

THE BOARD OF COUNTY COMMISSIONERS  
OF SANTA FE COUNTY

ORDINANCE NO. 2023- 02

AN ORDINANCE  
REPEALING AND REPLACING ORDINANCE NOS. 1999-10 AND 2020-1  
AND SECTION 7 OF ORDINANCE 2022-07, ADDING AND AMENDING  
DEFINITIONS AND EXEMPTIONS FOR THE LODGERS' OCCUPANCY  
TAX TO ALIGN WITH STATE LAW, INCREASING THE LODGERS'  
OCCUPANCY TAX, ESTABLISHING FINANCIAL REPORTING  
RESPONSIBILITIES, ADDING LIEN PROVISIONS, ADDING FURTHER  
USES OF LODGERS' OCCUPANCY TAX PROCEEDS, AND  
CLARIFYING COLLECTION OF LODGERS' OCCUPANCY TAXES  
FOR SHORT-TERM RENTAL PLATFORMS

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF  
SANTA FE COUNTY:

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. County Treasurer: The County Treasurer for the County of Santa Fe, New Mexico.
- C. Dwelling or Dwelling Unit: A structure or portion of a structure that is designed, occupied or intended to be occupied, or has been previously used, as living quarters for a family and includes facilities for cooking, sleeping, and sanitation; but not including recreational vehicles, travel trailers, hotels, motels, and boardinghouses. Dwelling or dwelling unit includes single-family, two-family, and multi-family dwellings; manufactured homes; mobile homes; and tiny houses.
- D. Gross Taxable Rent: The total amount of rent paid for lodging, not including the state gross receipts tax or local sales taxes.

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E. 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.

F. Lodgings: The rooms or other accommodations furnished from a vendor to a vendee by a taxable service of lodging.

G. Occupancy Tax or Lodgers' Occupancy Tax: The tax on lodging, authorized by this Ordinance.

H. 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, the State government, or any political subdivision of the State.

I. Rent: The consideration received by a vendor in money, credit, property or other consideration valued in money for lodgings, subject to the Occupancy Tax authorized by this Ordinance.

J. Short-Term Rental or STR: A dwelling or portion thereof that is rented for periods of less than thirty (30) consecutive days.

K. Short-Term Rental Platform: A person or entity that provides a means through which a vendor may offer a dwelling unit, or portion thereof, for STR use, and from which the person or entity financially benefits.

L. Taxable Premises: A hotel, motel, or other premises used for lodging that is not the vendee's household or primary residence. This includes, without limitation, hotels, motels, tourist homes, Short-Term Rentals, vacation rentals by owner, guestrooms for compensation, lodging houses, motor courts, inns, hostels, rooming houses, camps, studios, bed and breakfasts, or other structure, or portion thereof, offering, or renting for lodging, dwelling, or sleeping purposes, in guestrooms for compensation, and shall further include any trailer court, trailer spaces, or combinations of such spaces and trailers, including mobile homes, and timeshare units not occupied by the timeshare owner or a guest of the owner.

M. Temporary Lodging: Lodgings for the purpose of housing a vendee within proximity of the vendee's employment or job location.

N. Tourist: A person who travels for the purpose of business, pleasure, or culture to or within the County, including residents and non-residents of the County.

O. Tourist-Related Events: Events that are planned for, promoted to and attended by tourists.

P. Tourist-Related Facilities and Attractions: Facilities and attractions that are intended to be used by or visited by tourists.

Q. Tourist-Related Transportation Systems: Transportation systems that provide transportation for tourists to and from tourist-related facilities and attractions and tourist-related events.

R. 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.

S. Vendor: A person or the person's agent 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 Section 3-38-14, *et seq.*, NMSA 1978, 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: The Occupancy Tax shall not apply:

- (1) if a vendee:
  - (a) has been a permanent resident of the taxable premises for a period of at least thirty consecutive days, unless those premises are temporary lodging; or
  - (b) 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, unless those premises are temporary lodging;
- (2) if the rent paid by a vendee is less than two dollars (\$2.00) a day;
- (3) to lodging accommodations at institutions of the federal government, the state, or any political subdivision thereof;

(4) to lodging accommodations at religious, charitable, educational or philanthropic institutions, including accommodations at summer camps operated by such institutions;

(5) to clinics, hospitals, or other medical facilities; or

(6) to privately owned and operated convalescent homes or homes for the aged, infirm, indigent, or chronically ill.

C. Amount: The amount of Occupancy Tax imposed under this Ordinance is five percent (5%) of gross taxable rent.

D. Date Due: The Occupancy Tax shall be paid by the vendor in the form of cash, check, or other acceptable payment method to the County Treasurer 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. This requirement applies regardless of whether a Short-Term Rental Platform collects Occupancy Taxes as an agent for the vendor.

F. Civil Penalty and Interest: A civil 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. 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.

H. Date Due: Except as otherwise required in this Section H, the Occupancy Tax shall be paid by the vendor in the form of cash, check, or other acceptable payment method to the County Treasurer on or before the 25<sup>th</sup> day of each month for the previous calendar month's lodging. All Short-Term Rental Platforms that display STR listings and facilitate payment of rent from vendee to vendor for properties in Santa Fe County and outside the municipal limits of any municipality in the County shall collect the Occupancy Tax on gross taxable rent for such vendors and remit those taxes to the County Treasurer by the aforementioned date. The

Short-Term Rental Platform shall be considered an agent of the vendor for purposes of Occupancy Tax collections and remittance responsibilities as set forth in this Ordinance.

