

**ORDINANCE NO. O-1997-5
AMENDING ORDINANCE NO. 520**

AN ORDINANCE IMPOSING A LODGERS' TAX; SETTING FORTH DEFINITIONS; PROVIDING FOR EXEMPTIONS; ESTABLISHING CIVIL AND CRIMINAL PENALTIES; PROVIDING FOR AUDITS; ESTABLISHING ADMINISTRATIVE PROCEDURES AND ESTABLISHING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE GOVERNING BODY OF THE MUNICIPALITY OF MORIARTY, NEW MEXICO:

SECTION 1. This ordinance shall be know as and cited as the "Lodgers' Tax Ordinance."

SECTION 2. PURPOSE - The purpose of this ordinance is to impose a tax which will be borne by persons using commercial lodging accommodations; which tax will provide revenues for the purpose of advertising, publicizing and promoting tourist-related attractions, facilities and events, and acquiring, establishing and operating tourist-related facilities, attractions or transportation systems, as authorized in Section 17 of this Ordinance.

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

- A. "board" means the Advisory Board established herein to make recommendations to the governing body, keep minutes of its proceedings and submit its recommendations, correspondence and other pertinent documents to the governing body;
- B. "city clerk" means the City Clerk of Moriarty, New Mexico;
- C. "gross taxable rent" means the total amount of rent paid for lodging, not including the state gross receipts tax or local sales taxes;
- D. "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;
- E. "lodgings" means the rooms or other accommodations furnished by a vendor to a vendee by a taxable service of lodgings;
- F. "occupancy tax" means the tax on lodging authorized by the Lodgers' Tax Act;
- G. "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, 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;

- H. "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;
- I. "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 for lodging;
- J. "tourist" means a person who travels for the purpose of business, pleasure or culture to a municipality or county imposing an occupancy tax;
- K. "tourist-related events" means events that are planned for, promoted to and attended by tourists;
- L. "tourist-related facilities and attractions" means facilities and attractions that are intended to be used by or visited by tourists;
- M. "tourist-related transportation systems" means transportation systems that provide transportation for tourists to and from tourist-related facilities, attractions and events;
- N. "vendee" means a natural person to whom lodgings are furnished in the exercise of the taxable service of lodging; and
- O. "vendor" means a person furnishing lodgings in the exercise of the taxable service of lodging.

SECTION 4. IMPOSITION OF TAX - There is hereby imposed an occupancy tax of five percent (5%) of gross taxable rent for lodging within the municipality paid to vendors.

SECTION 5. LICENSING

- A. No vendor shall engage in the business of providing lodging in the Municipality of Moriarty who has not first obtained a license as provided for in this section.
- B. Applicants for a vendor's license shall submit an application to the City 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 place of lodging and the name or trade names under which the vendor proposes to do business and the post office address thereof;
 - (2) A description of the facilities, including the number of rooms and the

usual schedule of rates therefor;

- (3) A description of other facilities provided by vendor or others to users of the lodgings such as restaurant, bar, cleaning, laundry, courtesy car or others, and a statement identifying the license issued, to whom issued, the authority issuing, and the period for which issued. If applicable, also the identification number provided by the Bureau of Revenue of the State of New Mexico;
 - (4) The nature of the business of the vendor and to what extent, if any, his business is exempt from the Lodgers' Tax;
 - (5) Other information reasonably necessary to effect a determination of eligibility for such license.
- C. The City Clerk shall review applications for license within ten (10) days of receipt thereof, and grant the license in due course if the applicant is doing business subject to the Lodgers' Tax.
- D. An applicant who is dissatisfied with the decision of the City Clerk may appeal the decision to the Governing Body by written notice to the City Clerk of such appeal to be made within fifteen (15) days of the date of the decision of the City Clerk on the application. The matter shall be referred to the Governing Body for hearing at a regular or special meeting in the usual course of business. The decision of the Governing Body made thereof shall be expressed in writing and be communicated in the same manner as the decision of the City Clerk is transmitted. The action of the Governing Body shall be deemed final.
- E. If the Governing Body finds for the applicant, the City Clerk shall issue the appropriate license or other notice conforming to the decision made by the Governing Body.

