

**LUNA COUNTY, NEW MEXICO
ORDINANCE 2; SIXTH AMENDMENT**



AN ORDINANCE IMPOSING A LODGER'S TAX

WHEREAS, pursuant to Section 4-38-1, NMSA 1978, the powers of a county as a body politic and corporate shall be exercised by a Board of County Commissioners; and,

WHEREAS, pursuant to Section 3-38-21, NMSA 1978, a municipality or county imposing an occupancy tax may use the proceeds from the occupancy tax to defray costs of: collecting and otherwise administering the occupancy tax, including the performance of audits required by the Lodgers' Tax Act pursuant to guidelines.

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

Section 1 - Purpose

1.1 The purpose of this Ordinance is to impose a tax which will be known by persons using commercial lodging accommodations which will provide revenues for the purpose of advertising, publicizing and promoting facilities authorized in Section 8, tourist attractions, and acquisition, construction and maintenance of tourist attractions and recreational facilities.

Section 2 - Definitions

2.1 "Board" means the Luna County Board of County Commissioners.

2.2 "Clerk" means the County Clerk for the County of Luna, New Mexico.

2.3 "Gross Taxable Rent" means the total amount of rent paid for lodging, not including the state gross receipts tax or local sales taxes.

2.4 "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 a taxable premise.

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

2.6 "Occupancy Tax" means the tax on a lodging authorized by the Lodger's Tax Act.

2.7 "Person" means a corporation, firm, other body corporate, partnership, association or individual. Person includes an executor, administrator, trustee, receiver or other representative appointed according to law and acting in a representative capacity. The term "person" 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.

LUNA COUNTY-NM
BERENDA MCHRIGHT, CLERK
202304794
1 of 7
12/14/2023 11:12:30 AM
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2.8 “Planning Department” (Department) is the Department responsible for the administration and enforcement of this Ordinance.

2.9 “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 Lodger's Tax Act.

2.10 “Taxable Premises” means a hotel, apartment, apartment hotel, apartment house, lodge, lodging housing, 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, RV park, tourist camp, cabin, or any other premises used for lodging.

2.11 “Tourist” means a person who travels for the purpose of business, pleasure or culture to a municipality or county imposing an occupancy tax.

2.12 “Tourist-Related Events” means events that are planned for, promoted to and attended by tourists.

2.13 “Tourist-Related Facilities” and attractions means facilities and attractions that are intended to be used by or visited by tourists.

2.14 “Tourist-Related Transportation Systems” means transportation systems that provide transportation for tourists to and from tourist-related facilities, attractions and events.

2.15 “Treasurer” means the County Treasurer for the County of Luna, New Mexico.

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

2.17 “Vendor” means a person furnishing lodgings in the exercise of the taxable service of lodging.

Section 3 - Imposition of Tax

3.1 The Board of County Commissioners, pursuant to Section 3-38-13, et seq., NMSA 1978, hereby imposes an occupancy tax on vendors for gross taxable rent on lodging within the county and outside of the limits of all municipalities. The amount of the tax imposed under this article is five percent of gross taxable rent.

Section 4 – Licensing

4.1 No vendor shall engage in the business of providing lodging in the County who has not first obtained a license as provided in this section.

4.2 Applicants for a vendor's license shall submit an application to the Department stating:

4.2.1 The name of the vendor including identification of any person, as defined in this ordinance, who owns or operates or both a place of lodging, and the name or trade names under which the vendor proposes to do business, and the post office address thereof;

4.2.2 A description of the facilities including the number of rooms and the usual schedule of rates;

4.2.2 A description of other facilities provided by vendor or other 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, also the identification number provided by the bureau of revenue of the State;

4.2.4 The nature of the business practices of the vendor and to what extent, if any, his business is exempt from the lodger's tax;

4.2.5 Other information reasonably necessary to effect a determination of eligibility for such license.

4.3 The Department shall review applications for license within ten days of receipt thereof, and grant the license in due course if the applicant is doing business subject to the lodger's tax.

4.4 If the Department finds the applicant is not qualified to do business subject to the Lodger's tax, they shall, not more than ten (10) days after receipt of the application, advise the applicant of the 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 provided.

