

**COUNTY OF GRANT
ORDINANCE NO. O-23-01**

LODGERS' TAX ORDINANCE

AN ORDINANCE IMPOSING A LODGERS' TAX AND PROVIDING FOR THE USE OF SAID TAX, SETTING FORTH DEFINITIONS, PROVIDING FOR EXEMPTIONS AND ESTABLISHING ADMINISTRATIVE PROCEDURES.

WHEREAS, NMSA 1978, Section 3-18-1 (1972) provides that municipalities, and also counties pursuant to NMSA 1978, Section 4-37-1 (1995), have the power to "protect generally the property of its municipality and its inhabitants" and to "preserve peace and order"; and

WHEREAS, NMSA 1978, Section 4-37-1 et seq, provides that counties may adopt ordinances not inconsistent with statutory or constitutional limitations placed on counties, to discharge those powers necessary and proper to provide for the safety, preserve the health, promote the prosperity and improve the morals, order, comfort and convenience of the county and its inhabitants; and

WHEREAS, the Board of County Commissioners adopted an ordinance imposing a lodgers' tax on August 16, 1991 (Book 204, Page 612), which imposed a five percent (5%) tax upon those utilizing commercial lodging accommodations, the proceeds of which were directed to be utilized for equipping and furnishing recreational facilities and for advertising, publicizing and promoting such recreational facilities of the County and tourist facilities; and

WHEREAS, NMSA 1978, Section 3-38-15 (2020) provides that counties may impose by ordinance an occupancy tax for revenues on lodging within the unincorporated area of the county, which occupancy tax shall not exceed five percent (5%) of the gross taxable rent; and

WHEREAS, NMSA 1978, Section 3-38-20 (2020) provides that an ordinance imposing an occupancy tax shall comply with certain requirements and not be inconsistent with the Lodgers' Tax Act, NMSA 1978, Section 3-38-13 through 3-38-25; and

NOW, THEREFORE, BE IT ORDAINED that the Board of County Commissioners of Grant County, New Mexico, adopts the following Ordinance establishing a tax on lodging within the County.

SECTION 1: PURPOSE

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

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Marisa Castrillo, County Clerk, Grant County NM
Deputy - rzamarripa



SECTION 2: DEFINITIONS

As used in this Ordinance:

1. “Committee” means the Lodgers’ Tax Committee established herein to serve in an advisory capacity and make recommendations to the Board of County Commissioners of Grant County, keep minutes of its proceedings and submit its recommendations, correspondence and other pertinent documents to the County Commission.
2. “County” or “Grant County” means all parts of the County of Grant outside the incorporated unites of any municipality within the County of Grant.
3. “County Commission” or “Board” means the elected Board of County Commissioners of the County of Grant, New Mexico.
4. “County Manager” means the chief executive officer of the County of Grant 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 as the case may be.
5. “Gross Taxable Rent” means the total amount of rent paid for lodging, not including the state gross receipts tax or a local sales tax.
6. “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 premise.
7. “Lodgings” means the rooms or other accommodations furnished by a vendor to a vendee by a taxable service of lodgings.
8. “Occupancy Tax” or “Lodgers’ Tax” or “Tax” means the tax on lodging authorized by the Lodgers’ Tax Act.
9. “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.
10. “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.
11. “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 that is not the vendee's household or primary residence or dwelling.

12. "Tourist" means a Person who travels for the purpose of business, pleasure or culture to a municipality or county imposing an occupancy tax.
13. "Tourist-related events" means events that are planned for, promoted to, and attended by tourists.
14. "Tourist-related Facilities and Attractions" means facilities and attractions that are intended to be used by or visited by tourists.
15. "Tourist-related Transportation Systems" means transportation systems that provide transportation for tourists to and from tourist-related facilities, attractions, and events.
16. "Vendee" means a person to whom lodgings are furnished in the exercise of the taxable service or lodging.
17. "Vendor" means a person furnishing lodgings in the exercise of the taxable service of lodging.

SECTION 3: AMOUNT OF TAX

The occupant tax shall be five percent (5%) of the gross taxable rent.

