

STATE OF NEW MEXICO } SS.
County of Luna

I certify that this instrument was filed
for record at 2:47 P. M.

FEB 15 2005

ORDINANCE NO. 2

AS AMENDED

(AMENDMENT NO. 5)

Reception No. 2005-01386

Amelia Rodriguez
Karan Sawyer, County Clerk Deputy

8 pgs.

FURTHER AMENDING LODGERS' TAX ORDINANCE NO. 2, WITH RESPECT TO SECTION 4 THEREOF, "IMPOSITION OF TAX" INCREASING TO FIVE PERCENT (5%).

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LUNA COUNTY, NEW MEXICO:

SECTION 1. This ordinance shall be known as and may be cited as "THE LODGERS' TAX ORDINANCE."

SECTION 2. PURPOSE. The purpose of this ordinance is to impose a tax which will be borne by transient persons using commercial lodging accommodations, which tax will provide revenues for:

- A. Collecting and otherwise administering the tax;
- B. Establishing, constructing, purchasing, otherwise acquiring, reconstruction, extending, bettering or otherwise improving fairgrounds, exposition buildings, fieldhouses, auditoriums, convention halls or other convention facilities, and acquiring improvements incidental thereto;
- C. Equipping and furnishing such recreational facilities of the county;
- D. Acquiring a suitable site, grounds, or other real property or any interest therein for such recreational facilities of the county;
- E. The principal of, and interest on, any prior redemption premiums due in connection with and any other charges pertaining to revenue bonds authorized by Sections 3-28-23 or 3-28-4 N.M.S.A. 1978 Compilation;
- F. Advertising, publicizing and promoting such recreational facilities of the county and tourist facilities therein; or
- G. Any combination of the foregoing purposes or transactions stated in this section.

SECTION 3. DEFINITIONS. As used in the Lodgers' Tax Ordinance:

- A. "Gross taxable rent" means the total amount of rent paid for lodging;
- B. "Lodging" means the transaction of furnishing rooms or other accommodations by a vendor to a vendee who for a rent, uses, possesses or has the right to use or possess any room or rooms or other units of accommodations in or at taxable premises;
- C. "Lodgings" means the room or other accommodations furnished by a vendor to a vendee by the taxable service of lodgings;
- D. "Occupancy tax" means the tax on lodging, authorized by the Lodger's Tax Ordinance;
- E. "Person" means a corporation, firm, other body corporate, partnership, association or individual, 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;
- F. "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 Ordinance;
- G. "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;
- H. "Vendee" means a natural person to whom lodgings are furnished in the exercise of the taxable service of lodging;
- I. "Vendor" means a person furnishing lodgings in the exercise of the taxable service of lodging; and
- J. "County Clerk" means the County Clerk of Luna County or other designated representatives of the County Clerk as the case may be;

SECTION 4. IMPOSITION OF TAX. There is hereby imposed an occupancy tax of revenue of five percent (5%) of gross taxable rent for lodging paid to vendors on and after _____, 2005 (thirty days after recording of ordinance as amended).

01386

SECTION 5. EXEMPTIONS. The occupancy tax shall not apply:

- A. If the vendee:
 - (1) has been a permanent resident of the taxable premises for a period of at least thirty 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 consecutive days.
- B. If the rent paid by a vendee is less than two dollars 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 as 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 do not have at least three rooms or three other units of accommodations for lodgings.
- H. Taxable premises located within the corporate limits of a municipality.

SECTION 6. LICENSING.

A. No vendor shall engage in the business of providing lodging in the County of Luna, other than within the corporate limits of a municipality, who has not first obtained a license as provided in this section.

B. Applicants for a vendor's license shall submit an application to the County Clerk stating:

- (1) The name of the vendor including identification of any person, as defined in this ordinance, who owns or operates, or both owns and operates, a

01386

place of lodgings and the name or trade names under which 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 schedules of rates therefore,

(3) A description of other facilities provided by 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 the period for which issued, if applicable, and the identification numbered provided by the Bureau of Revenue of the State of New Mexico.

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

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

C. The County Clerk shall review applications for license within ten (10) days of receipt thereof and grant the license in due course if he finds the applicant is doing business subject to the Lodger's Tax.