4.5 If the Department finds the applicant not exempt under the terms of the Lodger's Tax Ordinance, they shall, not more than ten (10) days after the receipt of the application, advise the applicant of the decision and give the reason therefor in the manner listed above.

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

4.7 If the Board finds for the applicant, the Department shall issue the appropriate license or other notice conforming to the decision made by the Board.

Section 5 – Exemptions

The Occupancy tax shall not apply:

5.1. If a vendee:

5.1.1 Has been a permanent resident of the taxable premises for a period of at least 30 consecutive days; or

5.1.2 Enters into or has entered into a written agreement for lodgings at the taxable premises for a period of at least 30 consecutive days;

5.2 If the rent paid by a vendee is less than \$2.00 a day;

LUNA COUNTY-NM
BERENDA MCWRIGHT, CLERK
202304794
3 of 7
12/14/2023 11:12:30 AM
BY PAULAG

5.3 To lodging accommodations at religious, charitable, educational or philanthropic institutions, including without limitation such accommodations at summer camps operated by such institutions;

5.4 To lodging accommodations at institutions of the federal government, the state or any political subdivision thereof;

5.5 To clinics, hospitals, or other medical facilities;

5.6 To privately owned and operated convalescent homes, or homes for the aged, infirm, indigent or chronically ill; and

5.7 If the vendor does not offer at least three rooms within or attached to a taxable premise for lodging or at least three other premises for lodging or a combination of these within the taxing jurisdiction.

Section 6 - Collection of the tax and reporting procedures

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

6.2 The tax shall be collected from vendees and shall be charged separately from the rent fixed by the vendor for the lodgings.

6.3 Each vendor licensed under this ordinance shall be liable to the County for the tax provided herein on the rent paid for lodging at his respective place of business.

6.4 Each vendor shall, by the 20th of each month, complete, sign and submit, together with the tax payment, the vendor's monthly CRS gross receipts tax form and the County lodger's tax report.

6.5 Each 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 7 - Refunds and credits

7.1 If any person believes he has made payment of any lodger's tax in excess of that for which he is liable, he may claim a refund thereof by directing to the Department, not later than ninety (90) days from the date payment was made, a written claim for refund. Every claim for refund shall state the nature of the person's complaint and the affirmative relief requested. The Department will verify the claim and either allow the claim in whole or in part or deny it. If they allow it; in part or in whole, they must defer to the Treasurer and refund will be made. Any refunds of tax and interest erroneously paid and amounting to \$100.00 or more may be made only with the approval of the Board.

LUNA COUNTY-NM
BERENDA MCHRIGHT, CLERK
202304794
4 of 7
12/14/2023 11:12:30 AM
BY PAULAG

Section 8 - Confidentiality of return

8.1 It is unlawful for any employee of the county to reveal to any individual other than another employee of the county any information contained in the return of any taxpayer, except to a court of competent jurisdiction in response to an order thereof in an action relating to taxes to which the county is a party, and in which the information sought is material to the inquiry; to the taxpayer himself or to his authorized representative; and in such manner, for statistical purposes, the information revealed is not identified as applicable to any individual taxpayer.

Section 9 - County audit

9.1 Each vendor shall be subject to an audit, at the discretion of the Treasurer, upon reasonable notice, in order to verify the accuracy of information contained in the report required in Section 6.

Section 10 - Eligible uses of proceeds

10.1 A minimum of 1½ percent of the five percent tax shall be used for the purpose of advertising, publicizing, or promoting tourist attractions in the county; as well as the county fairgrounds, exposition buildings, field houses, auditoriums, welcome centers, tourist information centers, museums, performing art facilities, convention halls, and other convention activities in the county.

10.2 The remaining 3½ percent of the occupancy tax may be used to defray the costs of:

10.2.1 Collecting and otherwise administering the occupancy tax, including the performance of audits required by the Lodger's Tax Act pursuant to guidelines issued by the department of finance and administration;

10.2.2 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, attractions or transportation systems of the municipality, the county in which the municipality is located or the county.

