

CHAPTER 36: TAXATION

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LODGER'S TAX ORDINANCE

§ 36.01 PURPOSE.

The purpose of this subchapter 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 § 36.04.

(1988 Code, § 8-4-1) (Ord. 90-06, passed 9-24-1990; Ord. 2009-10, passed 9-28-2009; Ord. 2018-02, passed 3-12-2018)

§ 36.02 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BOARD AND COMMITTEE. The Lodgers' Tax Committee established in this section to make recommendations to the Council keep minutes of its proceedings and submit its recommendations, correspondence and other pertinent documents to the Council.

CITY CLERK. The City Clerk or Manager of the City or the Finance Department of the City, the City Treasurer, or other designated representatives of the City Clerk or Manager as the case may be.

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

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 Lodger's Tax Act, §§ 3-38-13 through 3-38-24 NMSA 1978.

PERSON. A corporation, firm, other body corporate, partnership, association, or individual, including an executor, administrator, trustee, receiver or other representative appointed according to law and acting in a representative capacity. **PERSON** does not include the United States, 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 by the Lodger's Tax Act, §§ 3-38-13 through 3-38-24 NMSA 1978.

TAXABLE PREMISES. A hotel, apartment, 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 used 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, attractions and 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. (§ 3-38-14 NMSA 1978) (1988 Code, § 8-4-2) (Ord. 90-06, passed 9-24-1990; Ord. 2009-10, passed 9-28-2009; Ord. 2018-02, passed 3-12-2018)

§ 36.03 IMPOSITION OF TAX.

(A) There is hereby imposed an occupancy tax of revenues of 5% of gross taxable rent for lodging paid to vendors after September 24, 1990.

(B) Every vendor who is furnishing any lodgings within the Municipality is exercising a taxable privilege.

(C) There is hereby created a Lodger's Tax Fund into which the City General Fund shall deposit the total amount of Lodger's Tax collected, which is to be distributed as follows:

(1) One half of the proceeds derived from the first 3% of this tax shall be placed into the Lodger's Tax Promotional Fund for the purpose of advertising, publicizing and promoting facilities authorized in § 3-38-21 NMSA 1978 and tourist attractions; and

(2) The remaining one-half of the tax proceeds derived from the first 3%, and the entire tax proceeds in excess of 3%, shall be placed into the Lodger's Tax Fund for any use authorized in § 3-38-21 NMSA 1978.

(§ 3-38-15(B) and (C) NMSA 1978) (1988 Code, § 8-4-3) (Ord. 90-06, passed 9-24-1990; Ord. 92-08, passed --; Ord. 2009-10, passed 9-28-2009) Penalty, see § 36.99

§ 36.04 USE OF TAX PROCEEDS.

The proceeds of the occupancy tax shall be used to defray costs of:

(A) Collecting and otherwise administering the tax; including the performance of audits required by the Lodger's Tax Act pursuant to guidelines issued by the state Department of Finance and Administration;

(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 or the country;

(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 §§ 3-38-23 or 3-38-24 NMSA 1978;

(D) Advertising, publicizing and promoting tourist-related attractions, facilities and events of the city or county and tourist facilities 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. (§ 3-38-21 NMSA 1978) (Ord. 2009-10, passed 9-28-2009; Ord. 2018-02, passed 3-12-2018)

§ 36.05 EXEMPTIONS.

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 30 consecutive days; or

(2) Enters into or has entered into a written agreement for lodging at the taxable premises for a period of at least 30 consecutive days.

(B) If the rent paid by a vendee is less than \$2 per 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 these 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

(G) If the vendor does not offer at least three rooms within or attached to taxable premises for lodging or at least three other premises for lodging or a combination of these within the taxing jurisdiction. (§ 3-38-16 NMSA 1978) (1988 Code, § 8-4-5) (Ord. 90-06, passed 9-24-1990; Ord. 2009-10, passed 9-28-2009; Ord. 2018-02, passed 3-12-2018)

§ 36.06 LICENSING.

(A) *Requirement.* No vendor shall engage in the business of providing lodging in the City who has not first obtained a license as provided in this section.

