

Chapter 2

LODGERS' TAX

2-2-1: TITLE:

This chapter shall be known as and cited as the *LODGERS' TAX ORDINANCE*. (Ord. 586, 8-13-1996)

2-2-2: PURPOSE:

The purpose of this chapter 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 tourist related attractions, facilities and events, and acquiring, establishing and operating tourist related facilities, attractions or transportation systems, as authorized in section [2-2-10](#) of this chapter. (Ord. 586, 8-13-1996)

2-2-3: DEFINITIONS:

As used in this chapter, the following words and terms shall have the meanings ascribed to them in this section:

BOARD: The advisory board established herein to make recommendations to the governing body, keep minutes of its proceedings and submit its recommendations, correspondence and other pertinent documents to the governing body.

CITY CLERK: The city clerk of Artesia, New Mexico.

GROSS TAXABLE RENT: The total amount of rent paid for lodging, not including the state gross receipts tax or local sales taxes.

LODGING: The transaction of furnishing rooms or other accommodations by a vendor to a vendee who, for 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: The rooms or other accommodations furnished by a vendor to a vendee by a taxable service of lodgings.

OCCUPANCY TAX: The tax on lodging authorized by the lodgers' tax act¹.

PERSON: A corporation, firm, other body corporate, partnership, association or individual. "Person" 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: The consideration received by a vendor in money, credits, property or other consideration valued in money for lodgings subject to an occupancy tax authorized in the lodgers' tax act.

TAXABLE PREMISES: A hotel, apartment, apartment hotel, apartment house, lodge, lodging house, rooming house, motor hotel, 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 or other premises for lodging.

TOURIST: A person who travels for the purpose of business, pleasure or culture to a municipality or county imposing an occupancy tax.

TOURIST RELATED EVENTS: Events that are planned for, promoted to and attended by tourists.

TOURIST RELATED FACILITIES AND ATTRACTIONS: Facilities and attractions that are intended to be used by or visited by tourists.

TOURIST RELATED TRANSPORTATION SYSTEMS: Transportation systems that provide transportation for tourists to and from tourist related facilities, and attractions and tourist related events.

VENDEE: A natural person to whom lodgings are furnished in the exercise of the taxable service of lodging.

VENDOR: A person furnishing lodgings in the exercise of the taxable service of lodging. (Ord. 586, 8-13-1996; amd. 2002 Code)

2-2-4: IMPOSITION OF TAX:

There is hereby imposed an occupancy tax of five percent (5%) of the gross taxable rent for lodging within the city paid to vendors. (Ord. 586, 8-13-1996)

2-2-5: LICENSING REQUIREMENTS:

- A. License Required: No vendor shall engage in the business of providing lodging in the city who has first not obtained a license as provided in this section.
- B. Application For License: Applicants for a vendor's license shall submit an application to the city clerk stating:
1. The name of the vendor, including identification of any "person", as defined in this chapter, 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 number of rooms and the usual schedule of rates thereof.
 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 or others, and a statement identifying the license issued, to whom issued, the authority issuing, and the period for which issued. If applicable, also the identification number provided by the bureau of revenue of the state.
 4. The nature of the business of the vendor and to what extent, if any, his business is exempt from the lodgers' tax.
 5. Other information reasonably necessary to effect a determination of eligibility for such license.
- C. Grant Of License: The city clerk shall review applications for license within ten (10) days of receipt thereof and grant the license in due course if the applicant is doing business subject to the lodgers' tax.
- D. Appeal:
1. Filing Appeal: An applicant who is dissatisfied with the decision of the city clerk may appeal the decision to the governing body 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 city clerk on the application.
 2. Hearing: The matter shall be referred to the governing body for hearing at a regular or special meeting in the usual course of business.
 3. Action By Governing Body: The decision of the governing body made thereof shall be expressed in writing and be communicated in the same manner as the decision of the city clerk is transmitted. The action of the governing body shall be deemed final.

4. Issuance Of License Or Notice Of Other Decision: If the governing body finds for the applicant, the city clerk shall issue the appropriate license or other notice conforming to the decision made by the governing body. (Ord. 586, 8-13-1996)

2-2-6: EXEMPTIONS FROM TAX:

The occupancy tax shall not apply:

A. If a vendee:

1. Has been a permanent resident of the taxable premises for a period of at least thirty (30) consecutive days; 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; or (Ord. 586, 8-13-1996)

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 for lodging or a combination of these within the taxing jurisdiction. (2002 Code)

2-2-7: COLLECTION OF TAX; REPORTING PROCEDURES:

- A. Collection Required: Every vendor providing lodgings shall collect the tax thereon on behalf of the city and shall act as a trustee therefor.
- B. Separate Charge From Rent: The tax shall be collected from vendees and shall be charged separately from the rent fixed by the vendor for the lodgings.
- C. Liability Of Vendor: Each vendor licensed under this chapter shall be liable to the city for the tax provided herein on the rent paid for lodging at his respective place of business.
- D. Return Filed: Each vendor shall make a report by the twenty fifth day of each month, on forms provided by the city clerk, of the receipts for lodging in the preceding calendar month, and shall submit the proceeds of the lodgers' tax to the city and include sufficient information to enable the city to audit the reports and shall be verified on oath by the vendor. (Ord. 586, 8-13-1996)

2-2-8: RECORDS KEPT:

The 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 the city, and shall be open to the inspection by the city during reasonable hours and shall be retained for three (3) years. (Ord. 586, 8-13-1996)

2-2-9: ADMINISTRATION OF MONIES COLLECTED:

