

San Miguel County



Lodgers' Tax

&

Short-Term Rental Ordinance

04122022-P&Z

Table of Contents

▪ Section 1: Findings.....	Page 3
▪ Section 2: Purpose.....	Page 4
▪ Section 3: Definitions.....	Page 4
▪ Section 4: Imposition of Tax.....	Page 6
▪ Section 5: Use of Tax Proceeds.....	Page 6
▪ Section 6: Exemptions.....	Page 7
▪ Section 7: Licensing.....	Page 8
▪ Section 8: Short-Term Rentals.....	Page 9
▪ Section 9: Collection of the Occupancy Tax; Reporting.....	Page 13
▪ Section 10: Duty of Vendor.....	Page 14
▪ Section 11: Audit of Vendors.....	Page 14
▪ Section 12: Failure to File Report; Failure to Pay Tax; Failure to Make Return; Computation Civil Penalty, and Notice; Collection of Delinquencies Occupancy Tax is a Lien.....	Page 15
▪ Section 13: Enforcement.....	Page 16
▪ Section 14: Lodgers' Tax Advisory Board, Creation.....	Page 17
▪ Section 15: Operation of the Advisory Board.....	Page 17
▪ Section 16: Procedures for Entities Requesting Lodgers' Tax Funds, Replacement of Unretrieved, Encumbered Funds to Unencumbered Status.....	Page 18
▪ Section 17: Disclosure of Information.....	Page 19
▪ Section 18: Contracting for Services.....	Page 20
▪ Section 19: Criminal Penalties.....	Page 20
▪ Section 20: Financial Reporting.....	Page 21
▪ Section 21: Severability.....	Page 21
▪ Section 22: Repealer.....	Page 21
▪ Section 23: Effective Date.....	Page 21

San Miguel County Lodgers' Tax Ordinance ORDINANCE 04122022-P&Z

AN ORDINANCE IMPOSING AN OCCUPANCY TAX ON REVENUES FOR PERSONS USING TOURIST-RELATED LODGING FACILITIES IN SAN MIGUEL COUNTY INCLUDING SHORT-TERM RENTALS; UTILIZING REVENUE FOR THE PURPOSE OF PROMOTING TOURISM WITHIN SAN MIGUEL COUNTY; PROVIDING FOR EXEMPTIONS, LICENSING, RECORD KEEPING PROCEDURES; COLLECTION OF TAXES, REPORTING, DUTIES OF VENDORS, AUDITS, AND ENFORCEMENT; REAFFIRMING THE LODGERS' TAX ADVISORY BOARD; REQUIRING THE DISCLOSURE OF INFORMATION; PROVIDING FOR PENALTIES; SETTING REQUIREMENTS FOR FINANCIAL REPORTING; PROVIDING FOR THE SEVERABILITY OF PARTIES HEREOF, THE REPEAL OF ORDINANCES IN CONFLICT; AND FOR AN EFFECTIVE DATE.

Section 1: Findings

WHEREAS, the Board of County Commissioners of San Miguel County, New Mexico, desires to amend and re-enact its Ordinance imposing a Tax on persons using tourist-related lodging facilities; and

WHEREAS, the practice of renting dwellings and rooms within dwellings as Short-Term Rental Units has become widespread in the United States and within San Miguel County; and

WHEREAS, the practice raises a number of issues including whether Short-Term Occupancy endangers the tourism and hotel industry, whether the owners of dwellings offered for short-term rental are paying their share of Lodger's Tax and Gross Receipts Tax, whether life safety issues exist with Short-Term Rentals and how the practice will affect neighborhoods and the historic districts, property values and infrastructure; and

WHEREAS, it is therefore necessary to address these issues before short term rentals create negative consequences for our community by creating herein reasonable and sensible regulation of the practice; and

WHEREAS, the revenue from such imposition of Tax serves to promote and publicize tourist-related attractions, facilities, and events within the County of San Miguel; and

WHEREAS, the Board of County Commissioners of San Miguel County, New Mexico, finds that enacting the San Miguel County Lodgers' Tax Ordinance will serve to promote the prosperity, order, comfort and convenience of the County of San Miguel and its residents.

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of San Miguel County, New Mexico, that the Lodgers' Tax Ordinance be as follows:

Section 2: Purpose

The purpose of this Ordinance is to impose and provide for the management of a Tax, which will be accepted by persons using tourist-related lodging accommodations, which will provide revenues for the purpose of advertising, publicizing, and promoting county tourist-related attractions, facilities and events, and acquiring, establishing and operating tourist-related facilities, attractions or transportation systems, as authorized in Section 4 of this Ordinance.