Section 11 - Limitations on the use of proceeds

11.1 The following portions of the proceeds from the occupancy tax shall be used only for advertising, publicizing, and promoting tourist-related attractions, facilities and events:

11.1.1 If the occupancy tax imposed is more than two percent and the county is not a Class A county, not less than one-half of the proceeds from the first three percent of the tax and not less than one-fourth of the proceeds from the tax in excess of three percent shall be used for these purposes.

11.1.2 The proceeds from the occupancy tax in excess of the amount required to be used for advertising, publicizing and promoting tourist-related attractions, facilities and events may be used for any purpose authorized in Section 3-38-21, NMSA 1978.

11.1.3 The proceeds from the occupancy tax that are required to be used to advertise, publicize and promote tourist-related attractions, facilities and events shall be used within

two years of the close of the fiscal year in which they were collected and shall not be accumulated beyond that date or used for any other purpose.

Section 12 - Failure to pay tax; failure to make return; computation, penalty, notice and severability

12.1 If any vendor makes a return as required by this article without paying the tax due, he shall be liable for the tax and a penalty equal to ten percent thereof, but not less than a \$10.00 penalty in addition to the tax, without notice from the County with regard thereto. Any penalty so assessed shall be added to the principle amount of the tax due; the entire balance of the tax plus penalty shall then accrue interest at the rate of one percent per month. This represents an annual percentage rate of twelve (12) percent. Interest shall be assessed fifteen (15) days after receipt of the return, and shall be computed from the date of receipt. The Treasurer will give the delinquent vendor written notice of the estimated tax penalty and interest, mailed to the vendor's local address.

12.2 If any vendor refuses or neglects to make a return and pay the tax as required by this article, the Treasurer or designee 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 period with respect to which vendor 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 ten percent thereof, but not less than \$10.00. Any penalty so assessed shall be added to the principle amount of the tax due; the entire balance of the tax plus penalty shall then accrue interest at the rate of one percent per month. This represents an annual percentage rate of twelve (12) percent. Interest shall be assessed fifteen (15) days after receipt of the return, and shall be computed from the date of receipt. The Treasurer will give the delinquent vendor written notice of the estimated tax penalty and interest, mailed to the vendor's local address.

12.3 If payments are not received within fifteen (15) days of the mailing of the notice, the Treasurer may bring an action in law or equity in a court of law for the collection of any amounts due, including without limitation, penalties thereon, interest on the unpaid principle balance plus penalties at the rate of one percent per month. This represents and annual percentage rate of twelve (12) percent. The County may attempt collection through an attorney or County attorney, and all other expenses incurred in connection therewith. Any sums so paid to an attorney or to the County attorney, and all costs and other expenses, shall accrue interest at the same rate, and in the same manner, as interest assessed on the tax-plus-penalty, and the vendor shall be liable to the County therefor. Interest shall be computed from the date of payment to the attorney or County attorney. At the same time and without further notice and regardless of whether an action as set forth above has been commenced, the Department is specifically authorized to revoke the license provided for in section three (3) of this Ordinance until payment of any tax and penalty due herein is received.

12.4 Any vendor who violates the provisions of this Ordinance by failure to pay the tax, to remit the proceeds thereof to the County, to account properly for any lodging tax proceeds thereto, or who continues to operate a place of business after revocation of his license as provided for in Section 12, shall be subject to penalties not to exceed ninety (90) days in jail or \$300.00 fine for each violation.

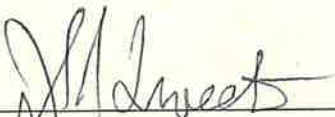
12.5 If any part of this Ordinance is held invalid, the remainder of its application to other persons or situations shall not be affected.

EFFECTIVE DATE. -- Effective date of this Ordinance shall be thirty (30) days after adoption and recording

PASSED, ADOPTED AND APPROVED this 14th day of December, 2023.

LUNA COUNTY BOARD OF COMMISSIONERS


ATTEST:



**John S. Sweetser, Chairperson
Commissioner, District 3**




Berenda McWright, County Clerk



**Ray J. Trejo,
Commissioner, District 2**

LUNA COUNTY-NM
BERENDA MCWRIGHT, CLERK
202304794
7 of 7
12/14/2023 11:12:30 AM
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**Colette M. Chandler,
Commissioner, District 3**