SECTION 6. EXEMPTIONS

The occupancy tax shall not apply:

- A. if a vendee:
 - (1) has been a permanent resident of the taxable premises for period a 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 the vendee is less than two dollars (\$2.00) per day;
- C. to lodging accommodations at institutions of the federal government, the state or any

political subdivision thereof;

- D. to lodging accommodations at religious, charitable, educational or philanthropic institutions, including without limitation such accommodations at summer camps operated by such institutions;
- E. to clinics, hospitals or other medical facilities;
- F. to privately-owned and operated convalescent homes, or homes for the aged, infirm, indigent or chronically ill; or
- G. if the taxable premises does not have at least three rooms or three other units of accommodation for lodging.

SECTION 7. COLLECTION OF THE TAX AND REPORTING PROCEDURES

- A. Every vendor providing lodgings shall collect the tax thereon on behalf of the municipality and shall act as a trustee therefor.
- B. The tax shall be collected from vendees and shall be charged separately from the rent fixed by the vendor for the lodgings.
- C. Each vendor licensed under this ordinance shall be liable to the Municipality of Moriarty for the tax provided herein on the rent paid for lodging at his respective place of business.
- D. Each vendor shall make a report by the twenty-fifth (25th) day of each month, on forms provided by the City Clerk, of the receipts for lodging in the preceding calendar month, and shall submit the proceeds of the Lodgers' Tax to the Municipality and include sufficient information to enable the Municipality to audit the reports and shall be verified on oath by the vendor.

SECTION 8. DUTIES OF THE 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 Moriarty, New Mexico, and shall be open to the inspection of the Municipality during reasonable hours and shall be retained for three (3) years.

SECTION 9. ENFORCEMENT

- A. 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 an occupancy 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 attorneys' fees to the prevailing party in a court action to enforce the provisions of the Lodgers' Tax Act.

SECTION 10. FAILURE TO MAKE RETURN; COMPUTATION, CIVIL PENALTY AND NOTICE, COLLECTION OF DELINQUENCIES; OCCUPANCY TAX IS A LIEN.

- A. Every vendor is liable for the payment of the proceeds of any occupancy tax that the vendor failed to remit the municipality, whether due to his failure to collect the tax or otherwise. He shall be liable for the tax plus a civil penalty equal to the greater of ten percent (10 %) of the amount not remitted or one hundred dollars (\$100.00). The City Clerk shall give the delinquent vendor written notice of the delinquency, which notice shall be mailed to the vendor's local address.
- B. If payments are not received within fifteen (15) days of the mailing of the notice, the Municipality may bring an action in law or equity in the district court for the collection of any amounts due, including without limitation penalties thereon, interest on the unpaid principal at a rate not exceeding one (1) percent a month. If the City attempts collection through an attorney or the City Attorney for any purpose with regard to this Ordinance, the vendor shall be liable to the Municipality for all costs, fees paid to the attorney or city attorney, and all other expenses incurred in connection therewith.
- C. The occupancy tax imposed by a municipality constitutes a lien in favor of the municipality upon the personal and real property of the vendor providing lodgings. The lien may be enforced as provided in Section 3-36-1 through 3-36-7 NMSA 1978. Priority of the lien shall be determined from the date of filing.
- D. Under process or order of court, no person shall sell the property of a vendor without first ascertaining from the City Clerk or Treasurer the amount of any occupancy tax due the municipality. Any occupancy tax due the municipality shall be paid from the proceeds of the sale before payment is made to the judgment creditor or any other person with a claim on the proceeds of the sale.

SECTION 11. CRIMINAL PENALTIES - Any person who violates the provisions of the Lodgers' Tax Ordinance for a failure to pay the tax, to remit proceeds thereof to the municipality, 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 12. REFUNDS AND CREDITS - If any person believes he has made payment of any Lodgers' Tax in excess of that for which he was liable, he may claim a refund thereof by

directing to the City Clerk, 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 person's complaint and the affirmative relief requested. The City Clerk shall allow the claim in whole or in part or may deny it. Refunds of tax and interest erroneously paid and amounting to one hundred dollars (\$100.00) or more may be made only with the approval of the Governing Body.