SECTION 4: PROCEEDS OF TAX

1. Not less than one-half (1/2) of the proceeds from the first three percent (3%) of the tax and not less than one-fourth (1/4) of the proceeds from the tax in excess of the three percent (3%) from the occupancy tax that are collected shall be used only for advertising, publicizing, and promoting tourist-related facilities, attraction and events.
2. The proceeds from the occupancy tax that are collected in excess of the amount required to be used for advertising, publicizing, and promoting tourist-related facilities, attraction and events may be used to defray the costs of:
 - a. 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;
 - b. Establishing, operating, purchasing, constructing, otherwise acquiring, reconstructing, extending, improving, equipping, furnishing or acquiring real property or any interest in real property for the site or grounds for tourist-related facilities, attractions or transportation systems of the County;

- c. The principal of and 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;
- d. Advertising, publicizing, and promoting tourist-related attractions, facilities and events of the County and tourist facilities or attractions within the area;
- e. Providing police and fire protection and sanitation service for tourist-related events, facilities, and attractions located in the county;
- f. Any combination of the foregoing purposes or transactions stated in this Section, but for no other County purpose.

SECTION 5: EXEMPTIONS

- 1. The occupancy tax shall not apply if a vendee:
 - a. Has been a permanent resident of the taxable premises for a period of at least thirty (30) consecutive days.
 - b. Pays less than Two Dollars (\$2.00) per day in rent;
- 2. The occupancy tax shall not apply to lodging accommodations:
 - a. At institutes of the federal government, the state or any political subdivision thereof;
 - b. At religious, charitable, educational or philanthropic institutions, including without limitation such accommodations as summer camps operated by such institutions;
 - c. Clinics, hospitals or other medical facilities; or
 - d. Privately-owned and operated convalescent homes or homes for the aged, infirm, indigent or chronically ill.

SECTION 6: REGISTRATION OF VENDORS

- 1. No vendor shall engage in the operation of taxable premises in the County who has not first registered as provided in the County Lodgers' Tax Vendor Registration Application Form (Exhibit A). Vendors who have registered with the County shall be deemed licensed for the purposes of NMSA 1978, Section 3-38-20.
- 2. A vendor who is exempt from obtaining a taxpayer identification number under NMSA 1978, Section 7-9-1 through 7-9-117 shall register with the County as a vendor under this Ordinance; providing relevant contact information, description of the taxable premises and reason for the exemption. Vendors shall update this information between January and April 1 of each year.

3. The County Planning and Community Development Department shall review applications for a license within ten (10) days of receipt thereof and grant the license in due course if the department assignee finds the applicant is doing business subject to the Lodgers' Tax Act.
4. If the County Planning and Community Development Department finds that the applicant is not qualified to do business subject to the Lodgers' Tax Act, the department assignee, not more than ten (10) days after receipt of the application, will advise the applicant of their 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 post office on the date thereof.
5. If the County Planning and Community Development Department finds the applicant not exempt under the terms of this Ordinance, the department assignee shall, not more than ten (10) days after receipt of the applications, advise the applicant of his or her decision and give the reasons therefor.
6. An applicant who is dissatisfied with the decision of the County Planning and Community Development Department may appeal the decision to the County Planning Director and County Manager by written notice of such appeal to be made within fifteen (15) days of the date of the decision of the County Planning and Community Development Department on the application. The matter shall be referred to the County Commission for hearing at a regular or special meeting in the 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 County Planning and Community Development Department is transmitted. The action of the County Commission shall be final.
7. If the County Commission finds in favor of the applicant, the County Manager shall issue the appropriate license or other notice conforming to the decision made by the County Commission.

SECTION 7: COLLECTION AND PAYMENT OF TAX; REPORTING

1. Every Vendor providing lodging shall collect the tax thereon on behalf of the County and shall act as a trustee therefor, as set forth in §3-38-17 NMSA 1978.
2. The tax herein 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.
3. Each Vendor shall make a report by the twenty-fifth (25th) day of each month utilizing the County Lodgers' Tax Reporting Form (Exhibit B) listing the receipts for lodging paid 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 the tax falls on a Saturday, Sunday, or legal state or national holiday, the act of filing the report and payment of tax 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. The report shall include sufficient information to enable the County to audit the report and shall be verified by certification by the vendor. Monthly reports shall be due from each vendor regulated by this Ordinance even if no tax is due during such reporting period.

