

1 CITY OF SANTA FE, NEW MEXICO

2 ORDINANCE NO. 2021-11

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5 AN ORDINANCE

6 AMENDING SECTION 18-11.3 SFCC 1987 TO DEFINE "TAXABLE PREMISES"
7 CONSISTENTLY WITH STATE STATUTE AND TO ADD A DEFINITION FOR
8 "PERMANENT RESIDENT"; AMENDING SECTION 18-11.8 TO MAKE IT
9 CONSISTENT WITH STATE STATUTE; AMENDING SECTION 18-11.17 TO
10 DIFFERENTIATE BETWEEN THE OCCUPANCY TAX AND THE CONVENTION
11 CENTER FEE, AND TO DEDICATE THE OCCUPANCY TAX COLLECTED ON THE
12 THIRTY-FIRST DAY AND SUBSEQUENT DAYS TO THE AFFORDABLE HOUSING
13 TRUST FUND; AMENDING SECTION 26-3.6 TO ADD THE DEDICATION TO THE
14 EXISTING LIST OF DEDICATIONS TO THE AFFORDABLE HOUSING TRUST FUND;
15 AND MAKING SUCH OTHER CHANGES AS ARE NECESSARY.

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

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19 Section 1. Section 18-11.3 of SFCC 1987 (being Ord. No. 1992-27, § 4, as
20 amended) is amended to read:

21 18-11.3 Definitions.

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

1 *Business licensing and registration office* means the office within the city of Santa Fe
2 that is responsible for issuing business registrations.

3 *City* means the city of Santa Fe.

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

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

8 *City treasurer* means the finance department director.

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

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

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

16 *Lodgers' tax* means the occupancy tax and convention center fee, collectively.

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

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

22 *Occupancy tax* means tax on lodging authorized by the Lodgers' Tax Act, Sections 3-38-
23 13 to 3-38-24 NMSA 1978.

24 *Permanent Resident* means a person who resides, lies, and pays taxes in a particular
25 location that the person identifies as the person's "primary residence" for tax purposes.

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

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

10 *Taxable premises* means a hotel, motel, or other premises for lodging that is not the
11 vendee's household or primary residence.

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

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

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

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

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

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

24 **Section 2. Section 18-11.6 of SFCC 1987 (being Ord. No. 1992-27, § 6, as**
25 **amended) is amended to read:**

1 **18-11.6 Registration.**

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

4 B. Applicants for a vendor's business registration shall submit an application to the
5 business licensing and registration office stating the following information:

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

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

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

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

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

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

23 C. The business licensing and registration office shall review applications for
24 registration within ten (10) days of receipt thereof, and grant the registration in due course if the
25 applicant is doing business subject to the lodgers' tax.

1 D. An applicant who is dissatisfied with the decision of the business licensing and
2 registration office may appeal the decision to the city manager by written notice to the city clerk
3 of such appeal to be made within fifteen (15) days of the date of the decision of the business
4 licensing and registration office on the application. The matter shall be referred to the city
5 manager for hearing in the usual course of business. The decision of the city manager shall be
6 expressed in writing and be communicated in the same manner as the decision of the business
7 licensing and registration office is transmitted. The action of the city manager shall be deemed
8 final.

9 E. If the city manager finds for the applicant, the business licensing and registration
10 office shall issue the registration or other notice conforming to the decision made by the city
11 manager.

12 **Section 3. Section 18-11.8 of SFCC 1987 (being Ord. No. 1992-27, § 7, as**
13 **amended) is amended to read:**

14 **18-11.8 Exemptions.**

15 Neither the occupancy tax nor the convention center fee shall apply to any portion of the
16 gross taxable rent under the following circumstances:

17 A. If a vendee:

18 (1) Has been a permanent resident of the taxable premises for a period of at
19 least thirty (30) consecutive days; or

20 (2) Enters into or has entered into a written agreement for lodgings at the
21 taxable premises for a period of at least thirty (30) consecutive days;

22 B. If the rent paid by the vendee is less than two dollars (\$2.00) a day;

23 C. To lodging accommodations at institutions of the federal government, the state, or
24 any political subdivision thereof;

25 D. To lodging accommodations at religious, charitable, educational, or philanthropic

1 institutions, including accommodations at summer camps operated by such institutions;

2 E. To clinics, hospitals, or other medical facilities; or

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

5 **Section 4. Section 18-11.17 of SFCC 1987 (being Ord. No. 1992-27, § 16, as**
6 **amended) is amended to read:**

7 **18-11.17 Use of lodgers' tax monies.**

8 A. The proceeds of the occupancy tax shall be used to defray costs as follows:

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

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

19 3. After July 1, 1996, funds collected for use under paragraph A, herein,
20 and at least one-fourth ($\frac{1}{4}$) of funds collected for use under paragraph B, herein, must
21 be spent within two (2) years of the close of the fiscal year collected.