Section 3: Definitions

As used in this Ordinance:

1. "Advisory Board" means the Lodgers' Tax Advisory Board or Board established herein to make recommendations and serve as an advisory group to the Board of County Commissioners of San Miguel County, keep minutes of its proceedings and submit its recommendations, correspondence, follow the Open Meetings Act and other pertinent documents to the staff and County Commission.
2. "County" or "San Miguel County" means all parts of the County of San Miguel outside the incorporated units of any municipality within the County of San Miguel.
3. "County Commission" means the elected Board of County Commissioners of the San Miguel County, New Mexico.
4. "County Clerk" means the County Clerk of San Miguel County, New Mexico.

5. "County Manager" means the chief executive officer of San Miguel or his or her designee which may include the County Clerk, the County Treasurer, County Finance Department or other designated representatives of the County Manager.
6. "Gross taxable rent" means the total amount of rent paid for lodging, not including the state gross receipts or a local sales tax.
7. "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.
8. "Lodgings" means the rooms or other accommodations furnished by a Vendor to a Vendee by a taxable service of lodging(s).
9. "Marketplace Provider" means a person who facilitates the rental of lodging by:
 1. Advertising the lodging by any means, whether physical or electronic, including by internet website, online booking platform, catalog, television or radio broadcast, and
 2. Collecting payment from the vendee and transmitting that payment to the vendor either directly or indirectly through agreements or arrangements with the vendor, regardless of whether the marketplace provider receives compensation or consideration in exchange for the marketplace provider's services.
10. "Occupancy Tax" or "Lodgers' Tax" or "Tax" means the tax on lodging authorized by the Lodgers' Tax Act, State of New Mexico.
11. "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. "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.
12. "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, State of New Mexico.
13. "Short-Term Rental (STR)" means a rental of a dwelling unit of 29 days or less, known as Air Bnbs.
14. "Short-Term Rental Operator (STRO)" means the owner or party otherwise responsible for a short term rental property or properties.
15. "Short-Term Rental Unit (STRU)" means the dwelling unit or portion thereof that is rented for 29 days or less. Each unit within a multifamily apartment building that is rented for 29 days or less is considered a STRU.

16. "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, tents, cabin, air b and b or other premises used for lodging.
17. "Tourist" means a Person(s) who travels for the purpose of business, pleasure or culture to a municipality or county imposing an Occupancy tax.
18. "Tourist-related events" means events that are planned for, promoted to, and attended by Tourists in San Miguel County.
19. "Tourist-related facilities and attractions" means facilities and attraction that are intended to be used by or visited by Tourists.
20. "Vendee" means a person to whom lodgings are furnished in the exercise of the taxable service or lodging.
21. "Vendor" means a Person furnishing lodgings in the exercise of the taxable service of lodging.

Section 4: Imposition of Tax

- A. There is hereby imposed an Occupancy tax, also known as Lodgers' Tax, on revenues received from lodging within the part of San Miguel County outside the municipal limits of any incorporated municipality of San Miguel County as set forth in §3-38-15 NMSA 1978.
- B. Every vendor who is furnishing any Lodgings within the unincorporated areas of the County of San Miguel is exercising a taxable privilege as set forth in §3-38-15 NMSA 1978. Each lodging facility, short-term rental, room or rooms, taxable premises, or other accommodations furnished by a Vendor shall be subject to a County Occupancy Tax.
- C. The amount of Lodgers' Tax imposed by this ordinance is five percent (5%) of Gross Taxable Rent for lodging paid to vendors.

Section 5: Use of Tax Proceeds

- A. The county shall use one-half (1/2) of the proceeds from the first three percent of the tax and not less than one-fourth (1/4) of the proceeds from the Tax in excess of three percent (3%) only for advertising, publicizing, and promoting tourist-related

attractions, facilities, and events as set forth in §3-38-10(D)(2)NMSA 1978. The proceeds from this portion of the tax 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.