D. If the County Clerk finds that the applicant is not qualified to do business subject to the Lodger's Tax, he shall not more than ten (10) days after receipt of the application, advise the applicant of his decision and give the reasons therefore. The notice of such 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 Deming on the date thereof.

01386

E. If the County Clerk finds the applicant not exempt under the terms of the Lodger's Tax Ordinance, he shall not more than ten (10) days after receipt of the application, advise the applicant of his decision and give the reasons therefore.

F. An applicant who is dissatisfied with the decision of the County Clerk may appeal the decision to the Board of County Commissioners by written notice to the County of such appeal to be made within fifteen (15) days of the date of the decision of the County Clerk on the application. The matter shall be referred to the Board of County Commissioners for hearing at a regular or special meeting in the usual course of business. The decision of the Board of County Commissioners made thereof shall be expressed in writing and be communicated in the same manner as the decision of the Board of County Commissioners is transmitted. The action of the Board of County Commissioners shall be final.

G. If the Board of County Commissioners finds for the applicant, the County Clerk shall issue the appropriate license or other notice conforming to the decision made by the Commission.

SECTION 7. COLLECTION OF THE TAX-REPORTING.

A. Every vendor providing lodgings shall collect the tax thereon on behalf of the County, and shall act as a trustee thereof.

B. The tax shall be collected from vendees in accordance with the Lodgers' Tax Ordinance and shall be charged separately from the rent fixed by the vendor for the lodgings.

C. On or after July 5, 1976, each vendor licensed under the ordinance shall be liable to Luna County for the tax provided herein on the rent paid for lodging.

01386

D. Each vendor shall make a report by the twentieth (20th) day of each month on forms provided by the County Clerk of the receipts for lodging paid to him in the preceding calendar month and shall remit therewith payment of the amounts due to the County. The report shall include sufficient information to enable the County to audit the report and shall be verified on oath by the vendor.

SECTION 8. DUTY OF VENDOR. 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 Luna County in accordance with acceptable accounting practices, and shall be open to inspection of the County during reasonable hours and shall be retained for three (3) years.

SECTION 9. FAILURE TO PAY TAX; FAILURE TO MAKE RETURN; COMPUTATION; PENALTY; NOTICE.

A. If any vendor fails to make a return as required by the Lodgers' Tax Ordinance or makes the return without paying any tax then due, he shall be liable for the tax and a penalty not exceeding ten percent (10%) thereof, but in an amount not less than ten dollars (\$10.00). Within ten (10) days thereafter, the County shall give the delinquent vendor written notice of such delinquency, which notice shall be served personally or by certified mail.

B. If the tax payments, along with penalty payments, are not made by the vendor within fifteen (15) days of such notice provided for in Section 9A, the County Clerk shall refer the matter to the District Attorney who may bring an action in law or equity in the district court for the collection of any amounts due, including without limitation, any penalties thereon, interest on the unpaid principal at the legal rate of interest then in

01386

effect, the costs of collection and reasonable attorney's fees incurred in connection therewith. At the same time and without further notice and regardless of whether an action as set forth above has been commenced, the County Clerk is specifically authorized to revoke the occupation license provided for in Section Six of this Ordinance until payment of any tax and penalty due herein is received.


SECTION 10. PENALTY CLAUSE. Any vendor who violated the provisions of the Lodgers' Tax Ordinance by failure to pay the tax, to remit the proceeds thereof to the County, to account properly for any lodging tax proceeds pertaining thereto, or who continues to operate a place of business after revocation of his occupation license as provided for in Section 9B, shall be subject to penalties of not to exceed ninety (90) days in jail or Three Hundred Dollars (\$300.00) fine for each violation.

SECTION 11. SEVERABILITY. If any part or application of this ordinance is held invalid, the remainder of its application to other situations or persons shall not be affected.

PASSED, ADOPTED AND APPROVED this 11 day of February,
2005.

LUNA COUNTY
BOARD OF COUNTY COMMISSIONERS


Dennis Armijo, Chairman


Member

01386

Jan P. Smyer
Member

ATTEST:

Karen Smyer
Karen Smyer, County Clerk



01386