SECTION 13. VENDOR AUDITS

- A. **[Option A** - For municipalities that collect more than \$250,000 per year in Occupancy Tax]

The Governing Body shall select for annual random audit(s) one or more vendors to verify the amount of gross rent subject to the occupancy tax and to ensure that the full amount of occupancy tax on the rent is collected from each vendor thus audited.

[Option B - For municipalities collecting less than \$250,000 per year in Occupancy Tax]

The Governing Body shall conduct random audits to verify full payment of occupancy tax receipts.

- B. The Governing Body shall determine each year the number of vendors within the municipality to audit.
- C. The audit(s) may be performed by the City Clerk or by any other designee of the Governing Body. A copy of the audit(s) shall be filed annually with the Local Government Division of the Department of Finance and Administration.

SECTION 14. FINANCIAL REPORTING

- A. The Governing Body shall furnish to the Advisory Board that portion of any proposed budget, report or audit filed or received by the Governing Body pursuant to either 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 Governing Body.
- B. The Governing Body 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 Sections 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 15. CONFIDENTIALITY OF RETURN AND AUDIT - It is unlawful for any employee of the Municipality of Moriarty to reveal to any individual other than another employee of the Municipality of Moriarty any information contained in the return or audit of any taxpayer, including vendors subject to the Lodgers' Tax Act, except to a court of competent jurisdiction in response to an order thereof in an action relating to taxes to which the

Municipality of Moriarty is a party, and in which 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 16. ADMINISTRATION OF LODGERS' TAX MONIES COLLECTED - The Governing Body shall administer the Lodgers' Tax monies collected. The Mayor shall appoint a five-member advisory board that consists of two members who are owners or operators of lodgings subject to the occupancy tax within the municipality, two members who are owners or operators of industries located within the municipality that primarily provide services or products to tourists and one member who is a resident of the municipality and represents the general public. The Board shall advise the Governing Body on expenditure of funds authorized under Section 17 of this ordinance for advertising, publicizing and promoting tourist attractions and facilities in the municipality and surrounding area.

SECTION 17. ELIGIBLE USES OF LODGERS' TAX PROCEEDS

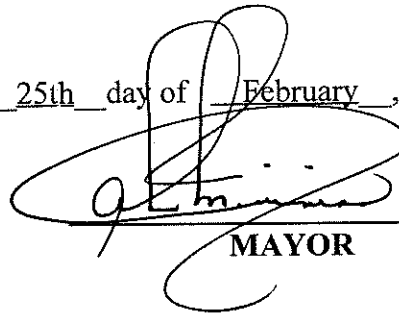
- A. The Municipality may use the proceeds from the tax to defray the costs of:
- (1) collecting and otherwise administering the tax, including the performance of audits required by the Lodgers' Tax Act pursuant to guidelines issued by the Department of Finance and Administration;
 - (2) establishing, operating, purchasing, constructing, otherwise acquiring, 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;
 - (3) the principal of and interest on any prior redemption premiums due in connection with and any other charges pertaining to revenue bonds authorized by Section 3-38-23 or Section 3-38-24 NMSA 1978;
 - (4) advertising, publicizing and promoting tourist-related attractions, facilities and events of the municipality or county and tourist facilities or attractions within the area;
 - (5) providing police and fire protection and sanitation service for tourist-related events, facilities and attractions located in the municipality; or
 - (6) any combination of the foregoing purposes or transactions stated in this section, but for no other municipal purpose.

SECTION 18. 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 19. REPEALER - All ordinances and parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 20. EFFECTIVE DATE - This ordinance shall be in full force and effect from and after its passage and publication as provided by law.

PASSED, APPROVED AND ADOPTED this 25th day of February, 1997.


MAYOR

ATTEST:


CITY CLERK