- B. The county shall use no less than one-fifth (1/5) of all monies collected to defray the costs of 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 and attractions or transportation systems, specifically tourist-related, of the municipality, or the county in which the municipality is located.
- C. The proceeds of the Occupancy tax shall be used to defray costs of:
 - (1) Collecting and otherwise administering the Tax, including the performance of audits required by the Lodgers' Tax Act and this ordinance, pursuant to guidelines issued by the New Mexico Department of Finance and Administration (NMDFA) and The New Mexico Tax and Revenue Department (NMTRD).
 - (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 county.
 - (3) The principal of an interest on any prior redemption premiums due in connection with any other charges pertaining to revenue bonds authorized by §3-38-23 or 3-38-24, NMSA 1978.
 - (4) Advertising, publicizing, and promoting tourist-related attractions, facilities and events of the county and tourist facilities or attractions within the area;
 - (5) Providing law enforcement, fire protection and sanitation services for tourist-related events, facilities and attractions located in the county; or
 - (6) Any combination of the foregoing purposes or transactions stated in this Section, but for no other municipal or county purpose.

Section 6: Exemptions

Lodgers' 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;

- (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;
- (3) Rent paid by a Vendee is less than two dollars (\$2.00) a day;
- (4) To lodging accommodations at institutes of the federal government, the state or any political subdivision thereof;
- (5) To lodging accommodations at religious, charitable, educational or philanthropic institutions, including without limitation such accommodations as summer camps operated by such institutions;
- (6) To clinics, hospitals or other medical facilities;
- (7) To privately-owned and operated convalescent homes or homes for the aged, infirm, indigent or chronically ill.

Section 7: Licensing

- A. No Vendor shall engage in the business of providing Lodging in the County who has not first obtained a business license as provided in this section.
- B. Applicants for a Vendor's license shall submit an application to the Planning and Zoning Division 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 place of lodging 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, as described and included in definition 12, and the usual schedule 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 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 to the extent, if any, that his business is exempt from the Lodgers' tax; and
 - (5) Other information reasonably necessary to effect a determination of eligibility for such business license. Vendor should have proof of a New

Mexico Gross Receipts Tax I.D. CRS # and liability insurance and proof of a legitimate business venture.

- C. The Planning and Zoning Division shall review applications for a license within ten (10) days of receipt thereof and grant the license in due course if he or she finds the applicant is doing business subject to the Lodgers' Tax Act.
- D. If the County Planning Department finds that the applicant is not qualified to do business subject to the Lodgers' Tax, he or she shall, not more than ten (10) days after receipt of the application, advise the applicant of his or her decision and give the reasons therefor. 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 a San Miguel County post office on the date thereof.
- E. If the County Planning and Zoning Department finds the applicant not exempt under the terms of this Ordinance, he or she shall, not more than ten (10) days after receipt of the application, advise the applicant of his or her decision and give the reasons therefor.
- F. An applicant who is dissatisfied with the decision of the Planning and Zoning Division may appeal the decision to the County Commission by written notice to the County Manager's Office of such appeal within fifteen (15) days the decision made by the Planning & Zoning Division. The matter shall be referred to the County Commission for hearing at a regular or special meeting in usual course of business. The decision of the County Commission made thereof shall be expressed in writing and be communicated in the same manner as the decision of the Planning & Zoning Division. The action of the County Commission shall be final.
- G. If the County Commission finds for the applicant, the County Manager or designee shall issue the appropriate license or other notice conforming to the decision made by the County Commission.

Section 8: Short-Term Rentals

8.1: General Provisions

- A. Each Short-term Rental Unit shall:
 - (1) Maintain a valid county business license for purposes of operating any one or more Unit within the unincorporated areas of San Miguel County;
 - (2) Pay all applicable local, state, and federal taxes, including lodgers' tax, hospitality fee, gross receipts tax and income taxes associated with the

operation of each Unit unless the marketplace provider does this on the operator's behalf;

- (3) Provide a habitable and safe condition for tenants, in compliance with all federal, state and local standards, statutes, regulations, health orders, and ordinances;
- (4) Shall be thoroughly cleaned and disinfected following each use;
- (5) Maintain short-term rental insurance coverage for each Short-Term Rental Unit in the minimum amount of \$250,000 to insure against damages to guest(s), and when such damages are incurred by other persons including, but not limited to, neighbors;
- (6) Clearly display inside each Unit a copy of the applicable Short-Term Rental Permit issued pursuant to this ordinance;
- (7) Include the Short-Term Rental Permit Number issued by the county on all marketing materials for each respective Unit;
- (8) Display inside each Unit a current "Good Neighbor Agreement". The Good Neighbor Agreement will be provided by the Planning & Zoning Division on an annual basis and shall inform the occupants of the maximum overnight occupancy, maximum gathering occupancy and relevant county ordinances, and explain that occupants of any Short-Term Rental Units are required to comply with all relevant county ordinances.

