

# SANTA FE COUNTY

Ordinance No. 1999-10

1668237

AN ORDINANCE REPEALING AND REPLACING ORDINANCE 1991-15, LODGERS' OCCUPANCY TAX ORDINANCE, INCREASING THE LODGERS' TAX RATE AND AMENDING THE LODGERS' TAX COLLECTION AND RECORD KEEPING PROCEDURES.

**SECTION 1.** **SHORT TITLE:** This Ordinance may be cited as the "Lodgers' Occupancy Tax Ordinance."

**SECTION 2.** **DEFINITIONS:** For the purposes of this Ordinance, the following words and phrases have the following meanings.

- A. **County Clerk:** The County Clerk for the County of Santa Fe, New Mexico.
- B. **Gross Taxable Rent:** The total amount of rent paid for lodging, not including the state gross receipts tax or local sales taxes.
- C. **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 other unit or accommodation in or at a taxable premises.
- D. **Lodgings:** The rooms or other accommodations furnished from a vendor to a vendee by a taxable service of lodging.
- E. **Occupancy Tax:** The tax on lodging, authorized by this Ordinance.
- F. **Person:** A corporation, firm, partnership, association, individual, or other entity, including 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, or any political subdivision, corporation, department,

instrumentally or agency of the Federal government or the State government.

- G. Rent: The consideration received by a vendor in money, credit, property or other consideration valued in money for lodging, subject to the Occupancy Tax authorized by this Ordinance.
- H. Taxable Premises: A hotel, apartment, apartment hotel, apartment house, lodge, lodging house, rooming house, motor hotel, guest house, guest ranch, ranch resort, guest resort, motor court, auto court, auto camp, trailer court, trailer camp, trailer park, tourist camp, cabin or other premises used for lodging.
- I. Vendee: A natural person to whom lodgings are furnished in the exercise of the taxable service of lodging. A vendee does not include a natural person who has been a permanent resident of the taxable premises for at least thirty (30) consecutive days, who has entered into a written agreement for lodging at the taxable premises for a period of at least thirty (30) days, or whose rent is less than \$2.00 per day.
- J. Vendor: A person who provides lodgings to a vendee for rent.

**SECTION 3. IMPOSITION OF TAX; REPORTS; PENALTY; COLLECTION:**

- A. Statutory Authority: The Board of County Commissioners of Santa Fe County, pursuant to NMSA Section 3-38-14, et seq. (1978, as amended) hereby imposes an occupancy tax on gross taxable rent for lodging within Santa Fe County and outside of the municipal limits of any incorporated municipality in the County.
- B. Exemptions: Accommodations at institutions of the Federal government, the State or any political subdivision thereof shall not be subject to this Occupancy Tax. This Ordinance shall not apply to clinics, hospitals, or other medical facilities; to privately owned and

operated convalescent homes or homes for the aging, infirm, indigent, or chronically ill; to lodging accommodations at religious, charitable, educational, or philanthropic institutions; or to premises which do not have at least three rooms of accommodations for lodgings.

- C. Amount: The amount of tax imposed under this Ordinance is four percent (4%) of gross taxable rent.
- D. Date Due: The Occupancy Tax shall be paid by the vendor in the form of cash or check to the County Clerk on or before the 25<sup>th</sup> day of each month for the previous calendar month's lodging.
- E. Reports Due: The vendor shall complete, sign and submit, together with the payment set forth in Section 3(C), the vendor's monthly CRS Gross Receipts Tax Form, and the Santa Fe County Lodger's Tax Report.
- F. Penalty and Interest: A penalty of one hundred dollars (\$100) or ten percent (10%) of the amount of Occupancy Tax due, whichever is greater, plus interest at the rate of one percent (1%) per month will be assessed against any vendor whose payments are either delinquent or late, in addition to the vendor's liability for any unpaid or uncollected funds.
- G. Collection: This Ordinance may be enforced by an action for Mandamus, Injunction or other appropriate remedy. The occupancy tax constitutes a lien in favor of the County upon the personal and real property of the vendor. The lien may be enforced as provided in Sections 3-36-1 through 3-36-7 NMSA (1978, as amended). Priority of the lien shall be determined from the date of filing. The vendor shall be liable for any and all costs and

reasonable attorney's fees associated with collection of funds under this section.

