

CITY OF SUNLAND PARK
ORDINANCE NO. 2015-5
LODGER'S TAX

Section 1. SHORT TITLE.

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

Section 2. DEFINITIONS.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section except where the context clearly indicates a different meaning:

- A. *Board* means the advisory board established in this article to:
 - 1. Make recommendations to the governing body;
 - 2. Keep minutes of its proceedings; and
 - 3. Submit its recommendations, correspondence and other pertinent documentation to the governing body.
- B. *City* means the City of Sunland Park, New Mexico.
- C. *Governing body* means the City Council of the City of Sunland Park, 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 rent uses, possesses or has the right to use or possess the rooms or other units of accommodation in or at a taxable premise.
- F. *Lodgings* means the room 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. *Persons* means a corporation, firm or other body corporate, partnership, association or individual. The term "person" includes an executor, administrator, trustee, receiver or other designated representative appointed according to law and acting in a representative capacity, but does not include the United States of America, the state, 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, lodginghouse, roominghouse, motor hotel, guesthouse, 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. *Tourist* means a person who travels for the purpose of business, pleasure or culture to a municipality or county imposing an occupancy tax.
- L. *Tourist-related events* means events that are planned for, promoted to and attended by tourists.
- M. *Tourist-related facilities and attractions* means facilities and attractions that are intended to be used by or visited by tourists;
- N. *Tourist-related transportation systems* means transportation systems that provide transportation for tourists to and from tourist-related facilities and attractions and tourist-related events;
- O. *Vendee* means a natural person to whom lodgings are furnished in the exercise of the taxable service of lodging; and
- P. *Vendor* means a person or his agent furnishing lodgings in the exercise of the taxable service of lodging.

Section 3. 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 tourist-related facilities, attractions or transportation systems, as authorized in section 44-126.

Section 4. IMPOSED.

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

State law reference-Tax authorized, NMSA 1978, § 3-38-15

Section 5. LICENSE.

- A. Required. No vendor shall engage in the business of providing lodging in the city who has not first obtained a license as provided in this sections
- B. Application; contents. Applicants for a vendor's license shall submit an application to the city clerk stating:
 1. The name of the vendor, including the 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 mailing address thereof;
 2. A description of the facilities, including the number of rooms and the usual schedule of rates thereof;
 3. A description of other facilities provided by vendor 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 state taxation and revenue department.
4. The nature of the business of the vendor and to what extent, if any, his business is exempt from the lodger's tax; and
 5. Other information reasonably necessary to effect a determination of eligibility for such license.
- C. Review. 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 lodger's tax.
- D. Appeals. 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 calendar days of the date of the city clerk's decision on the application. The matter shall be referred to the governing body for a 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. Issuance of appropriate license or other notice. 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.

State law reference—Mandatory ordinance requirements, NMSA 1978, § 3-38-20

Section 6. EXEMPTIONS TO ARTICLE.

The occupancy tax shall not apply:

- A. If vendee:
 1. Has been a permanent resident of the taxable premises for a period 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 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 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 vendor does not offer at least three rooms within or attached to a taxable premise for lodging or at least three other premises for lodging or a combination of these within the taxing jurisdiction.

Section 7. COLLECTION OF TAXES AND REPORTING PROCEDURE.

- A. Every vendor providing lodgings in the City of Sunland Park, NM shall collect the proceeds thereof on behalf of the municipality and shall act as a trustee thereof.
- B. The tax shall be collected from the 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 City for the tax provide in the article on the rent paid for the lodging at his respective place of business.
- D. Each vendor shall make a report by the 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 lodger's 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.

State law reference—Similar provisions, NMSA 1978 § 3-38-17.

Section 8. DUTY OF VENDOR TO MAINTAIN RECORDS.

The vendor shall maintain adequate records of facilities subject to the tax and of proceeds received for the use thereof. Such records shall be maintained within the municipal limits of City, shall be open to inspection by the municipality during reasonable hours, and shall be retained by the vendor for three years.

Section 9. AUDIT OF VENDORS.

- A. In accordance with state requirements, if the City of Sunland Park collects over two hundred fifty thousand dollars (\$250,000) in occupancy tax proceeds per annum, it shall conduct annual random audits of one or more vendors to verify the amount of gross rent subject to the occupancy tax and to ensure the full amount of occupancy tax on that rent is collected.
- B. In the event that the City collects less than two hundred fifty thousand dollars (\$250,000) in occupancy tax proceeds per annum, it shall conduct random audits to verify full payment of occupancy tax receipts.
- C. The audit may be performed by the city clerk or any other designee of the governing body. A copy of the audit shall be filed annually with the local government division of the department of finance and administration.
- D. Failure to comply with the auditors' request will subject the vendor to penalties allowable by law.

