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**CITY OF SANTA FE, NEW MEXICO**

**BILL NO. 2007 - 49**

**INTRODUCED BY:**

Councilor Wurzbarger  
Councilor Chavez  
Councilor Calvert  
Councilor Heldmeyer

**AN ORDINANCE**

**CREATING ARTICLE 18-19 OF THE SANTA FE CITY CODE IMPOSING A REAL ESTATE TRANSFER TAX.**

**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] REAL ESTATE TRANSFER TAX**

**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 Real Estate Transfer Tax Ordinance (RETT).

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

**18-19.2 [NEW MATERIAL] Purpose.** The purpose of this article is to impose an excise tax on the transfer of certain real property in order to fund affordable housing and housing for employees who provide critical and emergency services in the city of Santa Fe. This tax is imposed pursuant to § 3-18-2 NMSA 1978 authorizing municipalities to impose an excise tax on products and services specifically named upon approval at election by the voters.

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

2           **18-19.3 [NEW MATERIAL] Definitions.** For the purposes of this article, certain  
3 words are defined as follows:

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

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

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

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

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

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

23           **18-19.4 [NEW MATERIAL] Imposition of Tax.**

24           A.       *Tax imposed.* There is hereby imposed a real estate transfer tax on every  
25 document in writing whereby title to real property situated in the city is transferred, which tax

1 shall be measured by the consideration paid or to be paid for such grant or conveyance and shall  
2 be due and payable by the purchaser at the time of transfer contemporaneously therewith. The  
3 document shall not be recorded whereby or wherein title to real property situated in the city is  
4 transferred until the real estate transfer tax has been paid or exempted.

5 B. *Amount of tax.* The amount of real estate transfer tax payable is equal to one  
6 percent of the consideration paid exceeding \$500,000 for the transfer of ownership or title.

7 C. *Application of funds.* All funds received by the city of Santa Fe pursuant to this  
8 Article 18-19 shall be deposited into the Affordable Housing Trust Fund to be used for affordable  
9 housing projects or programs. The funds shall be subject to appropriation by the governing body  
10 of the city of Santa Fe, or its designee, only to the extent permitted by state law for the purpose(s)  
11 of:

12 (1) Establishing a reimbursement program to assist property owners of affordable  
13 housing, where the city has a shared equity lien, in paying the difference in property taxes  
14 between the taxes based upon the sales price and the appraised price;

15 (2) Acquiring vacant land for affordable housing;

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

17 (4) Constructing or reconstructing housing that addresses community  
18 housing goals;

19 (5) Employer assisted housing programs;

20 (6) Maintaining and rehabilitating affordable housing;

21 (7) Operating employer, employee or other community housing projects;

22 (8) Reimbursing fees waived for affordable housing developments; and

23 (9) Paying principal and interest on the bonds issued for such purposes and  
24 incidental costs of issuing the bonds and the funding of any reserve.

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

1           **18-19.5 [NEW MATERIAL] Exemptions.** The real estate transfer tax imposed by this  
2 section shall not apply to:

3           A. Any document granting or conveying title to property which is part of a  
4 development subject to the Santa Fe Homes Program, to HOP homes subject to the Housing  
5 Opportunity Program guidelines, as amended from time to time, or to any other form of  
6 permanently affordable housing including those sold subject to liens, deeds of trust or other  
7 instruments that ensure the unit will remain affordable.

8           B. Any document wherein the United States, or any agency or instrumentality  
9 thereof, the state of New Mexico, any county, municipality, district or other political subdivision  
10 of this state, is either the grantor or grantee.

11           C. Any document wherein the grantee corporation, association or trust has been  
12 organized, operated and maintained solely and exclusively for charitable or religious purposes.

13           D. Any document granting or conveying title to real property in consequence of a  
14 gift of such property, where no consideration other than love and affection, charitable donation or  
15 nominal compensation is evidenced by the terms of the instrument of transfer.

