

18-11 LODGERS' TAX.

Editor's Note: Prior ordinances codified herein include portions of Ordinance Nos. 1969-13, Code 1973 §§ 32-11, 32-26, 1977-25, 1979-20, 1980-38, SFCC 1981 §§ 9-11-1—9-11-4, 9-11-6—9-11-18, 1983-36, 1985-62, 1987-20, 1987-45, 1989-13.

18-11.1 Short Title.

This section may be cited as the "Lodgers' Tax Ordinance." (Ord. #1992-27, §2; Ord. #1996-25, §1)

18-11.2 Purpose.

The purpose of this section is to impose a tax which will be borne by persons using commercial lodging accommodations which tax will provide revenues for the purpose of advertising, publicizing and promoting facilities, tourist attractions, and acquisition, construction and maintenance of tourist attractions and recreational facilities, and for all other legally permissible purposes including those purposes as authorized in subsection 18-11.15 of this section. (Ord. #1992-27, §3; Ord. #1996-25, §2)

18-11.3 Definitions.

As used in this section.

Accounts receivable unit means the office, within the city of Santa Fe finance department, that is responsible for issuing business registrations.

Board means the lodgers' occupancy tax advisory board established herein to make recommendations for advertising, publicizing and promoting tourist-related attractions, facilities and events to the governing body, keep minutes of its proceedings and submit its recommendations, correspondence and other pertinent documents to the governing body.

City means the city of Santa Fe.

City cashier's office means the office, within the city of Santa Fe finance department, where all monies owed the city are collected and deposited. All lodgers' tax remittance will be collected and deposited in the cashier's office.

City clerk means the city clerk of Santa Fe, New Mexico.

City treasurer means the finance department director.

Convention center fee means the two percent (2%) increment imposed by the city under the Civic and Convention Center Funding Act, Sections 5-14-1 to 5-14-15 NMSA 1978.

Gross taxable rent means the total amount of rent paid for lodging, not including the state gross receipts tax or local sales taxes.

Increment means a specified unit of the total percent of occupancy tax or convention center fee imposed where the unit is derived by dividing the percent tax imposed into separate parts of one percent (1%) or portions of one percent (1%).

Lodgers' tax shall be used to collectively refer to the occupancy tax and convention center fee.

Lodging means the transaction of furnishing rooms or other accommodations by a vendor to a vendee who for a rent uses, possesses or has the right to use or possess any room or rooms or other units of accommodations in or at a taxable premises.

Lodgings means the rooms or other accommodations furnished by a vendor to a vendee by a taxable service of lodgings.

Occupancy tax means tax on lodging authorized by the Lodgers' Tax Act, Sections 3-38-13 to 3-38-24 NMSA 1978.

Person means a corporation, firm, other body corporate, partnership, association or individual, includes a property management company, includes an executor, administrator, trustee, receiver or other representative appointed according to law and acting in a representative capacity, but does not include the United States of America, the state of New Mexico, any corporation, department, instrumentality or agency of the federal government or the state government, or any political subdivision of the state.

Rent means the consideration received by a vendor in money, credits, property or other consideration valued in money for lodgings subject to a lodgers' tax authorized in the Lodgers' Tax Act and/or the Civic and Convention Center Funding Act.

Taxable premises means a hotel, apartment, apartment hotel, apartment house, condominium, town home, casita, time-share and fractional-share lodge, lodging house, rooming house, motor hotel, bed and breakfast, guest house, guest ranch, ranch resort, guest resort, mobile home, motor court, auto court, auto camp, trailer court, trailer camp, trailer park, tourist camp, cabin, short-term rental unit or other premises for lodging.

Tourist means a person who travels for the purpose of business, pleasure or culture to the city of Santa Fe.

Tourist-related events means events that are planned for, promoted to and attended by tourists.

Tourist-related facilities and attractions means facilities and attractions that are intended to be used by or visited by tourists.

Tourist-related transportation systems means transportation systems that provide transportation for tourists to and from tourist-related facilities, attractions and events.