**SECTION 4. REGISTRATION; DISPUTES; REFUNDS:**

**1668240**

- A. **Business Registration:** All vendors engaging in business in Santa Fe County shall obtain a County Business Registration as required by County ordinance.
- B. **Accounting Application:** All vendors applying for a County Business Registration must submit an application including the following information:
- (1) The name of the vendor, including identification of any person, as defined in this Ordinance, who owns or operates a place of lodging and the name or trade names under which the vendor proposes to do business and the mailing and street addresses thereof;
  - (2) A description of the facilities, including the number of rooms and the usual schedule of rates therefor;
  - (3) A description of other facilities provided by vendor or others to users of the lodgings such as restaurant, bar, cleaning, laundry, courtesy car, stenographer, tailor or others and a statement identifying any applicable licenses/registrations and tax identification numbers for those facilities.
  - (4) State of New Mexico gross receipts tax number (C.R.S. ID#).
- C. **Review:** The Finance Department shall review applications for registration within ten (10) days of receipt thereof, and approve the registration in due course if the applicant is doing business subject to the lodgers' tax.
- D. **Refunds:** Any vendor claiming a refund for overpayment shall file a request, in writing, with the County Finance Director within ninety (90) days of the alleged overpayment.

The request shall clearly document the gross rent for the payment period, the amount of occupancy tax collected, the amount remitted to the County, and the amount of overpayment claimed. The Finance Director shall review the refund request and take action to approve or deny the request within thirty (30) days.

- E. Dispute Procedure: An applicant who is dissatisfied with a decision of the Finance Director under paragraphs C and D may appeal the decision to the Board of County Commissioners by written notice to the County Clerk of such appeal, to be made within fifteen (15) days of receipt of the decision. The matter shall be referred to the Board of County Commissioners for hearing in the usual course of business. The action of the Board of County Commissioners shall be deemed final, and the Board of County Commissioners shall issue written findings of fact and conclusions of law.

**SECTION 5. USE OF TAX PROCEEDS:**

- A. Tourism Promotion: Fifty percent (50%) of the proceeds from the first three percent (3%) and one hundred percent (100%) of the proceeds from the next one percent (1%) of the occupancy tax shall be used for the purpose of advertising, publicizing, or promoting tourist attractions in Santa Fe County, as well as the County Fairgrounds, exposition buildings, field houses, auditoriums, welcome centers, tourist information centers, museums, performing art facilities in operation prior to January 1, 1989, convention halls and other convention facilities of Santa Fe County.
- B. Facilities: The remaining fifty percent (50%) of the proceeds from the first three percent (3%) of the occupancy tax shall be used to collect and otherwise administer the Occupancy Tax; to equip, furnish, and improve those facilities described in Section 5(A);

to acquire a suitable site, grounds, or other real property or any interest therein for the facilities described in Section 5(A); to advertise, publicize, and promote those facilities described in Section 5(A); to use the occupancy tax proceeds in any combination of the of the foregoing purposes or transactions.

- C. Spending Reserves: Occupancy tax proceeds collected under this Ordinance must be expended within two years of the fiscal year in which they were collected.
- D. Contracting for Services: The Board of County Commissioners may contract for management of programs and activities funded by the occupancy tax. In the event of such contracting for services, the following requirements apply:
- (1) The contracting person or governmental entity shall be required to provided quarterly reports to the Board of County Commissioners listing the expenditures for that period. Within ten (10) days of receiving such reports, the Board of County Commissioners shall forward them to the Lodgers' Tax Advisory Board.
  - (2) Funds provided to the contracting person or governmental agency shall be maintained in a separate account established for that purpose and shall not be commingled with any other money.
  - (3) The contracting person or governmental entity shall maintain complete and accurate financial records of each expenditure of the tax revenue made and upon request of the governing body of the municipality or county shall make such records available for inspection.
  - (4) The funds expended under this section may be spent for day-to-day operations, supplies, salaries, office rental, travel expenses and other administrative costs only

if those administrative costs are directly related to the purpose of this section.

- (5) A contracting person or governmental entity may subcontract with the approval of the Board of County Commissioners. A subcontractor shall be subject to the same terms and conditions as the contractor regarding separate financial accounts, periodic reports and inspection of records.

**SECTION 6. ADVISORY BOARD:**

- A. **Appointment of Members:** The Chairperson of the Santa Fe Board of County Commissioners shall appoint an advisory board of five residents of the County, two of whom shall represent the lodging industry, two of whom are directly involved in tourist-related industries, and one member at large who shall represent the general public. The appointments shall be subject to confirmation by the Board of County Commissioners.
- B. **Term:** The term for all members of the advisory board shall begin on the first day of January in even numbered years, and shall expire on the last day of December, two years thereafter, or when each member's respective successor has been duly appointed and qualified. Members may be renominated for up to two additional successive terms.
- C. **Service of Members:** Members of the advisory board shall serve at the pleasure of the Board of County Commissioners and may be removed at any time, with or without cause.
- D. **Replacement of Members:** Upon the death, removal, resignation, change of residence from the County or inability of a member of the board to act, a vacancy on the advisory board shall exist. This vacancy shall be filled by appointment by the Chairperson of the Board of County Commissioners for the unexpired term of such member, subject to confirmation by the Board of County Commissioners.