(B) *Application.* Applicants for a vendor's license shall submit an application to the City Clerk, stating:

(1) The name of the vendor, including the identification of any person, as defined in this subchapter, who owns or operates or both owns and operates a place of lodgings, 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 therefor;

(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, stenographic, tailor or others, and a statement identifying the license issued, to whom issued, the authority issuing, and period for which issued, if applicable, and identification number provided by the Bureau of Taxation and Revenue of the State of New Mexico;

(4) The nature of the business practices of the vendor and the extent, if any, to which his or her business is exempt from the Lodger's Tax; and

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

(C) *Issuance.* The City Clerk shall review applications for license within ten days of receipt thereof, and grant the license in due course if he or she finds the applicant is doing business subject to the Lodger's Tax.

(D) *Notice of denial.* If the City Clerk finds that the applicant is not qualified to do business subject to the Lodger's Tax, he or she shall, not more than ten days after receipt of the application, advise the applicant of his or her decision and give the reasons therefor. The notice of this action shall be given by registered mail, postage prepaid, addressed to the applicant at the address given on the application, deposited in the post office at the City on the date thereof.

(E) *Notice of finding that applicant is not exempt from tax.* If the City Clerk finds the applicant not exempt under the terms of this subchapter, he or she shall, not more than ten days after receipt of the application, advise the applicant of his or her decision and give the reasons therefor.

(F) *Appeal procedure.* 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 the appeal, to be made within 15 days of the date of the decision of the City Clerk on the application. The matter shall be referred to the Governing Body for hearing at a regular or special meeting in the usual course of business. The decision of the Governing Body 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 final.

(G) *Duties of City Clerk following action on appeal.* 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.
(1988 Code, § 8-4-6) (Ord. 90-06, passed 9-24-1990; Ord. 2009-10, passed 9-28-2009; Ord. 2018-02, passed 3-12-2018) Penalty, see § 36.99

§ 36.07 COLLECTION OF TAX; REPORTING.

(A) Every vendor providing lodgings shall collect the tax thereon on behalf of the City and shall act as a trustee therefor.

(B) The tax shall be collected from vendees in accordance with this subchapter, and shall be charged separately from the rent fixed by the vendor for the lodgings.

(C) On or after May 1, 1974, each vendor licensed under this subchapter shall be liable to the City for the tax provided herein on the rent paid for lodgings.

(D) On or before the twenty-fifth day of each month, each vendor shall make a report of the lodging receipts paid to that vendor in the preceding calendar month. the report shall:

(1) Be on a form provided by the City Clerk;

(2) Include all information requested on the form;

(3) Be verified under oath by the vendor;
and

(4) Be accompanied by the amount due the city.

(§ 3-38-17(A) and (B) NMSA 1978) (1988 Code, § 8-4-7) (Ord. 90-06, passed 9-24-1990; Ord. 2009-10, passed 9-28-2009; Ord. 2018-02, passed 3-12-2018) Penalty, see § 36.99

§ 36.08 DUTY OF VENDOR.

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 of the City during reasonable hours, and shall be retained for three years.

(1988 Code, § 8-4-8) (Ord. 90-06, passed 9-24-1990; Ord. 2009-10, passed 9-28-2009) Penalty, see § 36.99

§ 36.09 FAILURE TO PAY TAX; FAILURE TO MAKE RETURN; COMPUTATION PENALTY; NOTICE.

(A) If any vendor makes a return as required by this subchapter without paying the tax then due, he or she shall be liable for the tax and a penalty equal to 10% thereof, but not less than \$100, in addition to the tax, without notice from the City with regard thereto. Promptly thereafter, the City shall give the delinquent vendor written notice of the estimated tax, penalty and interest, which notice shall be served personally or by certified mail.

(B) If any vendor neglects or refuses to make a return and pay the tax as required by this subchapter, the City Clerk shall make an estimate based upon an examination of the vendor's books and records, or upon any information in its possession, or that may come into its possession, of the amount of the rent of the delinquent vendor for the period in respect to

which he or she has failed to make return, and upon the basis of the estimated amount shall compute and assess the tax payable by the delinquent vendor, adding to the sum thus arrived at a penalty equal to 10% thereof, but not less than \$100. Promptly thereafter the City shall give the delinquent vendor written notice of this estimated tax, penalty, and interest, which notice shall be served personally or by certified mail.