Vendee means a natural person to whom lodgings are furnished in the exercise of the taxable service of lodging.

Vendor means a person furnishing lodgings in the exercise of the taxable service of lodging.

(Ord. #1992-27, § 4; Ord. #1992-39; Ord. #1996-25, § 3; Ord. #2003-37, § 1; Ord. #2004-17, § 1; Ord. #2008-5, § 6)

18-11.4 Imposition of Tax.

There is imposed an occupancy tax of five percent (5%) and a convention center fee of two percent (2%) for a total of seven percent (7%) of gross taxable rent for lodging at a taxable premise within the city of Santa Fe paid to vendors. (Ord. #1992-27, § 5; Ord. #1999-16, §1; Ord. #2003-37, § 2; Ord. #2004-17, § 2)

18-11.5 Presumption of Taxability.

Every vendor who is providing lodging within the city of Santa Fe is exercising a taxable privilege. The vendor must provide documentation as to any applicable exception under this section, if requested by the city. (Ord. #2003-37, § 3)

18-11.6 Registration.

A. No vendor shall engage in the business of providing lodging in the city of Santa Fe who has first not obtained a business registration as provided in this subsection;

B. Applicants for a vendor's business registration shall submit an application to the accounts receivable unit stating:

(1) The name of the vendor, including identification of any person, as defined in this section, who owns or operates or both owns and operates a place of lodging and the name or trade names under which the vendor proposes to do business and the post office address thereof;

(2) A description of the facilities, including the physical address(es), the number of rooms and the usual schedule of rates;

(3) A description of other facilities provided by the vendor or others to users of the lodgings such as restaurant, bar, cleaning, laundry, courtesy car, stenographer, tailor or others, and a statement identifying the license/registration issued, to whom issued, the authority issuing, and the period for which issued. If applicable, also the identification number provided by the taxation and revenue department of the state of New Mexico;

(4) The nature of the business practices of the vendor and to what extent, if any, his business is exempt from the lodgers' tax;

(5) State of New Mexico gross receipts tax number (C.R.S. ID #); and

(6) Other information reasonably necessary to effect a determination of eligibility for such license;

C. The accounts receivable unit shall review applications for registration within ten (10) days of receipt thereof, and grant the registration in due course if the applicant is doing business subject to the lodgers' tax;

D. An applicant who is dissatisfied with the decision of the accounts receivable unit may appeal the decision to the city manager by written notice to the city clerk of such appeal to be made within fifteen (15) days of the date of the decision of the accounts receivable unit on the application. The matter shall be referred to the city manager for hearing in the usual course of business. The decision of the city manager shall be expressed in writing and be communicated in the same manner as the decision of the accounts receivable unit is transmitted. The action of the city manager shall be deemed final;

E. If the city manager finds for the applicant, the accounts receivable unit shall issue the registration or other notice conforming to the decision made by the city manager.

(Ord. #1992-27, § 6; Ord. #1996-25, § 4; Ord. #1999-16, § 2; Ord. #2003-37, § 4)

18-11.7 Change of Ownership.

Upon any change in, or transfer of ownership of lodging facilities, the vendor is required to notify the city of Santa Fe in writing:

- A. The nature of the ownership change;
- B. Documentation of sale or incorporation, if applicable;
- C. The effective date of the ownership change; and
- D. The name and business address of the new owner.

(Ord. #2003-37, § 5)

18-11.8 Exemptions.