SECTION 8: REFUNDS AND CREDITS

1. If any person believes they have made payment of occupancy tax in excess of that for which they were liable, they may claim a refund thereof by notifying the County Planning Director or designee, no 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 claim and the affirmative relief requested. The County Planning Director or designee shall allow the claim in whole or in part or may deny it within ten (10) working days of receipt of the claim. If the person is not satisfied with the Department's proposed resolution, the person may request an appeal to the County Manager within ten (10) days of the decision.
2. Refunds of tax erroneously paid and amounting to one hundred dollars (\$100.00) or more may be made only with the approval of the governing body.

SECTION 9: DUTY OF VENDOR

1. Vendor shall maintain adequate records of lodging facilities subject to the tax and of proceeds received for the use thereof which records include, at a minimum, the following:
 - A. Bank Statements
 - B. CRS-1 Reports
 - C. Annual Tax Returns
 - D. Housekeeping Records
 - E. Registration Cards
 - F. Daily Reports
 - G. Monthly or Quarterly Financial Statements
 - H. Annual Financial Statements
 - I. Advance Deposit Records
2. Such records shall be made available upon seven (7) days' notice for inspection at the Vendor's place of business during reasonable hours and shall be retained for three (3) years.

SECTION 10: AUDITS OF VENDORS

1. The County shall select for annual random audits to verify full payment of occupancy tax receipts.
2. The County shall periodically select taxable premises and vendors subject to audit at an open meeting by selecting one of its members to draw from a collection of currently licensed vendors.

3. No vendor shall be subject to a random audit more than once per year.
4. The audits may be performed by the County Planning Director or designee selected by the governing body.
5. Procedures for audits, and a copy of each audit under this Section shall be established by the County Manager and approved by the County Commission.

SECTION 11: ADMINISTRATION AND REPORTING

1. The County Commission shall administer the tax monies collected.
2. The County shall furnish to the Committee that portion of any proposed budget, report or audit filed or received by the County pursuant to either Chapter 6, Article 6 NMSA 1978 of the Audit Act that is related to the expenditure of tax funds within ten (10) days of the filing or receipt of such proposed budget, report or audit by the County.
3. The County shall report to the Department of Finance and Administration Local Government Division on a quarterly basis any expenditure of tax funds pursuant to NMSA 1978 Sections 3-38-15 and 3-38-21 and shall furnish a copy of this report to the Committee when it is filed with the Division.

SECTION 12: LODGERS' TAX COMMITTEE; CREATION

1. The County Commission shall appoint a five (5) member committee that consists of two (2) members who are owners and/or operators of lodgings subject to the Occupancy tax within the unincorporated area of the County, two (2) members who are owners and/or operators of industries located within the unincorporated area of the County that primarily provide services or products to tourists, and one (1) member who is a resident of the unincorporated area of the County who represents the general public, in compliance with §3-38-22 NMSA 1978.
2. The Committee shall serve at the pleasure of the County Commission and shall act in an advisory capacity to 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. The Committee 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.
3. Notwithstanding the terms established in Subsection 2 hereof or any other provisions of law, any person serving on the Committee may be removed by majority vote of the County Commission. Vacancies shall be filled by the County Commission. A person appointed to fill a vacancy shall serve the remainder of the term to which he is appointed.

4. The Committee shall annually, at the first regularly scheduled quarterly meeting of the calendar year, elect the following officers: Chair, Vice Chair, Secretary. A listing of the elected officers shall be provided to the County each year.
5. The Committee shall meet quarterly and shall be conducted in compliance with the provisions of §10-15-1, NMSA 1978. The Secretary 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.

SECTION 13: CONTRACTING FOR SERVICES

1. The County may contract for the management of programs and activities funded with the revenue from the tax authorized for use described in Section 4.2 of this Ordinance. The County shall require periodic reports to the governing body, at least quarterly, listing the expenditures for those periods. Copies of such reports shall be furnished to the Committee.
2. A person or agency with whom the County contracts under this section to conduct lodgers' tax activity shall maintain complete and accurate financial records of each expenditure and shall make such records available for inspection.
3. The tax spent for the purpose authorized by this Ordinance may be spent for day-to-day operations, supplies, salaries, office rental, travel expenses and other administrative costs only of those costs are incurred directly for that purpose.
4. A person or agency with whom the County contracts under this section may subcontract with the approval of the governing body. A subcontractor shall be subject to the same terms and conditions as the contractor regarding separate financial accounts, periodic reports and inspection of records.

