

ORDINANCE NO. 2019- 45

AN ORDINANCE REPEALING AND REPLACING ARTICLE IV SECTION 48-77 THROUGH 48-92 OF THE CODE OF ORDINANCES, CITY OF CARLSBAD, NEW MEXICO, REGARDING LODGERS' TAX MONIES

WHEREAS, pursuant to the Lodgers' Tax Act, NMSA 1978, Sections 3-38-13, et seq. and the City of Carlsbad's Lodger's Tax Ordinance, Sections 48-76 through 48-90 of the Carlsbad City Code, the City imposes, collects and expends an occupancy tax on lodging; and

WHEREAS, on January 1, 2020, an amendment to the state statute Lodgers' Tax Act will go into effect as to Section 3-38-16 NMSA 1978 removing an exemption to the Lodgers' Tax for vendors who offer at least three rooms or lodging of at least three other premises for lodging; and

WHEREAS, the City of Carlsbad currently has a Lodgers' Tax, Section 48-81 that exempts from taxes vendors that do not have at least three rooms or three other units of accommodation for lodging; and

WHEREAS, the State of New Mexico Lodgers' Tax Act contains certain additional definitions and provisions for revenue bonds that are not currently in the City of Carlsbad Lodgers' Tax Ordinance; and

WHEREAS, the City of Carlsbad, New Mexico wishes to update the existing requirements of city ordinances regarding Lodgers' Taxes to conform with state statutes.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF CARLSBAD, COUNTY OF EDDY, STATE OF NEW MEXICO, as follows:

Sections 48-76 through 48-90 of the Code of Ordinances, City of Carlsbad, New Mexico is hereby repealed and replaced with the following provisions:

SEE ATTACHED LODGERS' TAX ORDINANCE

INTRODUCED, PASSED, ADOPTED, AND APPROVED this 12th day of November, 2019.

/s/Dale Janway

DALE JANWAY, MAYOR

ATTEST:

/s/Nadine Mireles

City Clerk

ARTICLE IV. - LODGERS' TAX

Sec. 48-76. – Short Title.

This article shall be known as and cited as the "Lodgers' Tax Ordinance."

Sec. 48-77. - Purpose.

The purpose of this article 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 facilities, tourist attractions, and acquisition, construction and maintenance of tourist attractions and recreational facilities, as authorized in section 48-90.

Sec. 48-78. - 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 Carlsbad, 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 a rent uses, possesses or has the right to use or possess the 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 lodging.
- F. *"occupancy tax"* means the tax on lodging authorized by the Lodgers' Tax Ordinance.
- 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. *"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.
- 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 Ordinance.
- 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 of 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 and attractions and tourist-related events.
- N. "vendee" means a natural person to whom lodgings are furnished in the exercise of the taxable service of lodging.
- O. "vendor" means a person furnishing lodgings in the exercise of the taxable service of lodging.

Sec. 48-79. - Rate.

The occupancy tax rate shall not exceed five percent (5%) of gross taxable rent for lodging within the municipality paid to vendors.

Sec. 48-80. - Licensing.

- A. No vendor shall engage in the business of providing lodging in the Municipality of Carlsbad who has not first obtained a license as provided in this section.
- B. Applicants for a vendor's license shall submit an application to the city clerk stating:
 - (1) The name of the vendor, including identification of any person, as defined in this article, 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, stenographer, 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 Taxation and Revenue Department of the State of New Mexico;
 - (4) The nature of the business practices of the vendor and to what extent, if any, the 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 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 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 thereon 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.

Sec. 48-81. - Exemptions. **(Effective January 1, 2020.)**

The occupancy 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; or
 - (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;
- B. if the rent paid by a vendee is less than two dollars (\$2.00) a day;
- C. to lodging accommodations at institutions of the federal government, the state or any political subdivision thereof;
- D. to lodging accommodations at religious, charitable, educational or philanthropic institutions, including 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.

Sec. 48-82. - Collection of the tax and reporting procedures.

- A. Every vendor providing lodgings in a municipality imposing an occupancy tax shall collect the proceeds thereof on behalf of the municipality and shall act as a trustee therefor.
- B. The tax shall be collected from vendees in accordance with the ordinance imposing the tax and shall be charged separately from the rent fixed by the vendor for the lodgings.