The occupancy tax or the convention center fee shall not apply to any portion of the gross taxable rent:

- A. If a vendee:
 - (1) Has been a permanent resident of the taxable premises for a period of at least thirty (30) consecutive days as evidenced by a lease or other long-term lodging documentation; or
 - (2) Enters into or has entered into a written agreement for lodgings at the taxable premises for a period of at least thirty (30) consecutive days;
- B. If the rent paid by the vendee is less than two dollars (\$2.00) a day;
- C. To lodging accommodations at institutions of the federal government, the state or any political subdivision thereof;
- D. To lodging accommodations at religious, charitable, educational or philanthropic institutions, including without limitation such accommodations at summer camps operated by such institutions;
- E. To clinics, hospitals or other medical facilities;

F. To privately-owned and operated convalescent homes, or homes for the aged, infirm, indigent or chronically ill;

G. If the vendor does not offer at least three (3) rooms within or attached to a taxable premises for lodging, or at least three (3) other premises providing lodging facilities regardless of the number of rooms available at each taxable premises or a combination of these within the city.

(Ord. #1992-27, § 7; Ord. #1996-25, § 5; Ord. #2003-37, § 6; Ord. #2004-17, § 3)

18-11.9 Collection of the Tax and Reporting Procedures.

A. Every vendor providing lodgings shall collect the tax thereon on behalf of the city of Santa Fe and shall act as a trustee therefor.

B. The tax shall be collected from vendees and shall be charged separately from the rent fixed by the vendor for the lodgings.

C. Each vendor registered under this section shall be liable to the city of Santa Fe for the tax provided herein on the rent paid for lodging at his respective place of business.

D. Failure of the vendor to collect the tax is not cause for the city to forgive the tax due and owed by the vendor.

E. Each vendor shall make a report by the twenty-fifth day of each month, on forms provided by the city cashiers office, of the receipts for lodging in the preceding calendar month, and shall submit the proceeds of the lodgers' tax to the city of Santa Fe and include sufficient information to enable the city to audit the reports and shall be verified on oath by the vendor.

F. Lodgers' tax payments are due (postmarked by the United States Post Office or other such provider or hand delivered to and receipted by the city cashiers office) by the twenty-

fifth day of each month for receipts of lodging in the preceding calendar month. The city, however, is not obligated to retain all envelopes as it is the responsibility of the vendor to ensure timely payments;

G. Upon application approved in writing by the city, a vendor may report and submit payments on a quarterly basis, which are due on the twenty-fifth day of the month after the end of the quarter for the receipts of lodging in the preceding calendar quarter, using separate reporting forms for each month in the quarter;

H. A vendor applying to make quarterly reports as described in subsection 18-11.9G shall have and shall at all times continue to have:

(1) A twelve (12) month average of gross taxable rent of less than one thousand dollars (\$1,000.) per month; and,

(2) Not more than two (2) late payments out of the last eight (8) consecutive reporting periods.

(Ord. #1992-27, §8; Ord. #1996-25, §6; Ord. #1999-54, §1; Ord. #2003-37, §7)

18-11.10 Duties of the Vendor.

Vendor shall maintain adequate records of facilities subject to the tax and of proceeds received for the use thereof. Such records shall be maintained in Santa Fe, New Mexico, and shall be open to the inspection of the city during reasonable hours and shall be retained for three (3) years. (Ord. #1992-27, §9; Ord. #2003-37, §8)

18-11.11 Failure to Make Return; Computation, Civil Penalty and Notice; Collection of Delinquencies; Occupancy Tax Is a Lien.

A. Every vendor is liable for the payment of the proceeds of any occupancy tax and conventions center fee that the vendor failed to remit to the city, whether due to vendor's failure to collect the tax or otherwise. Vendor shall be liable for the tax plus a civil penalty equal to the greater of ten percent (10%) of the amount not remitted or one hundred dollars (\$100.). The city shall give the delinquent vendor written notice of the delinquency, which notice shall be mailed either to the vendor's local or business address, informing the lodging facility of the delinquency and penalty due. Failure to receive the notice does not abate the delinquency and penalty fee.

B. If payment is not received within fifteen (15) days of the date due, interest will accrue at the rate of one percent (1%) per month or pro rated for a partial month on the unpaid balance of the tax and penalty.