(C) If the payments are not made by the vendor within 15 days after the notice, the City Clerk shall bring an action in law or equity in the District Court for collection of any amount due, including, without limitation, penalties thereon, interest on the unpaid principal at the rate not exceeding 1% a month, the cost of collection, and reasonable attorney's fees incurred in connection therewith.

(D) The amounts specified in division (B) of this section, plus interest on 1% per month on the total amount due, including penalties, plus costs of collection, including reasonable attorney's fees, shall be a lien on the real property on which the taxable premises are located. If the payments are not made by the vendor within 15 days of the notice provided for in division (B) of this subchapter, the City Clerk shall cause notice of this lien to be filed with the County Clerk and sent to the vendor.

(E) Under process or order of court, no person shall sell the property of any vendor without first ascertaining from the City Clerk or treasurer the amount of any occupancy tax due the city. Any occupancy tax due 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.

(1988 Code, § 8-4-9) (Ord. 90-06, passed 9-24-1990; Ord. 2009-10, passed 9-28-2009; Ord. 2018-02, passed 3-12-2018) Penalty, see § 36.99

§ 36.10 ADMINISTRATION.

The duties assigned to the City Clerk in this subchapter may be delegated to the Finance

Department or other department officials, in whole or in part, as to the City Clerk shall appear useful. Duties may be, from time to time, reassigned. (1988 Code, § 8-4-10) (Ord. 90-06, passed 9-24-1990; Ord. 2009-10, passed 9-28-2009)

§ 36.11 CONFIDENTIALITY OF INFORMATIONAL RETENTION OF RECORDS.

(A) It is unlawful for any City official, employee or agent to reveal to any person other than another City official, employee or agent engaged in City tax administration, or any employee of the New Mexico Bureau of Revenue, any information about a vendor licensed by the City under this subchapter, or information acquired as the result of the vendor's collection and remittance of the tax described in this subchapter. No City official, employee, or agent charged with the keeping of this information shall be required to produce it in any action or proceeding in court except on behalf of;

The City in any action or proceeding under the provisions of §§ 3-38-13 through 3-38-24 NMSA 1978 (Lodger's Tax Statutes), or under the provisions of this subchapter (Lodger's Tax Ordinance), when the information is directly involved in the action or proceeding, provided that this information is provided in accordance with the New Mexico Rules of Civil Procedure and applicable statutes of the State of New Mexico. In either event, the Court may require the production of, and admit in evidence, only so much of the information as is pertinent to the action or proceeding.

(B) Nothing contained herein shall be construed to:

(1) Prohibit delivery to a vendor or his or her representative of a copy of any return or report filed by that vendor in connection with the tax;

(2) Prohibit the publication of statistics prepared so as to prevent the identification of a particular vendor's report or return and its contents; or

(C) Inspection is permitted by the legal representative of the State, County or Municipality of the report or return of any vendor by or against whom an action or proceedings is contemplated or has been instituted as authorized in §§ 3-38-13 through 3-38-24 NMSA 1978 (Lodger's Tax Statutes) or as authorized in this subchapter (Lodger's Tax Ordinance).

(D) Reports, statements, and returns shall be preserved for three years. Any person violating any of the provisions of this section shall be punished by a fine not exceeding \$300 or imprisonment not exceeding 90 days, or both; and if the offender be an official, employee or agent of the City, he or she shall be dismissed from office and be incapable of holding any public office or employment in the City for a period of five years.

(1988 Code, § 8-4-11) (Ord. 90-06, passed 9-24-1990; Ord. 2009-10, passed 9-28-2009; Ord. 2018-02, passed 3-12-2018) Penalty, see § 36.99

Statutory reference:

Tax receipt requirements, see § 3-38-17.1 NMSA 1975

§ 36.12 AUDITS.

(A) During an audit of the city conducted pursuant to state requirements, the auditor(s) will randomly select vendors to audit. At least one vendor, but not to exceed 20% of the total number of vendors, will be selected. Failure to comply with the auditor's request will subject the vendor to penalties as set forth in § 36.09 of this code.