8.2: Short Term Rental Permits

- A. The Planning & Zoning Division shall collect a non-refundable Short-Term Rental Permit fee of \$150.00 for each initial permit, and a non-refundable \$100.00 for the renewal thereafter. An inspection fee may be imposed at an amount set by the Fire Division. Revenue from fees imposed pursuant to this paragraph shall be used only to administer, manage, and enforce this section.
- B. In addition to any other necessary information, the Planning & Zoning Division application will contain the following for each Short-Term Rental Application:
 - (1) Physical address for the Short-Term Rental Unit;
 - (2) Name, phone number, email, and business address of the Operator/Owner or agent(s) who will be available twenty- four (24) hours per day, seven (7) days a week to respond to complaints regarding the operation or occupancy of the Unit;
 - (3) A scaled floor plan showing the layout and square footage of the STR unit(s);
 - (4) A statement signed by the Operator/Owner that the Short-Term Rental Unit will operate in compliance with this article and all other applicable county ordinances in affect at the time, including but not limited to, the Land

Development Ordinance, Code Enforcement Ordinance, the Fire Code and any relevant public health orders;

- (5) Proof of rental insurance coverage as required by Section 7.1-A; and
- (6) Copy of the Good Neighbor Agreement.

- C. Any Short-Term Rental Unit issued pursuant to this article is valid for twelve (12) consecutive months unless sooner terminated by the Operator/Owner, or cancelled by the county. Renewal will be required every calendar year in conjunction with business license renewal.
- D. The Planning & Zoning Division and Fire Division shall have the right to inspect each Unit, without prior notice, to determine compliance with this ordinance and all other applicable county ordinances and codes.
- E. A Short-Term Rental Unit permit may be renewed so long as the permit to be renewed is in good standing and in-force, and so long as the application complies with any and all requirements.
- F. Upon the transfer of ownership of a Short-Term Rental Unit, the permit shall terminate immediately. If the new owner wishes to use the property or unit as a Short-Term Rental Unit, a new application will be required.
- G. A real estate broker listing residential property in San Miguel County on which a Short-Term Rental Unit exists, shall provide prospective buyers a current copy of this Ordinance; and
- H. All Short-Term Rentals shall be considered to be non-residential property for purposes of the fire code and the Land Development Ordinance.
- I. No Short-Term Rental Operator/Owner shall operate any Short-Term Rental Unit without a valid Short-Term Rental Permit from the Planning & Zoning Division for each unit proposed for operation.

8.3: Short Term Rental Occupancy

- A. The maximum overnight occupancy of a Short-Term Rental Unit is limited to a maximum of two adults per bedroom, plus an additional two adults for each unit excluding studios or efficiencies, such that a two bedroom house would have an overnight occupancy of six adults, or a three bedroom house would have an overnight occupancy of eight adults. For the purposes of this division, an adult is any person over fifteen (15) years of age.
- B. Gatherings of persons in excess of the maximum overnight occupancy prescribed by division (A), above, shall not exceed two times the maximum overnight occupancy or 20 persons, whichever is less. All such gatherings shall conclude and attendees disburse by 10:00 p.m. local time.

- C. Noise or other disturbances outside the Short-Term Rental Unit, including on decks, portals, porches, balconies, patios, yards, pools, driveways, or carports, is prohibited between 10:00 p.m. and 9:00 a.m.

8.4: Enforcement & Penalties

- A. The San Miguel County Sheriff's Office, Planning & Zoning Division and Code Enforcement have the duty and authority to enforce this ordinance consistent with, but not limited to, the Land Development Ordinance and the Code Enforcement Ordinance currently in place.
- B. A written notice by first class mail to the Owner/Operator and/or agent of the unit will be issued by the Planning & Zoning Division and if no such person has been identified, then a written notice by first class mail will be issue to the owner of record as listed in the real property records of the County Clerk.
- C. At a minimum, the notice must include:
 - (1) A statement that a violation of this section has been observed or otherwise determined to exist;
 - (2) A brief description of the nature of the violation;
 - (3) Advisement of a 30-day grace period (or longer if appropriate per determination of authorized individual) within which to come into compliance;
 - (4) A reference to the penalty provisions of this section.
- D. If the property has not been brought into compliance within the grace period set forth by the notice prescribed under Section (C) above or any period of extension granted by an authorized official, the owner or responsible party is subject to the penalty provisions set forth in this ordinance, with each day of violation considered a separate offense.
- E. Instead of or in addition to the penalty provision of Section 7.4 of this ordinance, the county, acting through the County Attorney, is hereby authorized to file an action in a court of competent jurisdiction as a means of compelling compliance to:
 - (1) Prohibit any person from violating or threatening to violate the terms, conditions and restrictions of this article;
 - (2) Collect civil assessments against the property of \$500 per day for every day the property remains or remained in violation of this section after the expiration of the grace period or any extensions granted by the authorized county official identified in the notice by the Planning & Zoning Division; and
 - (3) Recover damages from the Operator/Owner of a Short-Term Rental Unit in the amount of money adequate for the county to undertake or reimburse