- E. Role of Advisory Board: The advisory board shall make recommendations to the Board of County Commissioners concerning the expenditure of the Occupancy Tax proceeds. The advisory board shall also prepare semiannual budgets, setting forth the amount of money collected by the County Clerk, and also setting forth all expenditures made during such semi-annual period.
- F. Open Meetings: The advisory board shall hold open meetings, pursuant to the New Mexico Open Meetings Act, and shall abide by the rules and regulations for the conduct of public meetings, as promulgated by the Board of County Commissioners.

**SECTION 7. COUNTY AUDIT; RECORDS:**

- F. Number of Audits: The Board of County Commissioners shall determine each year the number of vendors within the County to audit, based on a recommendation from the County Treasurer.
- G. Random Audit: The County Clerk shall select at random one or more vendors, as determined by the Board of County Commissioners, to verify reported gross rent, full collection of Occupancy Tax and accuracy of the information contained on the Report and Form required in Section 3(E) of this Ordinance.
- H. Notice: Vendors selected for audit shall be entitled to reasonable notice of an audit.
- I. Procedure: The audit(s) may be performed by the County Treasurer or by any other designee of the Board of County Commissioners. A copy of the audit(s) shall be filed annually with the local government division of the Department of Finance and Administration.
- J. Confidentiality: It is unlawful for any employee of the County of Santa Fe to reveal to any

1668245

individual other than another employee of the County, or the taxpayer himself or his authorized representative, any information contained in the return or audit of any taxpayer including vendors subject to the Lodger's Tax Act, except as otherwise provided by law. Information for statistical purposes may be revealed in such a manner that the information revealed is not identified as applicable to any individual taxpayer.

- K. Record Preservation and Destruction: 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 Santa Fe County and shall be open to the inspection of the County during reasonable hours and shall be retained for three (3) years.

SECTION 8. PENALTY CLAUSE: Any person who violates the provisions of the Lodger's Tax Ordinance by failure to pay the tax, to remit the proceeds thereof to the County, to submit required forms and reports, or to account properly for any lodging tax proceeds pertaining hereto, shall be subject to penalties not to exceed 90 days in jail and/or a fine of five hundred dollars (\$500.00) for each violation. Each month of noncompliance constitutes a separate offense.

SECTION 9. SEVERABILITY: If any of these sections, subsections, sentences, clauses, or phrases of this Ordinance are for any reason found to be unconstitutional or invalid, the validity of the remaining portions of this Ordinance shall not thereby be affected since it is the express intent of the Board of County Commissioners to pass each section, phrase, paragraph, and work separately.

SECTION 10. EFFECTIVE DATE: This Ordinance will take effect thirty (30) days after recordation by the County Clerk in the Official Ordinance Book.

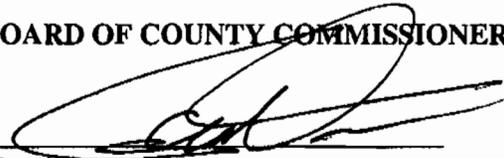
SECTION 11. REPEAL PROVISION: Ordinance No. 1991-15 is hereby repealed as of the

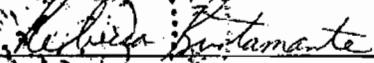
effective date of this ordinance.

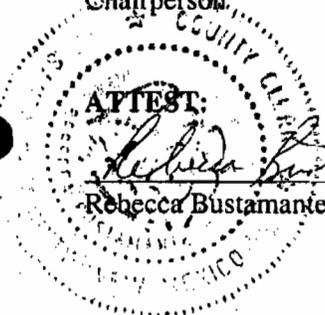
1668246

PASSED, APPROVED, AND ADOPTED THIS 27<sup>th</sup> DAY OF July, 1999

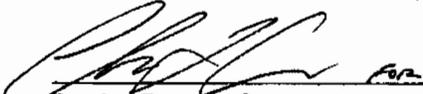
BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY

  
\_\_\_\_\_  
Chairperson

  
\_\_\_\_\_  
Rebecca Bustamante, County Clerk



APPROVED AS TO FORM:

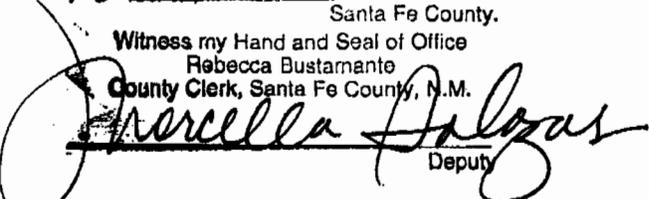
  
\_\_\_\_\_  
Denice Brown, County Attorney



1083.881

COUNTY OF SANTA FE )  
STATE OF NEW MEXICO )SS  
I hereby certify that this instrument was filed  
for record on the 28 day of July, A.D.  
19 99, at 8:21 o'clock a m.  
and was duly recorded in book 10608  
page 237-246 of the records of  
Santa Fe County.

Witness my Hand and Seal of Office  
Rebecca Bustamante  
County Clerk, Santa Fe County, N.M.

  
\_\_\_\_\_  
Deputy