SECTION 14: CIVIL ENFORCEMENT AND LIENS

1. 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 due, they shall be liable for the tax and a civil penalty for any such failure in an amount of fifty dollars (\$50.00) per month that was not duly remitted to the County.
2. 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:
 - A. prevent the conduct of the business;
 - B. restrain, correct or abate the violation; or
 - C. prevent the occupancy of the building, structure or land on which the business is located.

3. The vendor's business license fee may be collected and enforced by the County by suit in District Court or under such other regulation as the County may provide by this Ordinance.
4. The County may initiate any appropriate action or proceeding at any time up to four (4) years after the violation.
5. The occupancy tax imposed by the county constitutes a lien in favor of the County upon the personal and real property of the vendor providing lodgings in the 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.
6. Under process or order of court, no person shall sell the property of any vendor without first ascertaining from the County Manager, County Planning Director or Treasurer the amount of any occupancy tax due the County. Any occupancy tax due shall be paid from the proceeds of the sale before payment is made to the judgement creditor or any other person with a claim on the sale proceeds.
7. The County Manager, County Planning Director or 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 15: ENFORCEMENT

1. As set forth in 3-38-17(3) NMSA 1978, an action to enforce the Lodgers' Tax Act may be brought by:
 - A. The attorney general or the district attorney in the county of jurisdiction; or
 - B. A vendor who is collecting the proceeds of an Occupancy tax in the county of jurisdiction.
2. 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.
3. 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 16: REQUESTS FOR ALLOCATION OF FUNDS

1. Entities requesting consideration and recommendation from the Committee and approval from the County Commission for Lodgers' Tax funds should submit the most current County Lodgers' Tax Fund Request Form (Exhibit C) to the County Manager for consideration. The County shall supply a copy of the request to the Committee.

2. If funds are approved by the County Manager, entities shall have a period of ninety (90) days from the approved date of the event in which to request the 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 returned to unencumbered status in the Lodgers' Tax Fund and shall be considered available funds for future requests.

SECTION 17: CRIMINAL PENALTY

1. 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, shall be guilty of a misdemeanor and upon conviction shall be fined in an amount not to exceed five hundred dollars (\$500.00) or imprisonment not to exceed ninety (90) days, or both.

SECTION 18: SEVERABILITY

1. 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 19: REPEALER

1. The Lodgers' Tax Ordinance, adopted on August 16, 1991 (Book 204, Page 612), is expressly repealed. Any other ordinance, resolution or rule directly in conflict with this ordinance is hereby repealed to the extent of such conflict.

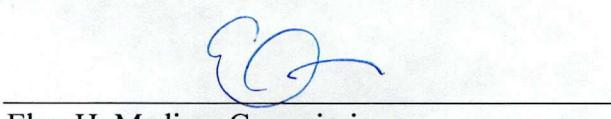
[Signatures on Next Page]

PASSED, APPROVED, and ADOPTED this 12th day of January, 2023.

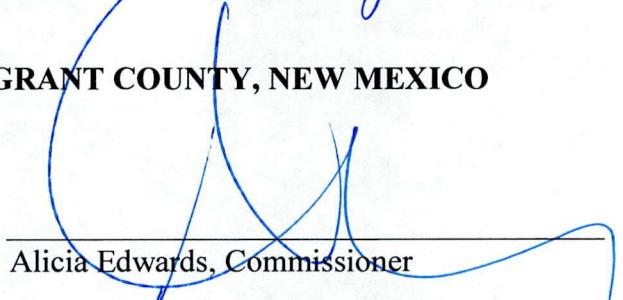
BOARD OF COUNTY COMMISSIONERS OF GRANT COUNTY, NEW MEXICO



Chris Ponce, Commissioner



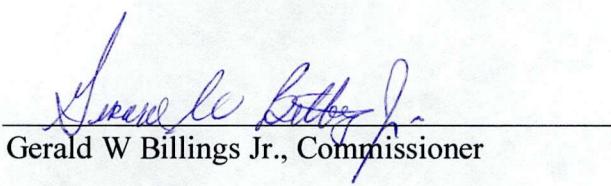
Eloy H. Medina, Commissioner



Alicia Edwards, Commissioner

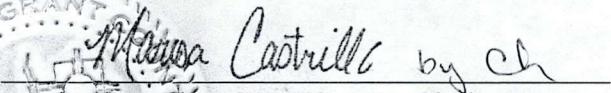


Harry Browne, Commissioner



Gerald W Billings Jr., Commissioner

Attest:



Marisa Castrillo, Grant County Clerk