration other than cancellation or surrender of the subsidiary's stock;
- viii. Any deed or conveyance made and delivered without consideration for the purpose of confirming, correcting, modifying, or supplementing a transfer previously recorded; making minor boundary adjustments, removing clouds on titles; or granting easements, rights-of-way or licenses;
- ix. Any decree or order of a court of record determining or resting title, including a final order awarding title pursuant to a condemnation proceeding;
- x. Any deed granting or conveying title to cemetery lots;
- xi. Any lease of any real property (or assignment or transfer of any interest in any such lease) provided such lease by its terms does not constitute a de facto conveyance of the subject property. In the latter event, the tax shall be based upon the capitalization at five percent of the average annual rental over the entire term of the lease, including any renewal term, plus the actual consideration, other than rent, paid or to be paid;
- xii. Any mineral deed or royalty deed;
- xiii. Transfers to secure a debt or other obligation, or transfers or release of property that is security for a debt or other obligation;
- xiv. Any executory contract for the sale of real property under which the vendee is entitled to or does take possession thereof without acquiring title thereto, or any assignment or cancellation of any such contract;
- xv. Any deed or conveyance under execution, sale, or foreclosure sale under a power of sale or court decree of lien foreclosure, sheriff's deed, public trustee deed, or treasurer's deed;
- xvi. Any deed or conveyance of commercial property;
- xvii. Any deed or conveyance of undeveloped land;
- xviii. Any deed or conveyance reflecting an interspousal transfer of real property; or
- xix. Any deed or conveyance of real property that is the principal residence of an eligible transferor in the case of a family transfer between parents and their children or between grandparents and their grandchild or grandchildren.

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VII. Tax Rates and Calculation

a. Standard tax rates

The tax rate is 3% on the consideration for residential property, exceeding the non-taxable consideration, pursuant to Section 18-18.6(A) SFCC 1987.

b. Calculation method for determining tax liability

The grantee's tax liability is calculated by taking the consideration, as defined in Section 18-18.5 SFCC 1987, less the non-taxable consideration amount, and multiplying the remaining consideration amount by 3%.

c. Example illustrating tax calculation

If the total consideration for a transfer of real property occurring on June 30, 2024 is \$1,500,000, then the tax is calculated as follows:

Step one: \$1,500,000 (consideration) - \$1,000,000 (non-taxable consideration) = \$500,000 (taxable consideration)

Step two: \$500,000 (taxable consideration) X 3% = \$15,000 (tax due)

VIII. Filing and Payment Requirements

a. Who must file

All purchasers of real property located within geographic boundaries of the city shall file a High-End Excise Tax Report and Payment Voucher Form within thirty (30) days of the date of the property transfer.

b. How to file

i. The purchaser shall complete the High-End Excise Tax Report and Payment Voucher form, available on the City's website at

"<https://santafenm.gov/finance-2/high-end-excise-tax>"

ii. If a property transfer is conducted using the services of a title insurance agent, the title insurance agent shall collect the completed form and tax due from the purchaser, verify the purchaser's identity and the property address, and notarize the form.

1. In situations where the purchaser is not physically present in the City of Santa Fe, New Mexico for the closing, and the High-End Excise Tax Report and Payment Voucher form is the only document associated with the transfer that requires notarization, the title insurance agent may use alternative methods to verify the purchaser's identity.

a. Acceptable alternative methods of verifying identity include a valid US Passport or federally compliant REAL ID.

b. A copy of the document used to verify the purchaser's identity must be submitted to the City with the completed, un-notarized High-End Excise Tax Report and Payment Voucher form.

