


CITY OF SANTA FE, NEW MEXICO

BILL NO. 2008-37

INTRODUCED BY:


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AN ORDINANCE

CREATING ARTICLE 18-19 OF THE SANTA FE CITY CODE ESTABLISHING THE
WORKFORCE HOUSING FUNDING INITIATIVE.

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

Section 1. A new Article 18-19 SFCC 1987 is ordained to read:

18-19 [NEW MATERIAL] WORKFORCE HOUSING FUNDING INITIATIVE

Section 2. A new Section 18-19.1 SFCC 1987 is ordained to read:

18-19.1 [NEW MATERIAL] Short Title. This article may be cited as the Workforce
Housing Funding Initiative.

Section 3. A new Section 18-19.2 SFCC 1987 is ordained to read:

18-19.2 [NEW MATERIAL] Legislative Findings. The governing body has
determined that:

A. The shortage of affordable home purchase opportunities has significant negative
effects on Santa Fe's economy, as well as for families and businesses. The effects include:

(1) The local economy loses an estimated \$301.6 million in local spending

1 annually when employees live elsewhere and commute in to work rather than living in
2 Santa Fe.

3 (2) The local community also loses valuable volunteer services when people
4 cannot live where they work and must commute long distances to and from home.

5 (3) Experience in other high cost housing markets nationally has shown that,
6 over the long term, jobs follow employees who move away in search of housing they can
7 afford to buy.

8 (4) Employers struggle to recruit and retain employees, and must pay higher
9 wages to compensate for high housing or commuting costs.

10 (5) 44% of the Santa Fe Workforce commutes from outside of Santa Fe and
11 over half of these commuters used to live in the City of Santa Fe.

12 (6) Productivity suffers when employees face commutes of two to three
13 hours on top of their workday.

14 (7) Approximately 65% of employers noted that the availability of
15 workforce housing was one of the more serious or critical problems in the City of Santa
16 Fe.

17 B. The city has adopted a five-year strategic housing plan addressing the
18 community's housing goals and objectives including workforce housing needs.

19 C. The city has established the affordable housing trust fund as set forth in Article
20 26-3 SFCC 1987 to provide or pay all or a portion of the costs of acquisition, development,
21 construction, renovation or conversion, financing, operation or owning affordable housing or
22 infrastructure to support affordable housing including workforce housing initiatives.

23 D. The affordable housing trust fund requires a dedicated source of revenue.

24 E. It is in the public interest to impose a duly approved real estate transfer tax to
25 fund the affordable housing trust fund for workforce housing needs.

1 **Section 4. A new Section 18-19.3 SFCC 1987 is ordained to read:**

2 **18-19.3 [NEW MATERIAL] Purpose.** The purpose of this article is to establish an
3 ongoing source of funding for workforce housing initiatives by imposing an excise tax on the
4 transfer of certain real property. This tax is imposed pursuant to § 3-18-2 NMSA 1978
5 authorizing municipalities to impose an excise tax on products and services specifically named
6 upon approval at election by the voters.

7 **Section 5. A new Section 18-19.4 SFCC 1987 is ordained to read:**

8 **18-19.4 [NEW MATERIAL] Definitions.** For the purposes of this article, certain
9 words are defined as follows:

10 *Consideration* means and includes the actual cash paid and/or value of the property
11 delivered, or contracted to be paid or delivered, in return for the transfer of ownership or title to
12 real property and shall include the amount of any lien, mortgage, contract indebtedness, or other
13 encumbrance, either given to secure the purchase price, or any part thereof, or remaining unpaid
14 on the property at the time of sale. The term does not include the amount of any outstanding lien
15 or encumbrance in favor of the United States, the State of New Mexico, or of a municipal or
16 quasi-municipal governmental corporation or district for taxes, special benefits or improvements.

17 *Conveyance of ownership* means and includes the transfer of more than fifty percent of
18 the authorized and issued shares of a corporation which has as its principal asset real property
19 situated in the city.

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

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

25 *Transfer* means and includes any conveyance of the ownership of a title to real property

1 and is evidenced by any deed or instrument or writing wherein or whereby title to real property
2 situated in the city is granted or conveyed, subject to the exclusions provided in this article.