- C. Each vendor licensed under this article shall be liable to the Municipality of Carlsbad for the tax provided herein on the rent paid for lodging at a taxable premises.
- D. Each vendor shall make a report by the 25th day of each month, on forms provided by the city clerk of all 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.

Sec. 48-83. - 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 Carlsbad, New Mexico, and shall be open to the inspection of the municipality during reasonable hours and shall be retained for three years.

Sec. 48-84. - 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 to 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 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 percent per month. If the city attempts collection through an attorney or the city attorney for any purpose with regard to this article, 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 NMSA 1978, §§ 3-36-1 through 3-36-7. 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 any judgment creditor or any other person with a claim on the sales proceeds.

Sec. 48-85. - 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 or 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 by imprisonment not to exceed ninety (90) days or both.

Sec. 48-86. - Refunds and credits.

If any person pays any lodgers' tax in excess of the tax required, a refund thereof may be claimed by directing a written claim to the city clerk, no later than ninety (90) days from the date payment was made. 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.

Sec. 48-87. – Audit of Vendors.

- A 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.
- B The governing body shall determine each year the number of vendors within the municipality to audit and shall conduct random audits to verify full payment of occupancy tax receipts.
- C The audit(s) may be performed by the city clerk or by any other designee of the governing body. A copy of each audit shall be filed annually with the Local Government Division of the Department of Finance and Administration.

Sec. 48-88. - Confidentiality of return and audit.

It is unlawful for any employee of the municipality of Carlsbad to reveal to any individual other than other employees of the municipality of Carlsbad any information contained in the return or audit of any taxpayer, including vendors subject to the Lodgers' Tax Ordinance, except to a court of competent jurisdiction in response to an order thereof in an action relating to taxes to which the Municipality of Carlsbad 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, that the information revealed is not identified as applicable to any individual taxpayer.

Sec. 48-89. - Advisory board created; duties.

- A *Creation.* There is hereby created a board to be known as the City of Carlsbad Lodgers' Tax Advisory Board.
- B. *Appointment of members.*
 - (1) The board shall consist of five members. The mayor, with the consent and approval of the city council, shall appoint the members. The board shall consist of:
 - a. Two members who are owners or operators of lodgings subject to the occupancy tax within the municipality;

- b. Two members who are owners or operators of industries located within the municipality that primarily provide services or products to tourists; and
- c. One member who is a resident of the municipality and represents the general public.

The board shall serve without compensation. The board shall annually elect one of its members as chairperson and one as vice-chairperson.

- (2) The mayor, the city administrator, and the director of finance shall be ex officio members of the board. Additionally, the mayor may appoint, with the consent and approval of the city council, one council member as an ex officio member of the board. The mayor may appoint, with the approval of council, a council member to act as the mayor's designee in the mayor's capacity as an ex officio member of the board. Ex officio members shall have no vote in any of the proceedings.
- C. *Term of office.* The term of office for the members shall be four years beginning on July 1st of the year of appointment and ending four years later. All appointments to vacancies on the board shall be for the unexpired term of the member leaving the board.
- D. *Meetings.* The board shall meet once a month and at such other times as may seem to it to be fit and proper.
- E. *Removal of board member.* Any board member, who shall, by his or her conduct, be subject to removal for cause shall be entitled to a hearing before the city council and is entitled to representation at such hearing and shall be removed if a majority of all members of the city council find that cause exists for removal of such member.
- F. *Duties.* The board shall advise the city council on the expenditure of funds authorized by the Lodgers' Tax Ordinance for advertising, publicizing and promoting tourist attractions and facilities in the City of Carlsbad. The board shall submit to the mayor and council recommendations for the expenditures of funds authorized pursuant to the Lodgers' Tax Ordinance for advertising, publicizing and promoting tourist-related attractions, facilities and events in the City of Carlsbad.
- G. *Secretary.* A designee of the City Administrator shall be the secretary of the board and shall faithfully keep the minutes of the meetings of the board and all other correspondence of the board but shall have no vote in any of the proceedings.

Sec. 48-90. - Use of lodgers' tax monies.