expenditures for any construction remediation, cleanup, or other activity necessary to bring about compliance with this article.

- F. In addition to judicial remedies, any expenditure by the county to bring the property into compliance, or any damages or assessments, are recoverable through the imposition of a county lien on the parcel under NMSA 1978, §§ 3-36-1 to 3-36-5. To the extent that monetary penalties are recovered as a result of enforcement under this section, any funds so recovered shall be used exclusively for the purpose of funding enforcement activities under this section.
- G. If there are three or more instances of violations of county ordinances statutes within a 12 month period of the Short-Term Rental Unit, the Unit's permit shall be revoked for a period of two years and the Unit shall cease to operate.

Section 9: Collection of the Occupancy Tax; Reporting

- A. Every Vendor providing lodgings within the county shall collect the proceeds of the Tax thereon on behalf of the county and shall act as a trustee therefor, as set forth in §3-38-17 NMSA 1978.
- B. The Tax shall be collected from Vendees in accordance with this Ordinance and shall be charged separately from the rent fixed by the Vendor for the lodgings. The Vendor shall be audit ready and be subject to review.
- C. On and after July 1, 1985, each Vendor licensed under this Ordinance shall be liable to the county for payment of the proceeds for the Lodger's Tax provided herein on the rent paid for lodging.
- D. Each Vendor shall make a report by the twenty-fifth (25th) day of each month on forms provided by the County Manager or designee of the receipts for Lodging paid to Operator/Owner in the preceding calendar month and shall remit therewith payment of the amounts due to the county. When the last day for filing a report and payment of Taxes falls on a Saturday, Sunday, or legal state or national holiday, the act of filing the report and payment of Taxes is timely if performed paid or postmarked on the next succeeding day which is not a Saturday, Sunday, or a legal state or national holiday.
- E. The report shall include sufficient information to enable the county to audit the report and shall be verified on oath by the Vendor. Monthly reports shall be due from each Vendor regulated by this Ordinance even if no Tax is due during the reporting period.

- F. Reporting forms shall include whether the taxpayer is utilizing a cash or accrual basis of accounting. Vendor's revenue recognition for Lodgers' Tax reporting shall be consistent with Gross Receipts Tax reporting regulations as specified under §7-9-1, through 7-9-91, NMSA 1978 per state law.

Section 10: Duty of Vendor

- A. The Vendor shall maintain adequate records of facilities subject to the Tax and of proceeds received for the use thereof which records include, at a minimum, the following:
1. Bank Statements
 2. CRS-1 Reports
 3. Annual Tax Returns
 4. Housekeeping Records
 5. Registration Cards
 6. Daily Reports
 7. Monthly or Quarterly Financial Statements
 8. Annual Financial Statements
 9. Advance Deposit Records
 10. Copies of Invoices
 11. Copies of Cancelled Checks
- B. Such records shall be made available upon a seven (7) day notice for inspection at the Vendor's place of business during reasonable hours and shall be retained for three (3) years.
- C. If Vendor fails to make such records available, after having been provided a seven (7) day notice, Vendor shall be assessed a civil penalty in the amount of One Hundred Dollars (\$100.00) per day until such records have been made available for inspection.

Section 11: Audit of Vendors

- A. As per §3-18-17(1) NMSA 1978, the County Commission shall select for annual random audits of one or more Vendors to verify the amount of gross rent subject to Lodgers' Tax and to ensure that the full amount of Tax on that rent is collected from each Vendor thus audited. The County Commission shall annually determine first the number of Vendors to be audited, and then the Vendor(s) by lot.
- B. The County may also, at any time deemed appropriate by the County Manager, audit any Vendor to verify the amount of gross rent subject to Lodgers' Tax and to ensure that the full amount of Lodgers' Tax on the rent is collected from each Vendor.
- 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 County Manager and approved by the County Commission. Vendors shall be prepared to be audited and provide backup documentation for all expenditures and have available all reporting and financial documents necessary for review and audit.