16           E. Any document terminating or evidencing termination of a joint tenancy in real  
17 property except where additional consideration of value is paid in connection with such  
18 termination, or a decree or agreement partitioning real property held under common ownership  
19 unless a consideration of value is paid in connection therewith.

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

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

25           H. Any deed or conveyance made and delivered without consideration for the

1 purpose of confirming, correcting, modifying, or supplementing a transfer previously recorded;  
2 making minor boundary adjustments, removing clouds on titles; or granting easements, rights-of-  
3 way or licenses.

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

6 J. Any deed granting or conveying title to cemetery lots.

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

14 L. Any mineral deed or royalty deed.

15 M. Transfers to secure a debt or other obligation, or transfers or release of property  
16 which is security for a debt or other obligation.

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

20 O. Any deed or conveyance under execution, sale, or foreclosure sale under a power  
21 sale or court decree of lien foreclosure; sheriff's deed; public trustee deed or treasurer's deed.

22 P. Any deed or conveyance of commercial property.

23 Q. Any deed or conveyance of undeveloped land.

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

25 S. Any deed or conveyance of real property which is the principal residence of an

1 eligible transferor in the case of a purchase or transfer between parents and their children or  
2 between grandparents and their grandchild or grandchildren, if all of the parents of that  
3 grandchild or those grandchildren, who qualify as the children of the grandparents, are deceased  
4 as of the date of purchase or transfer.

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

6 **18-19.6 [NEW MATERIAL] Application for Exemption.** In the event any document  
7 which is exempt from the real estate transfer tax herein imposed does not contain language  
8 clearly showing its exempt character, the grantor or grantee may apply for and obtain from the  
9 city's finance officer a certificate of exemption, which may be affixed to such deed or instrument  
10 of transfer.

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

12 **18-19.7 [NEW MATERIAL] Finance Officer to Enforce.**

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

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

21 C. For the purpose of collection of the taxes imposed by this section, the office of  
22 the Santa Fe county clerk, together with all banks, title companies, escrow companies, building  
23 and loan institutions and real estate agencies permitted as such to do business under the laws of  
24 the state of New Mexico and maintaining offices within the city are hereby appointed as  
25 authorized agents for the city for the collection of said tax. The finance officer is authorized to

1 negotiate with such appointed agents to allow them to retain a reasonable amount of the sum  
2 collected to cover their expense in the collection and remittance of said tax.

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

4 **18-19.8 [NEW MATERIAL] Lands Affected.** When a document subject to this  
5 section includes property located within the city of Santa Fe and property located outside the city  
6 of Santa Fe, the tax imposed under the authority of this section shall be computed only with  
7 respect to that portion of the property located within the city of Santa Fe and the tax shall be  
8 assessed on that part of the consideration fairly attributable to the portion of the property located  
9 within the city.

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

11 **18-19.9 [NEW MATERIAL] Penalties and Liens.**

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

18 B. Any person who shall fail or refuse to pay any tax due hereunder shall be  
19 punished by a fine not exceeding five hundred dollars (\$500.00) or imprisonment for a period of  
20 not more than ninety days, or both such fine and imprisonment.

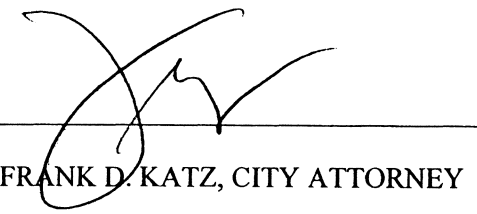
21 C. Any remedies provided for herein shall be cumulative, not exclusive and shall be  
22 in addition to any other remedies provided by law.