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- iii. If there is not a title insurance agent involved in the property transfer, or if for any other reason a title insurance agent does not collect the completed form and tax due from the purchaser, then the purchaser shall remit the completed, notarized form and payment to the City.
 - c. Due date of the filing and where the documents should be sent
 - i. A copy of the completed, notarized High-End Excise Tax Report and Payment Voucher form and payment of any tax due shall be remitted to the City within thirty (30) days of the date of the property transfer.
 - ii. Documents may be filed by email to “excisetax@santafenm.gov”, in person at City Hall (200 Lincoln Avenue Santa Fe, New Mexico 87501) during regular business hours, from 8 am to 5 pm, Monday through Friday, or by mail to the following address: City of Santa Fe, Excise Tax Processing, PO Box 909, Santa Fe, New Mexico 87504-0909
 - d. Payment and issuance of receipts
 - i. Tax payments must be remitted electronically by wire transfer in accordance with the wire instructions included in Attachment A to this Rule.
 - 1. All wire transfers must include the street address of the property in the addenda info field.
 - 2. If a buyer is unable to make a payment by wire transfer, email “excisetax@santafenm.gov” for alternative payment instructions.
 - ii. The City shall endeavor to issue receipts to purchasers within thirty (30) days of receiving the tax payment and matching it to the associated completed and submitted High-End Excise Tax Report and Payment Voucher form.
 - 1. Receipts shall be emailed to the purchaser email address reported on the High-End Excise Tax Report and Payment Voucher form.
 - 2. Additional copies of receipts may be requested by email to “excisetax@santafenm.gov”.
 - e. Amendments
 - i. If the purchaser becomes aware that the purchaser’s completed and filed High-End Excise Tax Report and Payment Voucher form contains one or more error(s), the purchaser is responsible notifying the City by filing an Amendment to High-End Excise Tax Report and Payment Voucher form with the City within ten (10) business days of the date the purchaser became aware of the error(s).
 - ii. The Amendment to High-End Excise Tax Report and Payment Voucher form shall be available on the City’s website at “<https://santafenm.gov/finance-2/high-end-excise-tax>”.

IX. Required documentation

- a. Grantees shall retain the original notarized High-End Excise Tax Report and Payment Voucher form and supporting documentation to substantiate the information reported on the High-End Excise Tax Report and Payment Voucher form. Supporting documentation may include, but is not limited to, the following documents: final,

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executed purchase agreement; final settlement statement; and evidence of consideration paid for the transfer of real property such as cancelled checks and wire transfer confirmations.

- b. If a real property conveyed to the grantee is located partially within the City limits and the total consideration includes property located outside the City limits, the purchaser must document the basis for reasonable apportionment of the total consideration. This documentation should include the apportionment methodology and other relevant facts to support the amount of consideration allocated to the portion of the property located within the City limits.
- c. Purchasers shall retain supporting documentation for 7 years and shall provide the documentation to the city upon request.

X. Administration and Enforcement

- a. Publication of non-taxable consideration amount
 - i. Publication of non-taxable amount of consideration:
 - 1. The exempt amount is \$1,000,000 from May 28, 2024*, through April 30, 2026. The city finance department shall calculate the non-taxable amount of consideration pursuant to Section 18-18.6 SFCC and publish the updated amount on the city website annually by March 1, beginning March 1, 2026, and every year thereafter.
 - 2. The High End-Excise tax Report and Payment Voucher form shall be republished annually by April 1, with the updated non-taxable amount of consideration for that year, beginning April 1, 2026, and every year thereafter.
- b. Audits and investigations
 - i. The Director or Director's designee shall conduct periodic audits and investigations as necessary to enforce the provisions of the ordinance and this rule.
 - ii. The City shall endeavor to select grantees for audit within seven (7) years of the date of the property transfer.
 - iii. The Director or Director's designee shall notify grantees selected for audit or investigation in writing. The written notification shall specify a deadline date of no less than thirty (30) days from the date of the city's written notice for the taxpayer to provide supporting documentation to the city to substantiate the information reported on the High-End Excise Tax Report and Payment Voucher form.
 - iv. The city shall endeavor to conduct its audit or investigation of the documentation provided by the grantee within ninety (90) days of the date the grantee provides complete information.
 - v. The Director or Director's designee shall provide written notification to the grantee documenting the results of the audit or investigation. This written notification shall include identification of any overpayment or underpayment of

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tax, including any penalty and interest assessed on underpayments of tax owed and a deadline date for remitting payment of any amounts due to the City. If the City assesses a grantee tax, penalty, or interest, then the City's written notification shall clearly state that it is a notice of assessment of tax and shall provide the grantee information about the grantee's right to appeal.

- c. Penalties for non-compliance (Pursuant to Section 18-18.11 Santa Fe City Code)
 - i. All taxes imposed by the ordinance, if not paid when due, shall bear interest at the internal revenue service's rate for underpayments, as updated.
 - ii. The amount of tax imposed and interest due thereon is hereby assessed against the property upon the transfer of which said tax is imposed, and if not paid when due, such tax and interest, if any, shall constitute a lien on the property for the amount thereof, which lien shall continue until the amount thereof is paid or until it is discharged of record by foreclosure or otherwise.
 - iii. Any person who shall fail or refuse to pay any tax due hereunder shall be subject to the general penalty under SFCC 1987, Section 1-3.1.
 - iv. Any remedies provided for herein shall be cumulative, not exclusive, and in addition to any other remedies provided by law.