Section 10. CONFIDENTIALITY OF RETURN AND AUDIT.

It is unlawful for any employee of the city to reveal to any individual—other than another employee of the City or an employee of the state taxation and revenue department—any information contained in the return or audit of any taxpayer, including vendors subject to the Lodger's Tax Act (NMSA 1978, §3-38-13 et seq.), except to a

court of competent jurisdiction in response to an order thereof in an action relating to taxes to which the City is a party, and in which information sought is material to the inquiry; to the taxpayer himself or an authorized representative; and in such manner, for statistical purposes, the information revealed is not identified as applicable to any individual taxpayer.

Section 11. FAILURE TO MAKE RETURN; COMPUTATION, CIVIL PENALTY AND NOTICE; COLLECTION OF DELINQUENCIES; OCCUPATION 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 greatest of ten percent of the amount not remitted or \$100. 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, and interest on the unpaid principal at a rate not exceeding one percent (1%) a 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 the 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 - 3-36-7. Priority of the lien shall be determined from the date of the filing.
- D. Under process or order of court, no person shall sell the property of a vendor without first ascertaining from the city finance director the amount of any occupancy tax due to the municipality. Any occupancy tax due to 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 12. CRIMINAL PENALTY.

Any person who violates the provision of this article for failure to pay the tax, remit proceeds thereof to the municipality, properly account for any lodging and tax proceeds pertaining thereto, or for the violation of the confidentiality provisions of this ordinance, shall be charged with a petty misdemeanor and upon conviction shall be punished by a fine of not more than five hundred dollars (\$500.00) or imprisonment for not more than ninety (90) days or by both such fine and imprisonment. as provided for in the city's general penalty code section 1-4-1.

Section 13. REFUND AND CREDIT PROCEDURE.

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 town clerk, no later than 90 days from the date the payment was made, a written claim for the 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 approval of the governing body.

Section 14. FINANCIAL REPORTS.

- A. The finance director 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 NMSA 1978, §6-6-1 et seq. or the Audit Act (NMSA 1978, §12-6-1 et seq.) that relates to the expenditure of occupancy tax funds within ten 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 NMSA 1978, §§ 3-38-15 and 3-38-21, and shall furnish a copy of this report to the advisory board when it is filed with the division.

Section 15. ADVISORY BOARDS CREATED; DUTIES.

- A. 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.
- B. Members shall serve at the pleasure of the mayor. The board shall advise the governing body on the expenditure of funds authorized by Section 3-38-15 NMSA 1978 for advertising, publicizing and promoting tourist attractions and facilities in the municipality.
- C. The advisory board shall submit to the mayor and governing body recommendations for the expenditures of funds authorized pursuant to the Lodger's Tax Act for advertising, publicizing and promoting tourist-related attractions, facilities and events in the municipality.

Section 16. ELIGIBLE USES OF PROCEEDS; LIMITATIONS.


- A. In accordance with NMSA 1978, §3-38-15(D)(3), no less than one-half of the proceeds from the tax shall be used for advertising, publicizing and promoting tourist-related attractions, facilities and events of the municipality.
 - 1. These funds 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 governing body may use the remaining proceeds from the tax to defray the costs of:
1. Collecting and otherwise administering the tax, including the performance of audits required by the Lodger's Tax Act (NMSA 1978, § 3-38-13 et seq.) pursuant to guidelines issued by the department of finance and administration;
 2. Establishing, operating, purchasing, constructing, extending, improving equipment, furnishing or acquiring real property for the site or grounds for tourist related facilities, attractions or transportation systems of the municipality;
 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, 3-38-24;
 4. Providing police and fire protection and sanitation services for tourist related events, facilities and attractions in the municipality; or
 5. Any combination of the forgoing purposes or transaction stated in this section, but for no other municipal purposes.

PASSED, APPROVED AND ADOPTED by the Governing Body of the City of Sunland

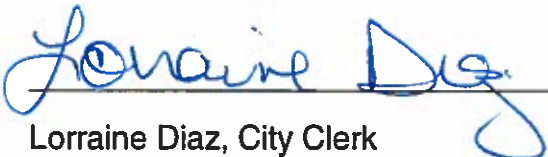
Park, New Mexico, this 6th day of October, 2015.

BY:



Javier Perea, Mayor

Attest:



Lorraine Diaz, City Clerk