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

24 **18-19.10 [NEW MATERIAL.] Confidentiality.** It is unlawful for any employee  
25 of the city of Santa Fe to reveal to any individual other than another employee or elected official

1 of the city of Santa Fe any information contained in a return or audit of any taxpayer subject to  
2 the Real Estate Transfer Tax except to a court of competent jurisdiction in response to an order  
3 thereof in an action relating to taxes to which the City of Santa Fe is a party, and in which  
4 information sought is material to the inquiry; to the taxpayer or the taxpayer's authorized  
5 representative; and for statistical purposes in such manner that the information revealed is not  
6 identifiable as applicable to any individual taxpayer.

7 **Section 12. A new Section 18-19.11 SFCC 1987 is ordained to read**  
8 **18-19.11 [NEW MATERIAL.] Effective Date.** The provisions of this Article  
9 18-19 shall be effective three (3) months from the date when the results of the election are  
10 certified to be in favor of the ordinance's adoption.

11 APPROVED AS TO FORM:  
12   
13 \_\_\_\_\_  
14 FRANK D. KATZ, CITY ATTORNEY

**City of Santa Fe  
Fiscal Impact Report (FIR)**

This Fiscal Impact Report (FIR) shall be completed for each proposed bill or resolution as to its direct impact upon the City's operating budget and is intended for use by any of the standing committees of and the Governing Body of the City of Santa Fe. Bills or resolutions with no fiscal impact still require a completed FIR. Bills or resolutions with a fiscal impact must be reviewed by the Finance Committee. Bills or resolutions without a fiscal impact generally do not require review by the Finance Committee unless the subject of the bill or resolution is financial in nature.

**Section A.      General Information**

(Check) Bill:  \_\_\_\_\_ Resolution: \_\_\_\_\_  
(A single FIR may be used for related bills and/or resolutions)

Short Title(s): **CREATING ARTICLE 18-19 OF THE SANTA FE CITY CODE IMPOSING A REAL ESTATE TRANSFER TAX.**

Sponsor(s): Councilors Calvert, Wurtzburger, Chavez and Heldmeyer

Reviewing Department(s): Office of Affordable Housing \_\_\_\_\_  
Person Completing FIR: Kathryn McCormick      Date: 05/30/07      Phone: 955-6350

Reviewed by City Attorney: [Signature]      Date: 10-5-2007  
(Signature)

Reviewed by Finance Director: KLR by [Signature]      Date: 10-5-2007  
(Signature)

**Section B.      Summary**

This is an ordinance that would impose an excise tax on the transfer of residential real estate in order to fund affordable housing and housing for employees who provide critical and emergency services in the city of Santa Fe. As proposed, the ordinance would exempt the first \$500,000 of real estate sales and require a 1% tax to be paid on the balance. Proceeds from the RETT would be dedicated to the Affordable Housing Trust Fund and allocated under the guidelines established for this fund.

**Section C.      Fiscal Impact**

**Note:** Financial information on this FIR does not directly translate into a City of Santa Fe budget increase. For a budget increase, the following are required:

- a. The item must be on the agenda at the Finance Committee and City Council as a "Request for Approval of a City of Santa Fe Budget Increase" with a definitive funding source (could be same item and same time as bill/resolution)
- b. Detailed budget information must be attached as to fund, business units, and line item, amounts, and explanations (similar to annual requests for budget)
- c. Detailed personnel forms must be attached as to range, salary, and benefit allocation and signed by Human Resource Department for each new position(s) requested (prorated for period to be employed by fiscal year)\*

**1. Projected Expenditures:**

- a. Indicate Fiscal Year(s) affected – usually current fiscal year and following fiscal year (i.e., FY 03/04 and FY 04/05)
- b. Indicate:      "A" if current budget and level of staffing will absorb the costs  
                      "N" if new, additional, or increased budget or staffing will be required
- c. Indicate:      "R" – if recurring annual costs  
                      "NR" if one-time, non-recurring costs, such as start-up, contract or equipment costs
- d. Attach additional projection schedules if two years does not adequately project revenue and cost patterns
- e. Costs may be netted or shown as an offset if some cost savings are projected (explain in Section 3 Narrative)