(B) The City may also, at any time deemed appropriate by the City Clerk, audit any vendor to verify the amount of gross rent subject to the occupancy tax, and to ensure that the full amount of occupancy tax on the rent is collected from each vendor thus audited.

(C) A copy of each audit conducted under this section shall be filed annually with the Local Government Division of the Department of Finance and Administration.

(D) Procedures for audits under this section shall be established by the City Clerk and approved by the City Council.

(1988 Code, § 8-4-12) (Ord. 92-08, passed - -; Ord. 93-07, passed - -; Ord. 2009-10, passed 9-28-2009; Ord. 2018-02, passed 3-12-2018)

Statutory reference:

*Tax receipt requirements, see §§ 3-38-17.1
NMSA 1978*

§ 36.13 LODGER'S TAX COMMITTEE.

(A) *Composition.* The Lodger's Tax Committee (hereinafter called "Committee") shall consist of five members. The Mayor, with the advice and consent of the Governing Body, shall appoint the members. Two members shall be owners or operators of lodging subject to the occupancy tax within the Municipality. Two members shall be owners or operators of industries located within the Municipality that primarily provide services or products to tourists. One member shall be a resident of the Municipality who shall represent the general public.

(B) *Term and vacancy of members.* Persons appointed to the Lodger's Tax Committee shall serve two-year terms at the pleasure of the Mayor and the Governing Body. In the event a vacancy occurs in the Committee prior to the expiration of the term of a member, it shall be filled by appointment as herein provided, and the term of the replacement member shall expire at the end of the original term in which the vacancy occurred.

(C) *Appointment of members.* After the initial effective date of this section, and subject to approval of the City Council, the Mayor shall appoint two members of the Committee for terms to expire December 31, 1994, and three members of the

Committee shall be appointed for terms to expire December 31, 1995. Thereafter, all persons appointed shall serve two-year terms as described in division (B) hereof.

(D) *Removal of members.* Removal of a Committee member shall be by a majority vote of the Governing Body of the City.

(1988 Code, § 8-4-12) (Ord. 92-08, passed - -; Ord. 93-07, passed - -; Ord. 2009-10, passed 9-28-2009)

ENVIRONMENTAL GROSS RECEIPTS TAX

§ 36.25 IMPOSITION OF TAX.

There is imposed on any person engaging in business in this Municipality, for the privilege of engaging in business in this Municipality, an excise tax equal to 1/16% of the gross receipts reported or required to be reported by the person pursuant to the State Gross Receipts and Compensating Tax Act, Ch. 7, Art. 9 NMSA 1978, as it now exists or as it may be amended. The tax imposed under this subchapter is pursuant to § 7-19D-10 NMSA 1978 as it now exists or as it may be amended, and shall be known as the "Municipal environmental services gross receipts tax."

(1988 Code, § 8-5-1) (Ord. 90-07, passed - -)
Penalty, see § 36.99

§ 36.26 ADOPTION OF STATE PROVISIONS BY REFERENCE.

This subchapter hereby adopts by reference all definitions, exemptions, and deductions contained in the Gross Receipts and Compensating Tax Act, Ch. 7, Art. 9 NMSA 1978, as it now exists or as it may be amended.

(1988 Code, § 8-5-2) (Ord. 90-07, passed - -)

§ 36.27 SPECIFIC EXEMPTIONS.

No Municipal environmental services gross receipts tax shall be imposed on the gross receipts arising from:

(A) The transmission of messages by wire or other means from a point in the Municipality to another point outside the Municipality;

(B) Transporting persons or property for hire by railroad, motor vehicle, air transportation, or any other means from a point within the Municipality to another point outside the Municipality; or

(C) A business located outside the boundaries of a Municipality on land owned by that Municipality for which a gross receipts tax distribution is made pursuant to § 7-1-6.4.A.(3) NMSA 1978. (1988 Code, § 8-5-3) (Ord. 90-07, passed - -)

§ 36.28 DEDICATION.

