

ORDINANCE NO. O-93-24

ORDINANCE IMPOSING A LODGER'S 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 BOARD OF COUNTY COMMISSIONERS OF EDDY COUNTY, NEW MEXICO.

SECTION 1. THIS ORDINANCE shall be known as and cited as the "LODGER'S 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 facilities and tourist attractions, as authorized in Section 15 of this ordinance.

SECTION 3. DEFINITIONS. As used in the Lodger's Tax Ordinance the following definitions apply:

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. "County" and "Governing Body" as used herein means the County of Eddy County, New Mexico;

C. "County Manager" means the County Manager of Eddy County, New Mexico;

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

E. "Lodging" means the transaction of furnishing rooms or other accommodations by a vendor to a vendee who for a rent uses, possesses or has the right to use or possess any room or rooms or other units of accommodations in or at a taxable premises;

F. "Lodging" means the rooms or other accommodations furnished by a vendor to a vendee by a taxable service of lodgings;

G. "Occupancy Tax" means the tax on lodging authorized by the Lodger's Tax Act;

H. "Person" means a corporation, firm, other body corporate, partnership, association or individual, 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;

I. "Rent" means the consideration received by a vendor in money, credits, property or other consideration valued in money for lodgings subject to an occupancy tax authorized in the Lodger's Tax Act;

J. "Taxable Premises" means a hotel, apartment, apartment hotel, apartment house, lodge, lodging housing, rooming house, motor hotel, guest house, guest ranch, ranch resort, guest resort, mobile home, motor court, auto court, auto camp, trailer court, trailer camp, trailer park, tourist camp, cabin or other premises for lodging;

K. "Vendee" means a natural person to whom lodgings are furnished in the exercise of the taxable service of lodging; and

L. "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 5% of gross taxable rent for lodging within the County lying outside the incorporated limits of any municipality of Eddy County, paid to vendors.

SECTION 5. LICENSING.

A. No vendor shall engage in the business of providing lodging within that part of Eddy County lying outside of the incorporated limits of any municipality of Eddy County, who has not first obtained a license as provided in this section.

B. Applicants for vendor's license shall submit an application to the County Manager 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 a restaurant, bar, cleaning, laundry, courtesy car, stenographer, trailer 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 practices of the vendor and to what extent, if any, his business is exempt from the Lodger's Tax;

(5) Other information reasonably necessary to effect a determination of eligibility for such license.

C. The County Manager 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 Lodger's Tax;

D. An applicant who is dissatisfied with the decision of the County Manager may appeal the decision to the Governing Body by written notice to the County Manager of such appeal to be made within fifteen (15) days of the date of the decision of the County Manager 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 County Manager is transmitted. The action of the Governing Body shall be deemed final;

E. If the Governing Body finds for the applicant, the County Manager 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 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 the vendee is less than two dollars (\$2) 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 without limitations 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;

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. The following requirements shall apply concerning the collection of the tax and reporting to the Governing Body:

A. Every vendor providing lodgings shall collect the tax thereon on behalf of the County 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 County of Eddy for the tax provided herein on the rent paid for lodging at vendor's 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 County Manager, of the receipts for lodging in the preceding calendar month, and shall submit the proceeds of the Lodger's Tax to the County Manager and include sufficient information to enable the County 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 Eddy County, New Mexico, and shall be open to the inspection of the County during reasonable hours and shall be retained for three (3) years.

SECTION 9. 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

County, whether due to vendor's failure to collect the tax or otherwise. Vendor shall be liable for the tax plus a civil penalty equal to the greater of ten (10) percent of the amount not remitted or one hundred dollars (\$100). The County Manager 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 County 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 County attempts collection through an attorney or the County Attorney for any purpose with regard to this Ordinance, the vendor shall be liable to the County for all costs, fees paid to the attorney or County Attorney, and all other expenses incurred in connection therewith.

C. 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. The lien may be enforced as provided in Section 3-36-1 through 3-36-7 N.M.S.A. 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 County Manager or County Treasurer the amount of any occupancy tax due the County. Any occupancy tax due the County 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 proceeds of the sale.

SECTION 10. CRIMINAL PENALTIES. Any person who violates the provisions of the Lodger's Tax Ordinance for a failure to pay the tax, to remit proceeds thereof to the County 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) or by imprisonment not to exceed ninety (90) days, or both.

SECTION 11. REFUNDS AND CREDITS. If any person believes he has made payment of any Lodger's Tax in excess of that for which he was liable, he may claim a refund thereof by directing to the County Manager, no later than ninety (90) days from the date the 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 County Manager 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) or more may be made only with the approval of the Governing Body.

SECTION 12. VENDOR AUDITS.

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 insure 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 County to audit.

C. The audit(s) may be performed by the County Manager 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 13. CONFIDENTIALITY OF RETURN AND AUDIT. It is unlawful for any employee of the County of Eddy to reveal to any individual other than another employee of the County of Eddy any information contained in the return or audit of any taxpayer, including vendors subject to the Lodger's Tax Act, except to a court of competent jurisdiction in response to an order thereof in an action relating to taxes to which the County of Eddy 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 14. ADMINISTRATION OF LODGER'S TAX MONIES COLLECTED. The Governing Body, to-wit: The Eddy County Commissioners shall appoint an Advisory Board of five residents of the County; two of whom shall represent the lodging industry, two of whom are directly involved in tourist-related industries and one member at-large who shall represent the general public. The Board shall advise the Governing Body on expenditure of funds authorized under Section 15 of this ordinance for advertising, publicizing and promoting tourist attractions and facilities in the County outside of the incorporated limits of any municipality and surrounding area.

SECTION 15. USE OF LODGER'S TAX MONIES.

A. The County may use the proceeds of the tax to defray the costs of:

- (1) Collecting and otherwise administering the tax; and
- (2) Advertising, publicizing and promoting tourist facilities within Eddy County outside the incorporated limits of any municipality therein, provided that 100% of said revenues deducting operating and collection expenses shall be used for the purpose of advertising,

publicizing and promoting the facilities set forth above, and tourist attractions within the area.

SECTION 16. 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 17. REPEALER. All ordinances and parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 18. EFFECTIVE DATE. This ordinance shall be in full force and effect from and after its passage and publication as provided by law.

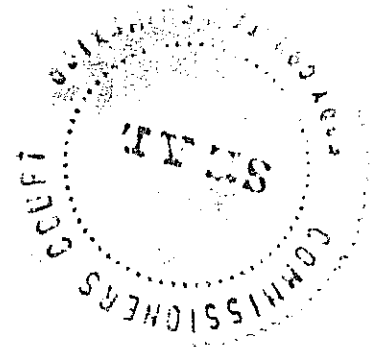
PASSED, APPROVED AND ADOPTED this 16th day of November 1993.

EDDY COUNTY, NEW MEXICO
BOARD OF COMMISSIONERS

By Fred T. Alvarez
FRED T. ALVAREZ, Chairman

ATTEST;

Karen Davis
County Clerk



STATE OF NEW MEXICO, County of Eddy, ss. I hereby certify that this instrument was filed for record on the 24 day of November, A.D. 19 93 at 11:30 o'clock A.M., and duly recorded in BOOK 1 PAGE 359 of the Ordinance Records.

KAREN DAVIS, County Clerk

By Lela M. Mashaw Deputy