C. If payments are not received within fifteen (15) days of the mailing of the notice, the city may bring an action in law or equity in the district court for the collection of any amounts due, including without limitation penalties thereon, interest on the unpaid principal at a rate not exceeding one percent (1%) a month. If the city attempts collection through an attorney or the city attorney for any purpose with regard to this section, the vendor shall be liable to the city for all costs, fees paid to the attorney or city attorney, and all other expenses incurred in connection therewith.

D. The occupancy tax and convention center fee imposed by the city of Santa Fe constitutes a lien in favor of the city upon the personal and real property of the property owner of the lodgings. The lien may be enforced as provided in Section 3-36-1 through 3-36-7 NMSA 1978. Priority of the lien shall be determined from the date of filing.

E. The payments due under this section, together with all penalties, fees, interest and other charges prescribed, shall become a personal liability of the owner of the property. In addition to collection through foreclosure of the lien, collection may be enforced on such personal liability by resort to any other legal procedure available for the enforcement of personal liabilities.

F. Under process or order of court, no person shall sell the property of a vendor without first ascertaining from the city treasurer the amount of an occupancy tax or convention center fee due the city. Any occupancy tax or convention center fee due the city shall be paid from the proceeds of the sale before payment is made to any judgment creditor or any other person with a claim on the proceeds of the sale.

(Ord. #1992-27, §10; Ord. #1996-25, §7; Ord. #1999-54, §2; Ord. #2003-37, §9)

18-11.12 Criminal Penalties; Other Sanctions.

A. Any person who violates the provisions of the lodgers' tax ordinance for a failure to pay the tax, to remit proceeds thereof to the city or to properly account for any lodging and tax proceeds pertaining thereto shall be guilty of a petty misdemeanor and upon conviction shall be fined in an amount not to exceed five hundred dollars (\$500.) and/or imprisonment not to exceed ninety (90) days, or both.

B. The city may bring an action in the district court for collection of amounts due, including without limitation, penalties on the amounts due on the unpaid principal at a rate not exceeding one percent (1%) per month, the costs of collection and reasonable attorney fees incurred in connection with the court action to collect the unpaid tax.

(Ord. #1992-27, §11; Ord. #1996-25, §8; Ord. #2003-37, §10)

18-11.13 Refunds and Credits.

A. If any person believes he has made payment of any lodgers' tax in excess of that for which he was liable, he may claim a refund thereof by directing to the city treasurer, no later than ninety (90) days from the date payment was made, a written claim for refund accompanied by a restated lodgers' tax reporting form for that period. Every claim for refund shall state the nature of the person's complaint and the affirmative relief requested. The city treasurer shall allow the claim in whole or in part or may deny it.

B. A refund may be made by the city unilaterally to a vendor in consideration of documentation presented in an audit report received as detailed in subsection 18-11.14 SFCC 1987.

(Ord. #1992-27, §12; Ord. #1996-25, §9; Ord. #2003-37, §11)

18-11.14 Vendor Audits.

A. The city treasurer may conduct random audit(s) to verify the amount of gross rent subject to the occupancy tax and to ensure that the full amount of occupancy tax on the rent is collected from each vendor thus audited. The city treasurer may also conduct audits as necessary to verify compliance with this section.

B. The audit(s) may be performed by the city treasurer or by any other designee. A copy of the audit shall be submitted to the city's finance committee and the advisory board for review. A copy of the audit(s) shall be filed annually with the local government division of the department of finance and administration.

(Ord. #1992-27, §13; Ord. #1996-25, §10; Ord. #2003-37, §12)

18-11.15 Confidentiality of Return and Audit.

It is unlawful for any employee of the city of Santa Fe to reveal to any individual other than another employee or elected official of the city of Santa Fe any information contained in the return or audit of any taxpayer including vendors subject to the Lodgers' Tax Act, except:

A. To a court of competent jurisdiction in response to an order thereof in an action relating to taxes to which the city of Santa Fe is a party, and in which information sought is material to the inquiry;

B. To the taxpayer himself or to his authorized representative;

C. In such manner, for statistical purposes, the information revealed is not identified as applicable to any individual taxpayer; and

D. For the identity of vendors subject to the Lodgers' Tax Act.

(Ord. #1992-27, §14; Ord. #1996-25, §11; Ord. #2003-37, §13; Ord. #2006-62)

18-11.16 Advisory Board.