Revenue from the Municipal environmental services gross receipts tax will be used for the purpose(s) listed as follows: for the acquisition, construction, operation, and maintenance of solid waste facilities, water facilities, wastewater facilities, sewer systems, and related facilities. (§ 7-19D-10.C. NMSA 1978) (1988 Code, § 8-5-4) (Ord. 90-07, passed - -)

§ 36.29 EFFECTIVE DATE.

The effective date of the Municipal environmental services gross receipts tax shall be January 1, 1980, unless an election is held pursuant to § 7-19B-3(A) NMSA 1978 (now repealed) on the question of disapproving this subchapter, in which case the effective date shall be either July 1 or January 1, whichever date occurs first after the expiration of three months from the date when the results of the election are certified to be in favor of the subchapter's adoption. (1988 Code, § 8-5-5) (Ord. 90-07, passed - -)

**MUNICIPAL INFRASTRUCTURE
GROSS RECEIPTS TAX****§ 36.40 IMPOSITION OF TAX.**

There is imposed on any person engaging in business in this Municipality, for the privilege of engaging in business in the Municipality, an excise tax equal to 1/8% of the gross receipts reported or required to be reported by the person pursuant to the State Gross Receipts and Compensating Tax Act, Ch. 7, Art. 9 NMSA 1978, as it now exists or as it may be amended. The tax imposed under this subchapter is pursuant to the Municipal Local Option Gross Receipts Tax Act as it now exists or as it may be amended and shall be known as the "Municipal infrastructure gross receipts tax." (1988 Code, § 8-6-1) (Ord. 92-06, passed - -; Ord. 2002-09, passed 9-10-2002) Penalty, see § 36.99

**§ 36.41 ADOPTION OF STATE PROVISIONS
BY REFERENCE.**

This subchapter hereby adopts by reference all definitions, exemptions, and deductions contained in the Gross Receipts and Compensating Tax Act, Ch. 7, Art. 9 NMSA 1978, as it now exists or as it may be amended. (1988 Code, § 8-6-2) (Ord. 92-06, passed - -; Ord. 2002-09, passed 9-10-2002)

§ 36.42 SPECIFIC EXEMPTIONS.

No Municipal infrastructure gross receipts tax shall be imposed on the gross receipts arising from:

(A) Transporting persons or property for hire by railroad, motor vehicle, air transportation, or any other means from a point within the Municipality to another point outside the Municipality;

(B) A business located outside the boundaries of a Municipality on land owned by that Municipality for which a gross receipts tax distribution is made pursuant to § 7-1-6.4.A.(3) NMSA 1978; or

(C) Direct broadcast satellite services.

(1988 Code, § 8-6-3) (Ord. 92-06, passed - -; Ord. 2002-09, passed 9-10-2002)

§ 36.43 DEDICATION.

Revenue from the Municipal infrastructure gross receipts tax will be used for the purpose(s) listed as follows: water or wastewater capital infrastructure improvements.

(1988 Code, § 8-6-4) (Ord. 92-06, passed - -; Ord. 2002-09, passed 9-10-2002)

§ 36.44 EFFECTIVE DATE.

The effective date of the Municipal infrastructure gross receipts tax shall be either January 1 or July 1, whichever date occurs first after the expiration of 3 months from the date this subchapter is adopted, unless an election is held on the question of approving the subchapter, in which case the effective date shall be either July 1 or January 1, whichever date occurs first after the expiration of three months from the date when the results of the election are certified to be in favor of the subchapter's adoption.

(1988 Code, § 8-6-5) (Ord. 92-06, passed - -; Ord. 2002-09, passed 9-10-2002)

§ 36.99 PENALTY.

(A) Violation of any provision of this chapter for which no other penalty is provided shall, upon conviction, be punishable as provided in § 10.99 of this Code.

(B) Any person violating any of the provisions of § 36.11 of this Code shall be punished by a fine not exceeding \$300 or imprisonment not exceeding 90 days or both; and if the offender be an official, employee, or agent of the City, he or she shall be dismissed from office and be incapable of holding any public office or employment in the City for a period of five years.

(1988 Code, § 8-4-11) (Ord. 90-06, passed 9-24-1990)

