

Chapter 3.08 - LODGERS' TAX

3.08.010 - Short title.

This chapter shall be known as and may be cited as "the lodgers' tax ordinance."

(Ord. 854 § (part), 1999: prior code § 14-45)

3.08.020 - 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 certain recreational and tourist-related attractions, facilities and events, as well as for acquiring, establishing and operating tourist-related attractions, facilities or transportation system as authorized in Section 3.08.140.

(Ord. 854 § (part), 1999: prior code § 14-46)

3.08.030 - Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

"Board" means the Advisory Board established herein to make recommendations to and advise the City Commission, keep minutes of its proceedings and submit its recommendations, advice, correspondence and other pertinent documents to the City Commission.

"City Clerk" means the City Clerk of Hobbs, New Mexico.

"Corporation" means a legally separate entity created by state law possessing its own Taxpayer Identification Number as provided by the Internal Revenue Service of the United States of America.

"Event(s)" means a single observable occurrence that is determined to take place on a given date or date range (limited to a time period not to exceed two (2) weeks) at a specific location.

"Gross taxable rent" means the total amount of rent paid for lodging, not including the State gross receipts tax or local sales taxes.

"Immediate surrounding area" means the extra-territorial planning jurisdiction of the City unless expanded by resolution of the City Commission.

"Lodging" means 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" means the rooms or other accommodations furnished by a vendor to a vendee by a taxable service of lodgings.

"Occupancy tax" means the tax on lodging authorized by the lodgers' tax act.

"Person" means a corporation, firm, other body corporate, partnership, limited liability company, or association; 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.

"Performer" means a paid or otherwise compensated or reimbursed professional speaker, musician(s), or comedian. Specifically excluded are unpaid sports teams, family members or relatives of the promoter or performer.

"Promotion" means production costs of a lodgers' tax event, limited to costs of performer fees, sound and lighting (associated with the performance).

"Rent" means 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" means 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 used for lodging.

"Tax-exempt Entity" means a corporation, as previously described, that is precluded from paying federal tax due to the type of entity organized under the Internal Revenue Code of the United States of America.

"Tourist" means a person who travels for the purpose of business, pleasure or culture to the City and the immediate surrounding area.

"Tourist-related events" means events as previously described that are planned for, promoted to and attended by tourists.

"Tourist-related facilities and attractions" means Facilities and attractions that are intended to be used by or visited by tourists.

"Tourists related transportation systems" means transportation systems that provide transportation for tourists to and from tourist-related facilities, attractions and events.

"Vendee" means a natural person to whom lodgings are furnished in the exercise of the taxable service of lodging.

"Vendor" means a person furnishing lodgings in the exercise of the taxable service of lodging.

(Ord. 854 § (part), 1999: prior code § 14-47)

(Ord. No. 1052, 12-19-2011; [Ord. No. 1064, 3-18-2013](#))

3.08.040 - Imposition of tax.

There is imposed an occupancy tax of five (5) percent of gross taxable rent for lodging within the municipality paid to vendors.

(Ord. 934, 2005: Ord. 854 § (part), 1999: prior code § 14-48)

3.08.050 - Licensing.

- A. 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. Applicants for a lodgers' tax vendor's license shall in addition to the business registration required by Section 5.04.050 of this Code 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 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 or others, and a statement identifying the license issued, to whom issued, the authority issuing, and the period for which issued; also the identification number provided by the Bureau of Revenue of the State of New Mexico;
 4. The nature of the business of the vendor and to what extent, if any, his or her business is exempt from the lodgers' tax;
 5. Other information reasonably necessary to effect a determination of eligibility for such license.
- C. 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. An applicant who is dissatisfied with the decision of the City Clerk may appeal the decision to the City Commission 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. The matter shall be referred to the City Commission for hearing at a regular or special meeting in the usual course of business. The decision of the City Commission 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 City Commission shall be deemed final.
- E. If the City Commission finds for the applicant, the City Clerk shall issue the appropriate license or other notice conforming to the decision made by the City Commission.

(Ord. 854 § (part), 1999: prior code § 14-49)

3.08.060 - Exemptions generally.

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
- G. If the taxable premises does not have at least three (3) rooms or three (3) other units of accommodations for lodging.

(Ord. 854 § (part), 1999: prior code § 14-50)

3.08.070 - Collection—Reporting procedure.

- 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 chapter and shall be charged separately from the rent fixed by the vendor for the lodgings. Every vendee shall be given a bill, invoice, receipt or other statement or memorandum of the price, charge or rent payable, upon which the lodgers' tax shall be stated, charged and shown separately.
- C. 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 or her respective place of business.
- D. 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 paid to him or her in the preceding calendar month and shall remit the proceeds of the lodgers' tax to the City Treasurer. The report shall include sufficient information to enable the City to audit the report and shall be verified on oath by the vendor. Occupancy taxes not paid by the twenty-fifth of the month as provided herein shall be considered delinquent.