- A. Administrative Authority: The governing body shall administer the lodgers' tax monies collected.
- B. Advisory Board: The mayor shall appoint a five (5) member advisory board that consists of two (2) members who are owners or operators of lodgings subject to the occupancy tax within the city, two (2) members who are owners or operators of industries located

within the city that primarily provide services or products to tourists and one member who is a resident of the city and represents the general public. The board shall advise the governing body on expenditure of funds authorized under section [2-2-10](#) of this chapter for advertising, publicizing and promoting tourist attractions and facilities in the city and surrounding area. (Ord. 586, 8-13-1996)

2-2-10: ELIGIBLE USES OF PROCEEDS:

Subject to the limitations contained in New Mexico Statutes Annotated section 3-38-15, the city may use the proceeds from the tax to defray the costs of:

- A. Collecting and otherwise administering the tax, including the performance of audits required by the lodgers' tax act pursuant to guidelines issued by the state department of finance and administration; (Ord. 586, 8-13-1996; amd. 2002 Code)
- B. 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, attractions or transportation systems of the city, the county in which the city is located or the county;
- C. The principal of and interest on any prior redemption premiums due in connection with and any other charges pertaining to revenue bonds authorized by New Mexico Statutes Annotated section 3-38-23 or section 3-38-24;
- D. Advertising, publicizing and promoting tourist related attractions, facilities and events of the city 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 city; or
- F. Any combination of the foregoing purposes or transactions stated in this section, but for no other municipal purpose. (Ord. 586, 8-13-1996)

2-2-11: FINANCIAL REPORTING:

- A. The governing body shall furnish the advisory board that portion of any proposed budget, report or audit filed or received by the governing body pursuant to either New Mexico Statutes Annotated chapter 6, article 6 or the audit act² that relates to expenditure of occupancy tax funds within ten (10) days of the filing or receipt of such proposed budget, report or audit by the governing body.

- B. The governing body shall report to the local government division of the state department of finance and administration on a quarterly basis any expenditure of occupancy tax funds pursuant to New Mexico Statutes Annotated sections 3-38-15 and 3-38-21 and shall furnish a copy of this report to the advisory board when it is filed with the division. (Ord. 586, 8-13-1996; amd. 2002 Code)

2-2-12: VENDOR AUDITS:

- A. The governing body shall conduct random audits to verify full payment of occupancy tax receipts.

- B. The governing body shall determine each year the number of vendors within the city to audit.

- C. The audits may be performed by the city clerk or by any other designee of the governing body. A copy of the audits shall be filed annually with the local government division of the state department of finance and administration. (Ord. 586, 8-13-1996; amd. 2002 Code)

2-2-13: CONFIDENTIALITY OF RETURN AND AUDIT:

It is unlawful for any employee of the city to reveal to any individual other than another employee of the city any information contained in the return or audit of any taxpayer, including vendors subject to the lodgers' tax act, except to a court of competent jurisdiction in response to an order thereof in an action relating to taxes to which the city is a party, and in which information sought is material to the inquiry; to the taxpayer himself or to his

authorized representative; and in such manner, for statistical purposes, the information revealed is not identified as applicable to any individual taxpayer. (Ord. 586, 8-13-1996)

2-2-14: REFUNDS AND CREDITS:

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 clerk, no later than ninety (90) days from the date payment was made, a written claim for refund. Every claim for refund shall state the nature of the person's complaint and the affirmative relief requested. The city clerk shall allow the claim in whole or in part or may deny it. Refunds of tax and interest erroneously paid and amounting to one hundred dollars (\$100.00) or more may be made only with the approval of the governing body. (Ord. 586, 8-13-1996)

2-2-15: FAILURE TO MAKE RETURN:

- A. **Liability For Tax; Civil Penalty:** Every vendor is liable for the payment of the proceeds of any occupancy tax that the vendor failed to remit to the city, whether due to his failure to collect the tax or otherwise. He 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 (\$100.00). The city clerk shall give the delinquent vendor written notice of the delinquency, which notice shall be mailed to the vendor's local address.

- B. **Collection Of Delinquent Taxes:** 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, and 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 chapter, 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.

- C. **Tax A Lien:** The occupancy tax imposed by the city constitutes a lien in favor of the city upon the personal and real property of the vendor providing lodgings. The lien may be enforced as provided in New Mexico Statutes Annotated sections 3-36-1 through 3-36-7. Priority of the lien shall be determined from the date of filing.

- D. Property Sales; Taxes To Be Current: Under process or order of court, no person shall sell the property of a vendor without first ascertaining from the city clerk or treasurer the amount of any occupancy tax due the city. Any occupancy tax due the city shall be paid from the proceeds of the sale before payment is made to the judgment creditor or any other person with a claim on the proceeds of the sale. (Ord. 586, 8-13-1996)

2-2-16: ENFORCEMENT AND PENALTIES:

A. Enforcement:

1. An action to enforce the lodgers' tax act may be brought by:
 - a. The attorney general or the district attorney in the county; or
 - b. A vendor who is collecting the proceeds of an occupancy tax in the county.
2. A district court may issue a writ of mandamus or order an injunction or other appropriate remedy to enforce the provisions of the lodgers' tax act.
3. The court shall award costs and reasonable attorney fees to the prevailing party in a court action to enforce the provisions of the lodgers' tax act.

- B. Criminal Penalties: Any person who violates the provisions of this chapter for a failure to pay the tax, to remit proceeds thereof to the city, to properly account for any lodging and tax proceeds pertaining thereto, or for violating the confidentiality provisions of section [2-2-13](#) of this chapter shall be guilty of a misdemeanor and, upon conviction, shall be subject to penalty as provided in [title 1, chapter 4](#) of this code. (Ord. 586, 8-13-1996; amd. 2002 Code)