

4713

**SAN MIGUEL COUNTY
LODGERS' TAX ORDINANCE
Ordinance No. SMC-10-09-01-ORD-LODGERS' TAX**

AN ORDINANCE IMPOSING AN OCCUPANCY TAX ON REVENUES FOR LODGING IN SAN MIGUEL COUNTY PURSUANT TO THE AUTHORITY GRANTED BY THE LODGERS' TAX ACT, SECTIONS 3-38-13 THROUGH 3-38-24, NMSA 1978; ESTABLISHING COLLECTION, REPORTING AND RECORD KEEPING PROCEDURES THEREFOR; ESTABLISHING PENALTIES FOR VIOLATION OF THE ORDINANCE; REPEALING AND SUPERSEDING ALL LODGERS' TAX ORDINANCES HERETOFORE ADOPTED IN SAN MIGUEL COUNTY; AND PROVIDING AN EFFECTIVE DATE OF JANUARY 1, 2002.

SECTION I. TITLE: This ordinance may be cited as the Lodgers' Occupancy Tax Ordinance.

SECTION II. DEFINITIONS: For the purpose of this ordinance, the following words and phrases have the following meanings:

- A. County Clerk: The county Clerk of San Miguel County, New Mexico.
- B. Gross Taxable Rent: The amount of rent paid for lodging, not including the State Gross Receipts Tax or Local Sales Tax.
- C. Lodging: The transaction of furnishing rooms and other accommodations to a vendee who, for rent uses, or has the right to use or posses any room or other unit or accommodations in or at a taxable premises for a period of no more than 30 consecutive days.
- D. Lodgings: The rooms or other accommodations furnished from a vendor to a vendee by a taxable service of lodging
- E. 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.
- E. 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.

COUNTY OF SAN MIGUEL
 PAUL MAEZ
 COUNTY CLERK
 FILED FOR RECORD ON:
 DATE: 10-15-01
 TIME: 2:45 PM
 BOOK 240 OF MSC PG 032
 DEPUTY [Signature]
 WITNESS MY HAND AND SEAL

- F. Taxable Premises: A hotel, apartment, apartment hotel, apartment house, lodge, lodging house, rooming house, motor hotel, guest house, ranch resort, guest resort, motor court, auto court, auto camp, trailer court, trailer camp, trailer park, bed and breakfast, tourist camp, cabin, or other premises for lodging.
- G. Treasurer: The County Treasurer of San Miguel County, New Mexico.
- H. 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.
- I. Vendor: A person who provides lodging to a vendee for rent.

SECTION III. IMPOSITION OF TAX; REPORTS; PENALTY; COLLECTION:

- A. Statutory Authority: The board of County Commissioners of San Miguel County, pursuant to the New Mexico Lodgers' Tax Act, section 3-38-13, et seq., NMSA 1978, as amended, hereby imposes an occupancy tax on gross taxable rent for lodging within San Miguel County and outside the municipal limits of any incorporated municipality in San Miguel 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, detention centers, 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 more than 3 units of accommodations for lodgings.
- C. Amount: The amount of the occupancy tax imposed by this Ordinance is 5 percent (5%) of gross taxable rent.
- D. Date Payment Due: The occupancy tax shall be paid to the County Treasurer by the vendor in the form of cash or check on or before the 25th day of each month for the previous calendar month's lodging or consistent with vendors New Mexico Gross Receipts payments.
- E. Reports Required: The vendor shall complete, sign, and submit, together with the payment set forth in Section III (C), the vendor's CRS Gross Receipts Tax Form, and San Miguel County's Lodgers' Tax Report.

F. Penalty and Interest: A penalty of one hundred dollars (\$100) or ten (10%) percent of the Amount of Occupancy Tax due, whichever is greater, plus interest at the rate of one (1%) percent 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. The County Treasures shall insure penalty and interest is applied against any vendor who is determined to be delinquent or late.

G. Collection: This Ordinance may be enforced by an action in mandamus or for injunction, or by other appropriate remedy. The occupancy tax imposed by this Ordinance constitutes a lien in favor of San Miguel County upon the personal and real property of the vendor providing lodgings, which lien may be enforced as provided in Sections 3-36-1 through 3-36-7, NMSA 1978, as amended.

SECTION IV. REGISTRATION; DISPUTES; REFUNDS:

A. Business Registration: All vendors engaging in business in San Miguel County, shall acquire and maintain a Business Registration/License as required by County Ordinance.

B. Accounting Applications: All vendors applying for a County Business Registration/license must submit an application including the following information:

1. The name of the vendor, including identities 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 vendor's lodging facilities, including the number of rooms and the usual schedule of rates therefor;
3. A description of other facilities or services provided by the vendor or others to users of the lodgings, such as restaurant, bar, cleaning, laundry, courtesy, car, stenograph, trailer, or others, and a statement identifying any applicable license/registrations and tax identification numbers for those facilities.
4. A copy of the State of New Mexico Gross Receipt tax number (CRS ID#)

- C. Review: The County Clerk shall review applications for Business Registration/License within ten (10) days of the receipt thereof, and approve the registration in due course if the applicant is doing business subject to the lodgers tax.
- D. Any vendor claiming a refund for overpayment shall file a request, in writing, with the County Clerk 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 County Clerk shall review the refund request within thirty (30) days of receipt of the claim for refund.
- E. Dispute Procedures: An applicant who is dissatisfied with the decision of the County Clerk under Paragraphs C and D herein above may appeal the decision to the Board of County Commissioners. The appeal shall be in writing and shall be filed with the County Clerk within fifteen (15) days of the receipt of the decision of the County Clerk as provided above at Paragraphs C and D.
- F. The appeal shall be heard by the County Commission in the usual course of business. The action of the County Commission shall be deemed final, and the Commission through the County Manager shall issue written findings of fact and conclusions of law.