The governing body shall administer the lodgers' tax monies collected. The mayor shall appoint an advisory board of five (5) members; two (2) of whom shall be owners or operators of lodgings subject to the tax within the municipality, two (2) of whom are owners or operators of industries within the municipality that primarily provide services or products to tourists and one (1) member who is a resident of the municipality and represents the general public. The members of the board shall serve at the pleasure of the mayor. The board shall advise the governing body on expenditures of funds authorized under subsection 18-11.17A, of this section for advertising, publicizing and promoting tourist attractions and facilities in the municipality and surrounding areas. The recommendations for the expenditures of funds shall be submitted to the governing body by the board. The budget approved by the governing body shall be furnished to the advisory board. (Ord. #1992-27, §15; Ord. #1996-25, §12; Ord. #2003-37, §14)

18-11.17 Use of Lodger's Tax Monies.

The proceeds of the occupancy tax and convention center fee shall be used to defray costs as follows:

A. Not less than one-half (1/2) of the proceeds derived from the first three percent (3%) increments and not less than one-fourth (1/4) of the proceeds of the tax in excess of three percent (3%) increments shall be used for the purpose of advertising, publicizing and promoting tourist-related attractions, facilities and events;

B. Proceeds of the fourth one percent (1%) increment of the tax not otherwise allocated by subsection 18-11.17A SFCC 1987 shall be used by the city for advertising, publicizing, promoting of tourist-related attractions, facilities and events, specifically as they relate to nonprofit art activities, and nonprofit performing arts in Santa Fe less administration costs. The funds shall be administered by the arts commission as created in Section 6-1 SFCC 1987, or its successor.

C. After July 1, 1996, funds collected for use under paragraph A, herein, and at least one-fourth (1/4) of funds collected for use under paragraph B, herein, must be spent within two (2) years of the close of the fiscal year collected.

D. The proceeds in excess of the amount required by paragraph A, herein, or allocated by the city, pursuant to paragraph B, herein, to be used for advertising, publicizing and promoting tourist-related attractions, facilities and events may be used for:

- (1) Collecting and administering the tax;
- (2) Audits;
- (3) Establishing, operating, purchasing, constructing, otherwise acquiring, reconstructing, extending, improving, equipping, furnishing or acquiring real property or any interest in real property for the site or grounds for tourist-related facilities or attractions or transportation systems of the municipality or the county in which the municipality is located;
- (4) Advertising, publicizing and promoting tourist-related attractions, facilities and events of the municipality or county and tourist facilities or attractions within the area;
- (5) Providing police and fire protection and sanitation service for tourist-related events, facilities and attractions located in the respective municipality or county;
- (6) Principal and interest of revenue bonds issued as authorized by Section 3-38-23 or 3-38-24 NMSA 1978; or
- (7) Any combination of the foregoing purposes or transactions stated in this section, but for no other municipal or county purpose.

E. Proceeds of the fifth one percent (1%) increment of the tax shall be used by the city for establishing, operating, purchasing, constructing, otherwise acquiring, reconstructing, extending, improving, equipping, furnishing or acquiring real property or any interest in real property for the site or grounds for a new convention center, major reconstruction or addition to the current convention center, or adjoining parking facilities. These funds may be used for construction of other tourism related facilities as limited by state law. Authorized uses may also be the payment of principal and interest in connection with and any other charges pertaining to revenue bonds issued for any of the above purposes. At the end of each four (4) years from the date of the enactment of this fifth one percent (1%) increment, the occupancy tax advisory board (OTAB) shall review and assess this section, determine the status of the authorized uses as stated in this paragraph F, and make a recommendation to the governing body if the tax shall continue to be accrued for these purposes or if the tax and accumulated proceeds shall be applied to any other use as authorized in other subsections of this section for lodgers' tax. The governing body shall make the final determination through an amended ordinance if the use is to be changed. If no action is taken, the ordinance for the fifth one percent (1%) increment shall continue as stated.