\_\_\_\_\_ Check here if no fiscal impact

Column #:	1	2	3	4	5	6	7	8
	Expenditure Classification	FY 07/08N	"A" Costs Absorbed or "N" New Budget Required	"R" Costs Recurring or "NR" Non-recurring	FY 08/09	"A" Costs Absorbed or "N" New Budget Required	"R" Costs – Recurring or "NR" Non-recurring	Fund Affected
	Personnel*	\$ 125,000	New	R	\$ 130,000	A		
	Fringe**	\$ 45,000			\$ 46,800			
	Capital Outlay	\$ 10,000			\$			
	Programs/AHTF	\$1,300,000			\$1,362,400			
	Professional Services	\$ 20,000			\$ 20,800			
	All Other Operating Costs	\$			\$			
	<b>Total:</b>	<b>\$ 1,500,000</b>			<b>\$ 1,560,000</b>			

\* Any indication that additional staffing would be required must be reviewed and approved in advance by the City Manager by attached memo before release of FIR to committees. \*\*For fringe benefits contact the Finance Dept.

1. Staffing will be needed in both housing and the budget office to cover the costs associated with accounting for funds, preparing and issuing requests for proposals, managing contracts that result from allocating funds, working with local lenders to maximize the leverage potential of these funds, as well as working with local employers to implement local employer assisted housing program. Legal services and support will be needed as well.

**2. Revenue Sources:**

- a. To indicate new revenues and/or
- b. Required for costs for which new expenditure budget is proposed above in item 1.

Column #:	1	2	3	4	5	6
	Type of Revenue	FY 07/08 Payments	"R" Costs Recurring or "NR" Non-recurring	FY 08/09	"R" Costs – Recurring or "NR" Non-recurring	Fund Affected
	RETT	\$1,500,000	R	\$ 1,560,000		
	<b>Total:</b>	<b>\$1,500,000</b>		<b>\$1,560,000</b>		

**3. Expenditure/Revenue Narrative:**

Explain revenue source(s). Include revenue calculations, grant(s) available, anticipated date of receipt of revenues/grants, etc. Explain expenditures, grant match(s), justify personnel increase(s), detail capital and operating uses, etc. (Attach supplemental page, if necessary.)

Funding would be generated from a Real Estate Transfer tax as noted above. Revenues are based on the last six months of sales data for 2006. During this period, 213 homes sold for \$500,000 or more. A RETT on these homes would have generated \$771,000. This was doubled and rounded up to achieve the estimate of \$1.5M.

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**Section D.      General Narrative**

**1. Conflicts:** Does this proposed bill/resolution duplicate/conflict with/companion to/relate to any City code, approved ordinance or resolution, other adopted policies or proposed legislation? Include details of city adopted laws/ordinance/resolutions and dates. Summarize the relationships, conflicts or overlaps.

No conflicts have been identified to date.

**2. Consequences of Not Enacting This Bill/Resolution:**

Are there consequences of not enacting this bill/resolution? If so, describe.

Santa Fe will continue to lose essential workers to other communities. There will be an increase in in-commuting. There will be a continued lack of affordable rental housing in the community.

**3. Technical Issues:**

Are there incorrect citations of law, drafting errors or other problems? Are there any amendments that should be considered? Are there any other alternatives which should be considered? If so, describe.

None have been identified at this time.

**4. Community Impact:**

Briefly describe the major positive or negative effects the Bill/Resolution might have on the community including, but not limited to, businesses, neighborhoods, families, social service providers and other institutions such as schools, churches, etc.

Additional revenues will further local affordable housing efforts. There will be an increase in the number of employees who can live and work in the community. Revenues will be available to support special populations such as seniors and the disabled. These revenues will be used to replace lost federal funding.

Implementation of a RETT will require approval by the voters. There will be resistance from Realtors, local developers and possibly business owners.

Form adopted: 01/12/05; revised 8/24/05