Section 12: Failure to File Report; Failure to Pay Tax; Failure to Make Return; Computation, Civil Penalty, and Notice; Collection of Delinquencies; Occupancy Tax is a Lien

- A. If any Vendor fails to file a report due under the provisions of this Ordinance, or if any Vendor makes a return as required by this Ordinance without paying the Tax then due, he or she shall be liable for the Tax and a civil penalty for any such failure in an amount equal to the greater of ten percent (10%) of the amount that was not duly remitted to the county or One Hundred Dollars (\$100.00), whichever amount is greater plus an interest rate of one percent (1%) per month in which a vendor fails to report or is late and shall be the vendor's liability for any unpaid, delinquent or uncollected funds. The San Miguel County Treasurer shall ensure penalty and interest is applied against any vendor who is determined to be delinquent or late.
- B. If any Vendor neglects or refuses to make a return and pay the Tax as required by this Ordinance, the County may institute any appropriate action or proceedings to:
 - (1) Prevent the conduct of the business;
 - (2) Restrain, correct or abate the violation; or
 - (3) Prevent the occupancy of the building, structure or land on which the business is located

- (4) Action in mandamus or for injunction or by other appropriate remedy
- C. In addition to the remedies provided in subsections 1 and 2 above, the business license fee and the business registration fee may be collected and enforced by the County by suit in District Court or under such other regulation as the County as provided by ordinance.
 - D. The county may initiate any appropriate action or proceeding as provided in subsections 1 and 2 of this section at any time up to four (4) years after the violation.
 - E. The Lodgers' Tax imposed by a municipality or county constitutes a lien in favor of the county upon the personal and real property of the Vendor providing lodgings in that specific county. The lien may be enforced as provided in §3-36-1 and 3-37-7, NMSA 1978. Priority of the lien shall be determined from the date of filing.
 - F. Under process or order of court, no person shall sell the property of any Vendor without first ascertaining from the County Manager, County Manager's Designee, or County Treasurer the amount of any Lodger's Tax due the County. Any Lodgers' 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.
 - G. The County Manager, County Manager's Designee or County Treasurer shall furnish to any Person applying for such a certificate a certificate showing the amount of all liens in the records of the County against any Vendor pursuant to Chapter 3, Article 38, NMSA 1978.

Section 13: Enforcement

- A. As set forth in §3-38-17(3) NMSA 1978, an action to enforce the Lodgers' Tax Act may be brought by:
 - (1) The attorney general or the district attorney in the county of jurisdiction; or
 - (2) A Vendor who is collecting the proceeds of Lodgers' Tax in the county of jurisdiction.
- B. A district court may issue a writ of mandamus or order an injunction or other appropriate remedy to enforce the provisions of the Lodgers' Tax Act.
- C. The court shall award costs and reasonable attorney's fees to the prevailing party in a court action to enforce the provisions of the Lodgers' Tax Act.

Section 14: Lodgers' Tax Advisory Board, Creation

- A. The Chairperson of County Commission shall appoint a five-member Advisory Board that consists of two members who are owners or operators of lodgings subject to Lodgers' Tax within the unincorporated area of the county, two members who are owners or operators of industries located within the unincorporated area of the County that primarily provide services or products to tourists, and one member who is a resident of the unincorporated area of the county who represents the general public, in compliance with §3-38-22 NMA 1978.
- B. The Advisory Board shall serve at the pleasure of the County Commission and shall advise the county on the expenditure of funds authorized by Section 4 of this Ordinance for advertising, publicizing, and promoting tourist attractions and facilities in the county.
- C. The Advisory Board, along with authorized county official shall submit to the County Commission recommendations for the expenditure of funds authorized pursuant to the Lodgers' Tax Act for advertising, publicizing, and promoting tourist-related attractions, facilities, and events in the County.

Section 15: Operation of the Advisory Board

- A. Notwithstanding the terms established in subsection 2 hereof or any other provisions of law, any person serving on the Advisory Board may be removed by majority vote of the County Commission. Vacancies shall be filled by the Chair of the County Commission. A person appointed to fill a vacancy shall serve the remainder of the term to which he is appointed.
- B. The Advisory Board shall annually, at the first regularly scheduled monthly meeting of the calendar year, elect the following officers:
 - (1) Chair
 - (2) Vice Chair
- C. 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.