(Ord. 854 § (part), 1999: prior code § 14-51)

3.08.080 - Records—Duties of the vendor.

Every 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 Hobbs, shall be open to the inspection of the City during reasonable hours, and shall be retained for three (3) years.

(Ord. 854 § (part), 1999: prior code § 14-52)

3.08.090 - Failure to make return—Computation, civil penalty and notice, collection of delinquencies—Occupancy tax is a lien.

- A. Each 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 or her failure to collect the tax or otherwise. He or she shall be liable for the tax plus a civil penalty equal to the greater of ten (10) percent 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. 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 to exceed one (1) percent a month. If the City attempts collection through an attorney, or the City Attorney, for any purpose with regard to this ordinance, 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. The occupancy tax imposed by a municipality constitutes a lien in favor of the municipality upon the personal and real property of the vendor providing lodgings. 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.
- D. 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. 854 § (part), 1999: prior code § 14-53)

3.08.100 - Criminal penalties.

Any person found guilty of violating the provisions of the lodgers' tax ordinance for failure to pay the tax, to remit proceeds thereof to the municipality, or properly to account for any lodging and tax proceeds pertaining thereto, shall be punished by a fine of not more than five hundred dollars (\$500.00) or by imprisonment in the City Jail for a term of not more than ninety (90) days, or by both such fine and imprisonment.

(Ord. 854 § (part), 1999: prior code § 14-54)

3.08.110 - Refunds and credits.

If any person believes he or she has made payment of any lodgers' tax in excess of that for which he or she was liable, he or she may claim a refund thereof by directing a written claim for refund to the City Clerk, no later than ninety (90) days from the date payment was made. 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 City Commission.

(Ord. 854 § (part), 1999: prior code § 14-55)

3.08.120 - Vendor audits.

- A. The City Commission shall conduct random audits to verify full payment of occupancy tax receipts.
- B. The City Commission shall determine each year the number of vendors within the municipality to audit.
- C. The audit(s) may be performed by any designee of the City Commission. A copy of the audit(s) shall be filed annually with the Local Government Division of the Department of Finance and Administration.

(Ord. 854 § (part), 1999: prior code § 14-56)

3.08.130 - Lodgers' Tax Advisory Board—Duties.

- A. The Mayor shall appoint a five-member Advisory Board that consists of two (2) members who are owners or operators of lodgings subject to the occupancy tax within the municipality, two (2) members who are owners or operators of industries located within the municipality that primarily provide services or products to tourists and one (1) member who is a resident of the municipality and represents the general public. All members of the Lodgers' Tax Advisory Board shall qualify for office by taking an oath to faithfully discharge the duties of the office.
- B. The Advisory Board shall serve at the pleasure of the City Commission. The Board shall advise the City Commission on the expenditure of funds authorized by Subsection 3.08.140(A) of this chapter for advertising, publicizing, and promotion of tourist related attractions, facilities and events.
- C. The City Commission shall directly determine expenditures of remaining funds authorized by Subsection 3.08.140(B) of this chapter.
- D. The Advisory Board may make the final determination on the expenditure of funds authorized by Subsection 3.08.140(A) of this chapter, up to the amount of ten thousand dollars (\$10,000.00). The Advisory Board shall submit to the City Commission recommendations for the expenditures of funds authorized by Section 3.08.140A of this chapter in excess of ten thousand dollars (\$10,000.00).

- E. The members of the Lodgers' Tax Advisory Board shall serve without compensation as members during the term for which they are appointed, or until their removal or resignation, and until their successors are duly appointed and qualified. The City Commission may remove a member of the Lodgers' Tax Advisory Board for cause or for failure to remain qualified to serve, and shall fill any vacancy on the Lodgers' Tax Advisory Board that may occur.
- F. The Lodgers' Tax Advisory Board shall meet regularly at least quarterly, on a regular date to be designated by the Lodgers' Tax Advisory Board; provided, that a special meeting may be called at any time by the written request to the Chairperson of the Lodgers' Tax Advisory Board by three (3) members, or on call by the Chairperson with the written consent of all members of the Board. All meetings, whether regular or special, shall be open to the public, as provided by the laws of the State. A majority of the whole membership shall constitute a quorum, and no action can be had in the absence of a quorum.

(Ord. 948, 2006: Ord. 854 § (part), 1999: prior code § 14-57)

(Ord. No. 1013, 5-4-2009, eff. 7-1-2009; Ord. No. 1029, 2-16-2010)

3.08.140 - Eligible uses of lodgers' tax proceeds.