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

A. Business Registration and Business Licenses: All vendors, other than Short-Term Rentals, as defined in the Business Registration and Licensing Ordinance (Ordinance No. 1992-3), must obtain a County Business Registration pursuant to this Section. Short-Term Rentals must obtain a business registration (Owner-Occupied Short-Term Rentals) or business license (Non-Owner-Occupied Short-Term Rentals) pursuant to Ordinance No. 1992-3, as amended by the Short-Term Rental Regulation, Registration, and Licensing Ordinance (Ordinance No. 2022-7).

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 with (10) days of receipt thereof, and approve the registration in due course if the applicant is doing business subject to the Occupancy 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.

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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.

F. Short-Term Rental Platforms:

(1) Short-Term Rental Platforms shall collect Occupancy Taxes and remit those taxes to the County Treasurer as required by Section 3(H) above. Short-Term Rental Platforms shall disclose to the County on a monthly basis each of their STR listings located in the County, the name of the person responsible for such listing, the address of each such listing, the length of stay of each such listing, and the price for each stay. Short-Term Rental Platforms shall also ask vendors whether their lodgings are located within the unincorporated area of Santa Fe County, the presumptive city limits of the City of Santa Fe, or within a municipality.

(2) Safe Harbor. A Short-Term Rental Platform, who operates in compliance with this Subsection F, shall be presumed to be in compliance with this Ordinance, except that Short-Term Rental Platforms remain responsible for compliance with the administrative penalty provisions in Section 8 of this Ordinance.

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

A. Tourism Promotion: Not less than fifty percent (50%) of the proceeds from the Occupancy Tax shall be used for the purpose of advertising, publicizing, or promoting tourist-related facilities, attractions, transportation systems, or events in Santa Fe County, including, but not limited to, the County Fairgrounds, Stanley Cyclone Center, exposition buildings, field houses, auditoriums, welcome centers, tourist information centers, museums, performing art facilities, open spaces and trails, and convention halls and other convention facilities of Santa Fe County.

B. Operations and Facilities: Any balance of the occupancy tax proceeds not used for the purposes set forth in Subsection A of this Section may be used to defray the costs of:

(1) Collecting and otherwise administering the Occupancy Tax including the performance of audits required by the Lodgers' Tax Act (Sections 3-38-13 to 3-38-25, NMSA 1978) pursuant to guidelines issued by the Department of Finance and Administration;

(2) 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 and attractions or tourist-related transportation systems;

(3) The principal of and interest on any prior redemption premiums due in connection with and any other charges pertaining to revenue bonds authorized by Section 3-38-23 or 3-38-24, NMSA 1978;

(4) Advertising, publicizing and promoting tourist-related attractions, facilities and events of the County and tourist-related facilities, attractions and events within the area;

(5) Providing police and fire protection and sanitation service for tourist-related facilities, attractions and events located in the County;

(6) Any combination of the foregoing purposes or transactions stated in this section;  
or

(7) As otherwise allowed by the Lodgers' Tax Act (Sections 3-38-13 to 3-38-25, NMSA 1978).

C. Spending Reserves: Occupancy Tax proceeds collected under Subsection A of this Section, Tourism Promotion, shall be expended within two years of the close 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.

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(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 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.

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. Members may be re-appointed 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 Board of County Commissioners for the unexpired term of such member.

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 Treasurer, 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**

A. 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.

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B. Random Audit: The County Treasurer 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.

C. Notice: Vendors selected for audit shall be entitled to reasonable notice of an audit.

D. 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.

E. Confidentiality: It is unlawful for any employee of the County of Santa Fe to reveal to any individual other than another employee of the County, or the taxpayer OR their 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.

F. 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. FINANCIAL REPORTING**

A. Budgets, Reports, and Audits. The Board of County Commissioners shall furnish to the Advisory Board that portion of any proposed budget, report, or audit filed or received by the Board of County Commissioners to either the Local Government Finances statute (Sections 6-6-1 to 6-6-20, NMSA 1978), or the Audit Act (Sections 12-6-1 to 12-6-14, NMSA 1978), that relate to the expenditure of Occupancy Tax funds within ten (10) days of the filing or receipt of such proposed budget, report or audit by the Board of County Commissioners.

B. Expenditures. The Board of County Commissioners shall report to the Local Government Division of the Department of Finance and Administration on a quarterly basis any expenditure of Occupancy Tax funds pursuant to Sections 3-38-15 and 3-38-21, NMSA 1978, and shall furnish a copy of this report to the advisory board when it is filed with the Local Government Division.

## **SECTION 9. CRIMINAL PENALTIES.**

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 ninety (90) days in jail and/or a fine of five hundred dollars (\$500) for each violation. Each month of noncompliance constitutes a separate offense.

**SECTION 10. LIENS.**

A. The Occupancy Tax imposed by the County constitutes a lien in favor of the County upon the personal and real property of the vendor providing lodgings in the County. The lien may be enforced as provided in Sections 3-36-1 through 3-36-7, NMSA 1978. Priority of the lien shall be determined from the date of filing.

B. Under process or order of court, no person shall sell the property of any vendor without first ascertaining from the County Treasurer the amount of any Occupancy Tax due the County. Any Occupancy Tax due the County 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 sale proceeds.

C. The County Treasurer shall furnish to any person applying for such a certificate a certificate showing the amount of all liens in the records of the County against any vendor pursuant to Chapter 3, Article 38, NMSA 1978.

**SECTION 10. 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 11. REPEAL.**

Santa Fe County Ordinance Nos. 1999-10 and 2020-1 and Section 7 of Ordinance No. 2022-07 are hereby repealed.

**SECTION 12. EFFECTIVE DATE.**

This Ordinance shall become effective June 1, 2023.

**PASSED, APPROVED, and ADOPTED** this 29<sup>th</sup> day of March, 2023, by the Board of County Commissioners of Santa Fe County.

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