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

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- a. Collecting and administering the tax;
 - b. Audits;
 - c. 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;
 - d. Advertising, publicizing and promoting tourist-related attractions, facilities and events of the municipality or county and tourist facilities or attractions within the area;
 - e. Providing police and fire protection and sanitation service for tourist-related events, facilities and attractions located in the respective municipality or county;
 - f. Principal and interest of revenue bonds issued as authorized by Section 3-38-23 or 3-38-24 NMSA 1978; or
 - g. Any combination of the foregoing purposes or transactions stated in this section, but for no other municipal or county purpose.
5. 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

1 any of the above purposes. At the end of each four (4) years from the date of the
2 enactment of this fifth one percent (1%) increment, the occupancy tax advisory board
3 (OTAB) shall review and assess this section, determine the status of the authorized uses
4 as stated in this subparagraph 5, and make a recommendation to the governing body if
5 the tax shall continue to be accrued for these purposes or if the tax and accumulated
6 proceeds shall be applied to any other use as authorized in other subsections of this
7 section for lodgers' tax. The governing body shall make the final determination through
8 an amended ordinance if the use is to be changed. If no action is taken, the ordinance
9 for the fifth one percent (1%) increment shall continue as stated.

10 6. Proceeds from the occupancy tax that are collected based on the thirty-
11 first (31st) and subsequent days during which a vendee rents lodgings in taxable
12 premises shall be dedicated to the affordable housing trust fund.

13 B. The proceeds of the convention center fee may be used by the city for the
14 following:

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

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

23 3. Costs of collecting and otherwise administering the tax, provided that
24 administration costs shall not be paid if there are current payments due pursuant to
25 paragraph B(2) of this subsection and that no more than ten percent (10%) of the

1 revenue collected in any fiscal year shall be used to pay administration costs;

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

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

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

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

14 C. The convention center fee shall be imposed only for the period necessary for
15 payment of principal and interest on revenue bonds issued to accomplish the purpose for which
16 the revenue is dedicated, but the period shall not exceed thirty (30) years from the date of the
17 ordinance imposing the fee.

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

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

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

25 (3) The local government division of the department of finance and

1 administration of the state of New Mexico finds that the requirements of paragraphs
2 D(1) and (2) of this subsection have been satisfied and otherwise approves the fee
3 decrease.

4 **Section 5. Section 26-3.6 of SFCC 1987 (being Ord. No. 2007-23, § 9, as amended) is**
5 **amended to read:**

6 **26-3.6 Dedication.**

7 The following shall be dedicated to the affordable housing trust fund.

8 A. Tierra Contenta:

9 (1) All payments received from the sale of property in Tierra Contenta that
10 has been reserved for affordable housing as of the date of the passage of this ordinance;

11 (2) Thirty-five percent (35%) of all payments received from the sale of
12 property in Tierra Contenta received after the date of the passage of this section; and

13 (3) All interest earned from the above.

14 B. All proceeds of loans that have been recorded against various affordable housing
15 units through the capital improvements program funds—infrastructure loan funds.

16 C. Principal and interest payments made by the borrowers to the city for outstanding
17 AHTF loans.

18 D. Proceeds from shared equity loans which are realized when a housing
19 opportunity program home or Santa Fe homes program unit is sold on the open market.

20 E. All in-lieu-of contributions or fractional payments received from developers as
21 an option to meet the Santa Fe Homes requirements.

22 F. All in-lieu-of contributions received from developers of qualifying residential
23 projects within the Midtown LINC overlay district, as defined in Section 14-5.5(D) SFCC 1987,
24 but only applied within the following locations:

25 (1) The Midtown LINC overlay district;

1 (2) Qualified census tracts (as defined by the United States department of
2 housing and urban development) adjacent to the boundaries of the Midtown LINC
3 overlay district; or

4 (3) Existing residential developments adjacent to the boundaries of the
5 Midtown LINC overlay district.

6 G. Proceeds from the occupancy tax that are collected based on the thirty-first
7 (31st) and subsequent days a vendee rents lodgings in taxable premises shall be dedicated to the
8 affordable housing trust fund pursuant to Subsection 18-11.17(A)(6) SFCC 1987.

9 H. Other funds that may be identified from time to time [~~which~~] that are suitable
10 and appropriate for allocation to the AHTF. These may include on-going, dedicated funding
11 sources as well as one-time funding that is specifically approved by the governing body.

12 **Section 6. Editor’s Note: SFCC 1987 is hereby amended to strike all references**
13 **to “lodger’s tax” and “lodgers tax” and insert in lieu thereof “lodgers’ tax”.**

14 **Section 7. Effective Date.** This ordinance shall take effect on the first day of the
15 first month following adoption by the governing body.

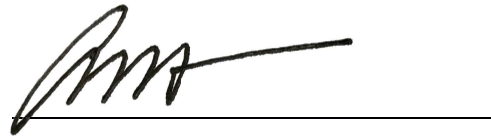
16 PASSED, APPROVED, and ADOPTED this 28th day of April, 2021.

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ALAN WEBBER, MAYOR

21 ATTEST:

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[Kristine Mihelcic \(May 4, 2021 09:33 MDT\)](#)

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KRISTINE MIHELICIC, CITY CLERK

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1 APPROVED AS TO FORM:

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4 ERIN K. McSHERRY, CITY ATTORNEY

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Bill No. 2021-10

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Legislation/2021/Ordinances/2021-11 Lodgers' Tax Amendments