- D. The replacement of members shall be upon death, removal, resignation, change of residence from the county, or an inability of a member of the Advisory Board to act, a vacancy on the board shall exist. The vacancy shall be filled by appointment of the Chairperson of the County Commission, for the unexpired term.
- E. Under no circumstances will an Advisory Board member serve on another Advisory Board or board of another municipality/county during their respective term and will be deemed a conflict of interest.
- F. The Advisory Board shall hold a regular meeting quarterly at a date and time established by a majority vote of the board and can meet as needed by the Planning & Zoning Division or County Commission. The meeting shall be conducted in compliance with the provisions of §10-15-1, NMSA 1978, Open Meetings Act. A member of the Advisory Board shall take minutes of each meeting, whether regular or special. Within ten (10) days of any meeting, the member shall forward a copy of the minutes to the County Manager.

Section 16: Procedures for Entities Requesting Lodgers' Tax Funds, Replacement of Unretrieved, Encumbered Funds to Unencumbered Status

- A. Lodgers' Tax Fund Requests shall comply with the usage requirements set forth in 3-38-21, NMSA 1978 and may be requested through the following procedure:
 - (1) Entities requesting consideration and recommendation from the Advisory Board and approval from the County Commission for Lodgers' Tax funds should request and complete the most current form of the Lodgers' Tax Application for Funding Request from the County no fewer than three (3) months prior to the entity's event for Advisory Board and potential County Commission consideration.
 - (2) Entities are strongly encouraged to submit requests to the Advisory Board for consideration of Lodgers' Tax funds well in advance of the three-month deadline. Requests that are submitted which do not comply with the provision of submission three months prior to the event may not be considered by County personnel.
 - (3) In addition to supplying the Request form, the County shall also provide guidance for completing the Request form and which necessary background documents are required from the requesting entity.

- (4) San Miguel County has the discretion to issue a Request for Proposals (RFP) for purposes of providing funding to entities based on the New Mexico Procurement Code, New Mexico Administrative Code (NMAC), and State Purchasing Act.
- B. Upon receipt of a completed Application for Funding form by the county, consideration shall be given for each entity's fund request at the next regularly scheduled Advisory Board meeting for approval or disapproval of recommendation to the County Commission for funding request.
- C. Upon Advisory Board approval of recommendation for funding, the County Commission shall consider approval or disapproval of the request at the next regularly scheduled County Commission meeting.
- D. If funds are approved by the County Commission, entities shall have a period of ninety (90) days from the approved date of the event, in which to request approved funds from the County by submitting a completed Reimbursement form accompanied by appropriate documentation. If entities do not retrieve funds during the allocated time, all approved funds shall be replaced to unencumbered status in the Lodgers' Tax Fund and shall be considered available funds for future requests.

Section 17: Disclosure of Information

- A. It is unlawful for any County official, employee or agent to reveal to any Person other than another County official, employee or agent engaged in County tax administration, or any employee of the New Mexico Bureau of Revenue, any information about a Vendor licensed by the County under this Ordinance or information acquired as the result of the Vendor's collection and remittance of the Tax described in this Ordinance. No County official, employee or agent charged with keeping such information shall be required to produce it in any action or proceeding in court except on behalf of:
- (1) The County in any action or proceeding under the provisions of §3-38-13 through 3-38-24, NMSA 1978 (Lodgers' Tax Act) or under the provisions of this Ordinance when the information is directly involved in the action or proceeding, provided that such 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 representative a copy of any return or report filed by that Vendor in connection with the Tax;
 - (2) Prohibit the publication of statistics prepared to prevent the identification of a particular Vendor's report or return and its contents; or
 - (3) Prohibit inspection by the legal representative of the State or County of the report or return of any Vendor by or against whom an action or proceeding is contemplated or has been instituted as authorized in §3-38-13 through 3-38-24, NMSA 1978 (Lodgers' Tax Act) or as authorized in this Ordinance.
- C. Reports, statements and returns shall be preserved for three (3) years.