3 **Section 6. A new Section 18-19.5 SFCC 1987 is ordained to read:**

4 **18-19.5 [NEW MATERIAL] Imposition of Tax.**

5 A. *Tax imposed.* There is hereby imposed a real estate transfer tax on every
6 conveyance of ownership of real property situated in the city, which tax shall be measured by the
7 consideration paid or to be paid for such grant or conveyance and shall be due and payable by the
8 purchaser at the time of transfer contemporaneously therewith. No document shall be recorded
9 whereby or wherein title to real property situated in the city is transferred until the real estate
10 transfer tax has been paid or exempted.

11 B. *Amount of tax.* The amount of real estate transfer tax payable is equal to one
12 percent of the consideration paid exceeding \$650,000 for the transfer of ownership or title.

13 C. *Application of funds.* All funds received by the city of Santa Fe pursuant to this
14 Article 18-19 shall be deposited into the Affordable Housing Trust Fund to be used only for the
15 following types of affordable housing projects or programs provided that the assistance is related
16 to workforce housing initiatives. The funds shall be subject to appropriation by the governing body
17 of the city of Santa Fe, or its designee, only to the extent permitted by state law for the purpose(s)
18 of:

19 (1) Supporting workforce housing initiatives, including: providing matching
20 funds to be used for down payment assistance;

21 (2) Acquiring vacant land for affordable workforce housing;

22 (3) Acquiring buildings for the purpose of affordable workforce housing;

23 (4) Constructing or reconstructing housing for the workforce;

24 (5) Maintaining and rehabilitating affordable housing;

25 (6) Operating employer housing projects; and

(7) Paying principal and interest on the bonds issued for affordable workforce housing purposes and incidental costs of issuing the bonds and the funding of any reserve.

Section 7. A new Section 18-19.6 SFCC 1987 is ordained to read:

18-19.6 [NEW MATERIAL] Exemptions. The real estate transfer tax imposed by this section shall not apply to:

A. Any conveyance of ownership of property which is part of a development subject to the Santa Fe Homes Program, to HOP homes subject to the Housing Opportunity Program guidelines, as amended from time to time, or to any other form of permanently affordable housing including those sold subject to liens, deeds of trust or other instruments that ensure the unit will remain affordable;

B. 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;

C. 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;

D. 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;

E. 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 therewith.;

F. The transfer of title or change of interest in real property by reason of death, will

1 or decree of distribution;

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

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

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

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

12 K. Any lease of any real property (or assignment or transfer of any interest in any
13 such lease) provided such lease by its terms does not constitute a de facto conveyance of the
14 subject property. In the latter event the real estate transfer tax shall be based upon the
15 capitalization at five percent of the average annual rental over the entire term of the lease,
16 including any renewal term, plus the actual consideration, other than rent, paid or to be paid.
17 When the average annual rental cannot be determined, or at the election of the city's finance
18 officer, the tax shall be based upon the assessed value of the property covered by the lease;

19 L. Any mineral deed or royalty deed;

20 M. Transfers to secure a debt or other obligation, or transfers or release of property
21 which is security for a debt or other obligation;

22 N. Any executory contract for the sale of real property under which the vendee is
23 entitled to or does take possession thereof without acquiring title thereto, or any assignment or
24 cancellation of any such contract;

25 O. Any deed or conveyance under execution, sale, or foreclosure sale under a power

1 sale or court decree of lien foreclosure; sheriff's deed; public trustee deed or treasurer's deed;

2 P. Any deed or conveyance of commercial property;

3 Q. Any deed or conveyance of undeveloped land;

4 R. Any deed or conveyance reflecting an interspousal transfer of real property; or

5 S. Any deed or conveyance of real property which is the principal residence of an
6 eligible transferor in the case of a family transfer between parents and their children or between
7 grandparents and their grandchild or grandchildren.

8 **Section 8. A new Section 18-19.7 SFCC 1987 is ordained to read:**

9 **18-19.7 [NEW MATERIAL] Application for Exemption.** In the event any
10 document which is exempt from the real estate transfer tax herein imposed does not contain
11 language clearly showing its exempt character, the grantor or grantee may apply for and obtain
12 from the city's finance officer a certificate of exemption, which may be affixed to such deed or
13 instrument of transfer.