- A. Not less than one-half (½) of the proceeds of such tax shall be used for the purposes of advertising, publicizing and promoting tourist-related events and facilities. Eligible uses of lodgers' tax proceeds shall not include administrative office overhead or expenses (i.e., Web site costs) and the purchase of real property or tangible personal property. Eligible uses only consist of expenditures that facilitate the purpose of the lodgers' tax ordinance as stated in Section 3.08.020 of this chapter. Lodgers' tax proceeds shall be awarded on the basis of stimulating the circulation of proceeds by increasing the number of hotel patrons, thereby increasing the lodgers' tax receipts.
- B. Any balance of the occupancy tax proceeds not used for the purposes set forth in subsection A of this section may be used by the City to defray the costs of:
 1. Collecting and otherwise administering the tax, including the performance of audits required by the Lodgers' Tax Act pursuant to guidelines issued by the Department of Finance and Administration;
 2. Establishing, operating, purchasing, constructing, otherwise acquiring, re- constructing, 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 municipality or Lea County;
 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 N.M.S.A. 1978;
 4. Advertising, publicizing and promoting tourist-related attractions, facilities and events of the municipality or Lea County and tourist facilities or attractions within the immediate surrounding area;
 5. Providing police and fire protection and sanitation service for tourist-related events, facilities and attractions located in the municipality or Lea County; or
 6. Any combination of the foregoing purposes or transactions stated in this section, but for no other municipal or county purpose.

(Ord. 973, 2007: Ord. 854 § (part), 1999: prior code § 14-58)

(Ord. No. 1052, 12-19-2011)

3.08.145 - Allocation of proceeds.

1. At least fifteen (15) percent of lodgers' tax proceeds shall fund public safety and city-incurred sanitation costs associated with lodgers' tax events, not to include necessary private security expenses, based on the scope of the event at the discretion of the City Manager.
2. Per Section 3-38-15 NMSA, 1978 Compilation, as amended, a minimum of fifty (50) percent of the lodgers' tax proceeds generated in Lea County as a Class A county must be used for advertising and promotion and such fifty (50) percent portion may not be accumulated beyond two (2) years nor used for any other purpose. Once each year the Lodgers' Tax Board shall recommend general allocations or events for uses of said fifty (50) percent minimum.
 - a. The City will allocate up to twenty (20) percent for the advertising, publicizing and promotion of tourist-related attractions and events, by issuing an annual request for proposals. Eligible organizations shall include non-profit, for-profit and public entities, excluding local governments. Maximum awards for non-profit and for-profit entities cannot exceed \$25,000 per event. In no case shall funds be allocated to individual persons.
 - b. The City will allocate up to twenty-five (25) percent of lodgers' tax proceeds for the support and promotion of the Lea County Airport Commercial Air Service at Lea County Airport.
 - c. At least forty (40) percent of lodgers' tax proceeds shall fund the advertising, marketing, publicizing, promotion of tourist-related attractions, facilities, community, and events for the City of Hobbs and Lea County.
3. The Lodgers' Board is hereby authorized to approve expenditures for smaller events of ten thousand dollars (\$10,000.00) or less and make recommendations to the City Commission for expenditures of greater amounts for a single event or purpose; such events needing approval prior to the next scheduled Lodgers' Tax Board meeting or, if a quorum cannot be obtained, may be approved by the City Manager.
4. Second and subsequent years funding regarding for-profit events or those charging a fee, must be reviewed by the Commission, since such events are expected to become self-sustaining over time and require less or no lodgers' tax subsidy.

(Ord. No. 1013, 5-4-2009, eff. 7-1-2009; Ord. No. 1029, 2-16-2010; Ord. No. 1052, 12-19-2011; [Ord. No. 1064, 3-18-2013](#))

3.08.150 - Contracting for services.

- A. The City Commission may contract for the management of programs and activities funded with revenue from the lodgers' tax. The governing body shall require periodic reports to the governing body, at least quarterly, listing the expenditures for those periods. Within ten (10) days of receiving the reports, the governing body shall furnish copies of them to the Advisory Board. 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.
- B. A person or governmental agency with whom the municipality contracts under this section 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 shall make such records available for inspection.
- C. The occupancy tax revenue spent for a purpose authorized by the Lodgers' Tax Act (3-38-13 to 3-28-24 N.M.S.A. 1978) may be spent for day-to-day operations, supplies, salaries, office rental, travel expenses and other administrative costs only if those administrative costs are incurred directly for that purpose.

D. A person or government agency with whom the municipality contracts under this section may subcontract with the approval of the governing body of the municipality. A subcontractor shall be subject to the same terms and conditions as the contractor regarding separate financial accounts, periodic reports and inspection of records.

(Ord. 854 § (part), 1999: prior code § 14-59)

(Ord. No. 1013, 5-4-2009, eff. 7-1-2009; Ord. No. 1029, 2-16-2010)