Section 18: Contracting for Services

- A. Contracting for services shall comply with the New Mexico Procurement Code as it applies to contracting or subcontracting for professional services. Any person, firm, or agency contracted under funding provided by the Lodgers' Tax shall be required to provide quarterly reports of activities or reports as stated in a contract between San Miguel County and the entity.
- B. Payment of funds shall occur only and after a receipt and report of all expense reports and activity of the grant is submitted to the County Manager or designee outlining the activity for the month. Contractual language between entities may modify this requirement based on budget and scope of work.
- C. The funds expended may be spent for printing, supplies, office expenses, advertising, promoting, publicizing, and other related administrative costs directly related to the management of the program and activities by the occupancy tax. All expenditures will relate directly to a scope of work and budget.

Section 19: Criminal Penalties

- A. Any Person violating any of the provisions of the Lodgers' Tax Ordinance for failure to pay the Tax, to remit proceeds thereof to the County, to properly account for any Lodging and Tax proceeds pertaining thereto, or for violating the confidentiality provisions of Section 15 of this Ordinance shall be guilty of a misdemeanor and upon conviction shall be fined in an amount not to exceed Five Hundred Dollars (\$500.00) or by imprisonment not to exceed ninety (90) days, or both.

Section 20: Financial Reporting

- A. The County Commission shall furnish to the Advisory Board that portion of any proposed budget, report or audit filed or received by the County Commission pursuant to Chapter 6, Article 6, NMSA 1978 or the Audit Act that relates to expenditure of Occupancy tax funds within ten (10) days of the filing or receipt of such proposed budget, report or audit by the County Commission.
- B. The County Commission shall report to the local Government Division of the Department of Finance and Administration on a quarterly basis any expenditure of Occupancy tax funds pursuant to 3-38-15 and 3-38-21, NMSA 1978, and shall furnish a copy of this report to the Advisory Board when it is filed with the Division.

Section 21: Severability

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions of this Ordinance.

Section 22: Repealer

All Ordinances or parts of Ordinances in conflict with the provisions of this Ordinance are hereby repealed to the extent of such conflict.

Section 23: Effective Date

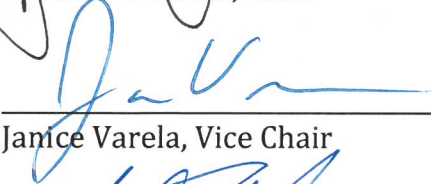
This Ordinance shall take effect June 30, 2022, at which time Ordinance No. SMC -10-09-01-ORD-LODGERS' TAX shall be repealed.

PASSED, APPROVED AND ADOPTED this 10th day of May 2022.

BOARD OF COUNTY COMMISSIONERS OF SAN MIGUEL COUNTY, NEW MEXICO



Harold M. Garcia, Chair



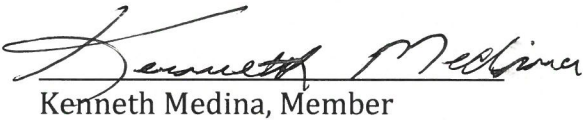
Janice Varela, Vice Chair



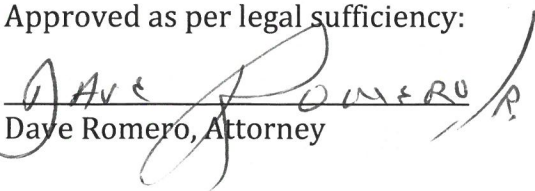
Max Trujillo, Member



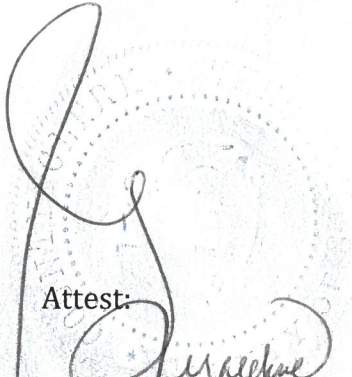
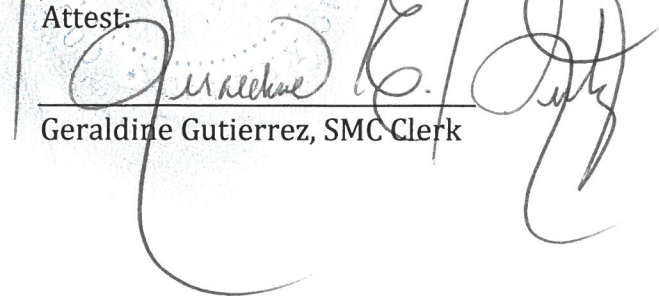
Martin Sena, Member



Kenneth Medina, Member

Approved as per legal sufficiency:


Dave Romero, Attorney


Attest:


Geraldine Gutierrez, SMC Clerk