F. Proceeds of the sixth one percent (1%) and the seventh one percent (1%) increments of the tax (also referred to as a convention center fee) may be used by the city for the following:

(1) The design, construction, equipping, furnishing, landscaping and other costs associated with the development of a civic and convention center and adjoining parking garage located within the city;

(2) Payments of principal, interest or prior redemption premiums due in connection with and any other charges pertaining to revenue bonds authorized by the Civic and Convention Center Fund Act Sections 5-14-1 to 5-14-15 NMSA 1978 including payments into sinking fund or reserve fund required by the revenue bond ordinance; and,

(3) Costs of collecting and otherwise administering the tax, provided that administration costs shall not be paid if there are current payments due pursuant to paragraph F(2) of this subsection and that no more than ten percent (10%) of the revenue collected in any fiscal year shall be used to pay administration costs.

(4) Operation costs of the civic and convention center and adjoining parking garage provided that no such costs shall be paid if there are current payments due pursuant to paragraph F(2) of this subsection; and

(5) Payments into a capital reserve fund established for the future payment for capital maintenance and improvements and equipment replacement costs of the civic and convention center and adjoining parking garage provided that:

(a) No payments shall be made pursuant to this paragraph if there are current payments due pursuant to paragraph F(2) of this subsection; and

(b) At least once every five (5) years, the governing body shall compare the amount of money in the fund with the expected future expenditures from the fund and decide if the convention center fees may be reduced pursuant to paragraph H of this section.

G. The sixth one percent (1%) and the seventh one percent (1%) increments of the lodgers' tax (also referred to as a convention center fee) shall be imposed only for the period necessary for payment of principal and interest on revenue bonds issued to accomplish the purpose for which the revenue is dedicated, but the period shall not exceed thirty (30) years from the date of the ordinance imposing the fee.

H. The governing body may decrease the rate of the convention center fee if the following are met:

(1) All required payments have been made pursuant to paragraph F. of this subsection and the required levels of and estimated payments from any reserve fund, sinking fund or capital reserve fund can be sustained at a decreased rate;

(2) The decreased fee will not otherwise directly or indirectly impair outstanding revenue bonds issued under Section 5-14-13 NMSA 1978; and

(3) The local government division of the department of finance and administration of the state of New Mexico finds that the requirements of paragraphs H(1) and (2) of this subsection have been satisfied and otherwise approves the fee decrease.

(Ord. #1992-27, § 16; Ord. #1992-39, §2; Ord. #1996-25, § 13; Ord. #2000-2, §1; Ord. #2003-37, § 15; Ord. #2004-17, § 4)

18-11.18 Contracting for Services.

The governing body may contract for the management of programs and activities for advertising, publicizing and promoting tourist-related attractions, facilities and events. The contractor shall be required to maintain the funds from the city in a separate account, not commingled with any other money, maintain complete and accurate financial records of each expenditure, and make such records available for inspection upon request by the city. Subcontractors shall be subject to the same terms and conditions. Occupancy tax revenue may be spent for day-to-day operations, supplies, salaries, office rental, travel expenses and other administrative costs if incurred directly for the purpose of advertising, publicizing and promoting tourist-related attractions, facilities and events. Quarterly reports of expenditures made for contracted services shall be made to the governing body and the advisory board. (Ord. #1996-25, § 14; Ord. #2003-37, § 16)

18-11.19 Local Government Division Rules.

A report shall be made quarterly to the local government division of the state department of finance and administration of expenditure of lodgers' tax. A copy shall be submitted to the advisory board. (Ord. #1996-25, § 15; Ord. #2003-37, § 17)

18-11.20 Severability.

If any subsection, sentence, clause, phrase or portion of this section is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this section. (Ord. #1992-27, § 17; Ord. #1996-25, §16; Ord. #2003-37, §18)