- A. The municipality may use the proceeds of the occupancy tax to defray the costs of:
 - (1) collecting and otherwise administering the occupancy tax including the performance of audits required by the Lodgers' Tax Ordinance;
 - (2) establishing, operating, constructing, purchasing, 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 tourist-related transportation systems of the municipality of Carlsbad, NM;

- (3) the principal of and interest on any prior redemption premiums due in connection with any other charges pertaining to revenue bonds authorized by NMSA 1978, § 3-38-23 or § 3-38-24;
- (4) advertising, publicizing and promoting such facilities of the municipality and tourist-related attractions, facilities and events of the municipality within the area;
- (5) providing police and fire protection and sanitation service for tourist-related facilities, attractions and events located in the respective municipality;
- (6) providing required minimum revenue guarantee for air service to the municipality to increase the ability of tourists to easily access the municipality's tourist-related facilities, attractions and events; or
- (7) any combination of the foregoing purposes or transactions stated in this section but for no other municipal purpose.

Sec. 48-91. Revenue bonds.

- A. Revenue bonds may be issued at any time or from time to time by a municipality to defray wholly or in part the costs of any one, all or any combination of purposes authorized in Paragraphs 2-5 of Sec. 48-90.
- B. The revenue bonds may be payable from and such payment may be secured by a pledge of and lien on the revenues derived from:
 - (1) the proceeds of the occupancy tax of the municipality after the deduction of those amounts required to be expended pursuant to Sec. 48-90 and the administration costs pertaining to the occupancy tax in an amount not to exceed ten percent (10%) of the occupancy tax receipts collected by the municipality in any fiscal year, excluding from the computation of such costs the administration costs ultimately recovered from delinquent vendors by civil action as penalties, costs of collection and attorney fees but not as interest on unpaid principal;
 - (2) the tourist-related facilities and attractions or tourist-related transportation systems to which the bonds pertain, after provision is made for the payment of the operation and maintenance expenses of the tourist-related facilities and attractions or tourist-related transportation systems; or
 - (3) a combination of such net revenues from both sources designated in Paragraphs (1) and (2) of this subsection.
- C. The bonds shall bear interest at a rate as authorized in the Public Securities Act [Sec. 6-14-1 through 6-14-3 NMSA 1978], and the first interest payment may be for any period authorized in the Public Securities Act.

- D. Except as otherwise provided in the Lodgers' Tax Ordinance [Sec. 48-76 through 48-100 NMSA 1978], revenue bonds authorized in the Lodgers' Tax Ordinance shall be issued in accordance with the provisions of Sections 3-31-2 through 3-31-6 NMSA 1978.

Sec. 48-92. Refunding bonds.

- A. Any municipal revenue bonds issued as authorized in the Lodgers' Tax Ordinance [Sec. 48-76 through 48-100 NMSA 1978] may issue refunding revenue bonds payable from pledged revenues therein authorized for the payment of revenue bonds at the time of the refunding or at the time of the issuance of the bonds being refunded as the governing body of the municipality may determine, notwithstanding the revenue sources or the pledge of such revenues or both are thereby modified.
- B. Refunding bonds may be issued for the purpose of refinancing, paying and discharging all or any part of such outstanding bonds of any one or more or all outstanding issues:
 - (1) for the acceleration, deceleration or other modification of the payment of such obligations, including without limitation any capitalization of any interest thereon in arrears or about to become due for any period not exceeding one year from the date of the refunding bonds;
 - (2) for the purpose of reducing interest costs or effecting other economies;
 - (3) for the purpose of modifying or eliminating restrictive contractual limitations pertaining to the issuance of additional bonds, otherwise concerning the outstanding bonds, or to any facilities relating thereto; or
 - (4) for any combination of the foregoing purposes.
- C. The interest on any bond refunded shall not be increased to any rate in excess of the rate authorized in the Public Securities Act [Sec. 6-14-1 through 6-14-3 NMSA 1978] and shall be paid as authorized in that act.
- D. Bonds for refunding any bonds for any other purpose permitted by the Lodgers' Tax Ordinance may be issued separately or issued in combination in one series or more.
- E. Except as otherwise provided in the Lodgers' Tax Ordinance, refunding bonds authorized in the Lodgers' Tax Ordinance shall be issued in accordance with the provisions of Sections 3-31-10 and 3-31-11 NMSA 1978.

Sec. 48-91—48-100. - Reserved.