XI. Appeals Process

- a. Grantees who are assessed tax, penalty, and/or interest by the City shall have the right to appeal the assessment.
- b. Appeals shall be conducted in accordance with the process described in Section 18-3.10 of the City of Santa Fe Code.
 - i. Taxpayers shall have thirty (30) calendar days from the receipt of a notice of assessment of tax to appeal such decision to a hearing officer appointed by the city manager.
 - ii. Appeals shall be filed in writing together with a \$200.00 filing fee.
 - iii. The appeal shall set forth the appellant's reasons for asserting the tax assessment was in error or in violation of any city of Santa Fe ordinance or other applicable law.
 - iv. The hearing officer shall conduct a formal hearing within thirty (30) days of the receipt of the appeal. The officer shall give written notice by certified mail to the appellant at least ten (10) days prior to the hearing.
 - v. The hearing officer shall make a decision on the basis of the preponderance of evidence presented at the hearing, rendering a decision within thirty (30) days of the hearing to affirm or reverse the assessment, in part or in full.
 - vi. The appellant's failure to appear at the hearing shall extinguish the appeal.
 - vii. The hearing officer's decision is the city's final action and the appellant may appeal the decision of the hearing officer in district court.
 - viii. Appeals to the District Court. An appeal of a decision by the hearing officer is only subject to appeal to the first judicial district court pursuant to Section 39-3.1.1 NMSA 1978, Rule 1-074, NMRA or Rule 1-075, NMRA, as amended, or

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other relevant statute or court rule. A person aggrieved by a final decision of the hearing officer may appeal the decision to district court by filing in district court a notice of appeal within thirty days of the date of filing of the final decision.

XII. Miscellaneous Provisions

a. Confidentiality of taxpayer information

Pursuant to Section 18-18.12 of the Santa Fe City Code, it is unlawful to reveal any information contained in a return or audit of any taxpayer, except as required to administer the collection and enforcement of the tax or under one of the following circumstances:

- i. To a court of competent jurisdiction in response to an order thereof;
- ii. To the taxpayer or the taxpayer's authorized representative; or
- iii. For statistical purposes in such manner that the information revealed is not identifiable as applicable to any individual taxpayer.

b. Grantee's Authorized Representative

- i. A grantee may designate an authorized representative to conduct business related to the High-End Excise Tax on their behalf. The designation must be made in writing and must include the notarized signature of the grantee.
 1. The designation must specify the grantee's name, email address, telephone number, mailing address, the property address, the closing (transfer) date, and the beginning and ending dates that the authorized representative designation is in effect.
 2. The designation must also specify the grantee's authorized representative's full name, email address, telephone number, and mailing address.
- ii. Authorized representative designations may be filed by email to "excisetax@santafenm.gov" [in person at City Hall, Finance Department \(200 Lincoln Avenue Santa Fe, New Mexico 87501\)](mailto:excisetax@santafenm.gov) during regular business hours, 8am-5pm Monday through Friday, or by mail to the following address: City of Santa Fe, Excise Tax Processing, PO Box 909, Santa Fe, New Mexico 87504-0909.

c. Authorized Agents

- i. Pursuant to Section 18-18.9.D of the Santa Fe City Code, the Director may appoint authorized agents to collect payments for the High-End Excise Tax for Affordable Housing from grantees and remit said payments to the City within thirty (30) days of the date of the property transfer.
- ii. Parties eligible to be appointed as authorized agents for the City are the office of the Santa Fe County Clerk, and all banks, title companies, escrow companies, building and loan institutions, and real estate agencies permitted as such to do business under the laws of the state of New Mexico and conducting business within the City.
- iii. Parties seeking to be appointed as authorized agents shall submit a written request to the Director with the following information:

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1. The organization name, business address, telephone number, City of Santa Fe business license number, State of New Mexico Business Tax Identification Number, and a brief description of the organization's primary business activities; and
 2. The organization's authorized representative's full name, job title, email address, telephone number, and mailing address.
- iv. Requests may be filed by email to excisetax@santafenm.gov, in person at City Hall, Finance Department (200 Lincoln Avenue Santa Fe, New Mexico 87501) during regular business hours, 8am-5pm Monday through Friday, or by mail to the following address: City of Santa Fe, Excise Tax Processing, PO Box 909, Santa Fe, New Mexico 87504-0909
 - v. The Department shall endeavor to review and respond to requests within 15 business days of receipt. The Director or designee shall respond to these requests in writing, and authorized agent appointments shall be made in writing.
 - vi. Appointments shall remain in effect unless the Department notifies the agent that the Director has denied or revoked the authorization. Such notification shall be made in writing and shall include the effective date of the revocation.
 - vii. The Department shall maintain a listing of parties appointed to serve as authorized agents.

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