14 **Section 9. A new Section 18-19.8 SFCC 1987 is ordained to read:**

15 **18-19.8 [NEW MATERIAL] Finance Officer to Enforce.**

16 A. The city's finance officer is charged with the enforcement of the provisions of
17 this section and is hereby authorized and empowered to prepare such forms and adopt and enforce
18 such rules and regulations consistent with this section, as he deems necessary to implement the
19 same.

20 B. At the time of any transfer upon which a tax is imposed by this section the
21 purchaser shall make a report to the finance officer on forms prescribed by the officer, setting
22 forth the true, complete and actual consideration for the transfer, the names of the parties thereto,
23 the location of the real estate transferred, and such other information as may be required.

24 C. For the purpose of collection of the taxes imposed by this section, the finance
25 officer shall appoint as authorized agents for the city for the collection of said tax the office of the

1 Santa Fe county clerk, and all banks, title companies, escrow companies, building and loan
2 institutions and real estate agencies permitted as such to do business under the laws of the state of
3 New Mexico and maintaining offices within the city. The finance officer is authorized to
4 negotiate with such appointed agents to allow them to retain a reasonable amount of the sum
5 collected to cover their expense in the collection and remittance of said tax.

6 **Section 10. A new Section 18-19.9 SFCC 1987 is ordained to read:**

7 **18-19.9 [NEW MATERIAL] Lands Affected.** When a conveyance subject to this
8 section includes property located within the city of Santa Fe and property located outside the city
9 of Santa Fe, the tax imposed under the authority of this section shall be computed only with
10 respect to that portion of the property located within the city of Santa Fe and the tax shall be
11 assessed on that part of the consideration fairly attributable to the portion of the property located
12 within the city.

13 **Section 11. A new Section 18-19.10 SFCC 1987 is ordained to read:**

14 **18-19.10 [NEW MATERIAL] Penalties and Liens.**

15 A. All taxes imposed by this section, if not paid when due, shall bear interest at the
16 rate of twelve percent per annum until so paid. The amount of the real estate transfer tax imposed
17 by this section and interest due thereon is hereby assessed against the property upon the transfer
18 of which said tax is imposed, and if not paid when due, such tax and interest, if any, shall
19 constitute a lien on the property for the amount thereof, which lien shall continue until the amount
20 thereof is paid or until it is discharged of record by foreclosure or otherwise.

21 B. Any person who shall fail or refuse to pay any tax due hereunder shall be subject
22 to the general penalty under SFCC §1-3.1.

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

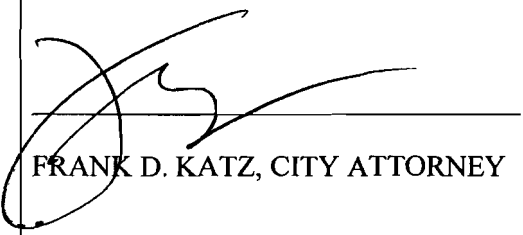
25 **Section 12. A new Section 18-19.11 SFCC 1987 is ordained to read:**

1 **18-19.11 [NEW MATERIAL.] Confidentiality.** It is unlawful for any
2 employee of the city of Santa Fe to reveal to any individual other than another employee or
3 elected official of the city of Santa Fe any information contained in a return or audit of any
4 taxpayer subject to the Real Estate Transfer Tax except to a court of competent jurisdiction in
5 response to an order thereof in an action relating to taxes to which the City of Santa Fe is a party,
6 and in which information sought is material to the inquiry; to the taxpayer or the taxpayer's
7 authorized representative; and for statistical purposes in such manner that the information
8 revealed is not identifiable as applicable to any individual taxpayer.

9 **Section 13. A new Section 18-19.12 SFCC 1987 is ordained to read**

10 **18-19.12 [NEW MATERIAL.] Effective Date.** The provisions of this Article
11 18-19 shall be effective 90 days from the date when the results of the election are certified to be
12 in favor of the ordinance's adoption.

13 APPROVED AS TO FORM:

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16 FRANK D. KATZ, CITY ATTORNEY
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25 *jp/CA/jpmb/2008 bill/ workforce housing initiative 5-13-08*