SECTION V. USE OF TAX PROCEEDS:

- A. Tourism Promotions: Seventy five (75%) percent of the proceeds from the lodgers tax collected under this Ordinance shall be used for the purpose of advertising, publicizing and promoting tourist related attractions, facilities and events in San Miguel County, including fair grounds, expositions, 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 in San Miguel County.
- B. Administration: Up to twenty five (25%) percent of the proceeds may be used to collect and otherwise administer the occupancy tax, to equip, furnish, and repair those facilities described in Section V (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 herein, and for any combination of the foregoing purposes or transactions.
- C. Spending Occupancy Tax: Proceeds collected under this Ordinance shall 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 the programs and activities funded by the occupancy tax, as follows:
1. Contracting of services shall comply with the New Mexico Procurement Code, Section 13-1-28, et seq., NMSA 1978, as it applies to contracting for professional services.
 2. Any person, firm or agency contracted under this subsection shall be required to provide quarterly reports to the Lodgers Tax Advisory Board listing expenditures for that period.
 3. Payment of funds under this subsection shall occur only after receipt of all expense reports, whereupon issuance of a check from the County Finance Supervisor shall occur within thirty (30) days. The County Manager shall authorize reimbursements for expenses incurred and allowed under any contract authorized hereunder.
 4. The funds expended under this Section may be spent for printing, supplies, office expenses, advertising, promoting, publicizing, and other related administrative costs directly related to the management of the programs and activities funded by the occupancy tax.

SECTION VI. ADVISORY BOARD:

- A. Appointment of Members: The chairperson of the County Commission shall appoint an Advisory Board of five county residents, 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, which Board shall be known as the Lodgers' Tax Advisory Board. The appointments shall be subject to confirmation by the Board of County Commissioners.
- B. Term: The term for all members of the Lodgers' Tax 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.
- 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 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 County Commission, for the unexpired

term of such member, subject to confirmation by the Board of County Commissioners.

- E. Role of Advisory Board: The Lodgers' Tax Advisory Board shall work with the County Manager, to make recommendations to the Board of County Commissioners concerning the appointment of Board Members, issuance of service contracts, and the expenditure of the occupancy tax proceeds. The Advisory Board shall prepare financial reports, identifying the amount of occupancy tax collected, the amount of expenditures incurred and the fund balances remaining. These reports shall be submitted to the Board of County Commissioners during the County's Budget Schedule.
- F. Open Meetings: The advisory board shall hold open meetings, pursuant to the New Mexico Open Meetings Act, Section 10-15-1, et. Seq. NMSA 1978, as amended, and shall abide by any rules and regulations for the conduct of public meetings as may be promulgated by the Board of County Commissioners.

SECTION VII: COUNTY AUDIT RECORDS:

- A. Number of Audits: The Board of County Commissioners shall determine each year the number of vendors within the County who shall be audited, based on recommendations from the Lodgers' Tax Advisory Board.
- B. Random Audit: The County Manager 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 County's Reporting Form.
- C. Notice: Vendors selected for audit shall be entitled to reasonable notice of the audit.
- D. Procedure: The audit may be performed by the County Treasurer or by any other designee of the Board of County Commissioners. A copy shall remain with the County Clerks Office.
- E. Confidentiality: It is unlawful for any employee of the County of San Miguel to reveal to any individual other than another employee of the County, or the taxpayer or his authorized representative, any information contained in the return or audit of any taxpayer including vendors subject to the Lodgers Tax Act, except as otherwise provided by law.
- F. Record Preservation and Destruction: The vendor shall maintain adequate records of facilities subject to the tax and proceeds received for the use thereof. Such records shall be maintained in San Miguel County and shall be

open to inspection by the County during reasonable business hours and shall be retained for three (3) years.

SECTION VIII. PENALTY CLAUSE: Any person who violates the provisions of the Lodgers' 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) for each violation. Each month of non-compliance shall constitute a separate offense.

SECTION IX. SEVERABILITY: If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason found to be unconstitutional or invalid, the validity of the remaining portions of this Ordinance shall not be affected, it being the express intent of the Board of County Commissioners to adopt each section, phrase, paragraph, and word separately.

SECTION X. EFFECTIVE DATE: This Ordinance shall become effective January 1, 2002.


PASSED, APPROVED, ADOPTED AND ORDAINED THIS 10 DAY OF October 2001.

**SAN MIGUEL COUNTY
BOARD OF COUNTY COMMISSIONERS**


LeRoy H. Garcia, Chairman


Arthur J. Padilla, Vice-Chairman

Lawrence R. Rascon, Member

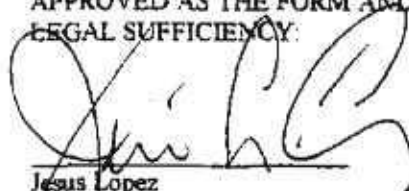

Hugh H. Ley, Member


Kenneth C. Medina, Member

ATTEST:

APPROVED AS THE FORM AND
LEGAL SUFFICIENCY:


Paul Maez,
San Miguel County Clerk


Jesus Lopez
San Miguel County Attorney