



**TAOS COUNTY ORDINANCE 2021-3  
AN ORDINANCE REPEALING ORDINANCE 1996-7 AND  
ADOPTING AN AMENDED TAOS COUNTY LODGERS' TAX ORDINANCE**

**WHEREAS**, the New Mexico Lodgers' Tax Act provides that counties may adopt a Lodgers' Tax Ordinance; and

**WHEREAS**, Taos County has previously adopted Ordinance 1994-2 (adopted February 8, 1994) which established the Taos County lodgers' tax; and

**WHEREAS**, Taos County has previously adopted Ordinances 1994-6 (adopted June 14, 1994) and Ordinance 1995-8 (adopted June 27, 1995), both amending certain provisions of the Taos County Lodgers' Tax Act; and

**WHEREAS**, the 1996 New Mexico Legislature enacted several changes to the New Mexico Lodgers' Tax Act which affect the County's ordinances; In 1996, Ordinance 1996-7 was adopted which repealed both the former Ordinances identified above.

**WHEREAS**, the practice of renting dwellings and rooms within dwellings for periods shorter than thirty days (short term) has become widespread in the United States and recently within the County of Taos;

**WHEREAS**, it is necessary to amend the Lodger's Tax Ordinance to include reasonable tax regulation of the practice of short term rentals. The unregulated practice of renting residential dwellings and rooms within dwellings, provides challenges ensuring that the Lodger's Tax is being paid by each and every Vendor renting rooms on a short-term basis.

**NOW THEREFORE BE IT ORDAINED**, by the Governing Body of Taos County, the Taos County Board of Commissions, meeting in regular session, that:

1. **Repeal of Prior Ordinance.** Taos County Ordinance 1996-7 is hereby repealed in its entirety, effective as of the effective date of this new and amended Ordinance.
2. **Short Title.** Pursuant to the authority granted to the County pursuant to Section 3-38-15 NMSA 1978 (as amended), the Taos County Board of Commissioners hereby adopts the following as the "Taos County Lodgers' Tax Ordinance". This Ordinance shall be known as, and may be cited as, the "Taos County Lodgers' Tax Ordinance."
3. **State Law Incorporated.** The terms and definitions of the New Mexico Lodgers' Tax Act, Section 3-38-13 through 3-38-25 NMSA 1978 (as amended) are hereby adopted and incorporated by reference herein.
4. **Definitions.**
  - a. **"County clerk"** means the elected or appointed County Clerk of Taos County, New Mexico, or his/her designee.
  - b. **"Business Registration Certificate"** means the certificate issued by the Office of the Taos County Clerk, upon application and payment thereof, to a Vendor.
  - c. **"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; in addition to the definition under state law, any lodging including all hotel(s), motel(s), bed and breakfast establishment(s), short term rental units, boarding and/or rooming units and any other room or portion of a premises rented out by a Vendor for less than thirty (30) days.

d. **“Lodgers’ Tax Manager”** means an employee of the County assigned by the County Manager and provided the resources and staff necessary to administer the Lodgers’ Tax within Taos County.

5. **Imposition of Tax.** There is hereby imposed an occupancy tax of five percent (5%) of gross taxable rent on lodging paid to, or compensation received by, vendors for their taxable premises, beginning on the effective date of this Ordinance.

6. **Licensing.**

a. No Vendor shall engage in the business of lodging who has not obtained a Business Lodging Registration Certificate as provided in this Act.

b. Each applicant for a Business Registration Certificate shall submit an application, to the County Clerk, stating:

(1) The name, mailing address and telephone number(s) of the applicant, and the trade names, if different from the name of the applicant, under which the applicant proposes to engage in lodging;

(2) A description of the applicant's lodgings, including their physical location and the number of rooms located at that location;

(3) The applicant's New Mexico Taxation & Revenue Department Identification Number (i.e., CRS number);

(4) If the applicant claims that his/her lodging activity is exempt from the tax under this Ordinance, a detailed explanation of the basis of the applicant's claim of exemption.

c. The County Clerk shall review each application and shall, within ten (10) business days of receipt thereof, issue the Business Lodging Registration Certificate if the applicant is or will be a vendor as defined in this Ordinance and the applicant has complied with the requirements of this Ordinance;

7. **Exemptions.** The occupancy tax shall not apply if a vendee;

a. has been a permanent resident of taxable premises for a period of at least thirty (30) consecutive calendar days; or

b. enters into, or has entered into, a written agreement for lodging at the taxable premises for a period of at least thirty (30) consecutive calendar days; or

c. if the rent, paid by a vendee, is less than two dollars (\$2.00) a day; or

d. to lodging accommodations at institutions of the federal government, the state, or any political subdivision thereof; or

e. to lodging accommodations at religious, charitable, educational, or philanthropic institutions, including without limitation such accommodations at summer camps operated by such institutions; or

- f. to clinics, hospitals or other medical facilities; or
- g. to privately owned and operated convalescent homes or homes for the aged, infirm, indigent, or chronically ill.; ~~or~~

**8. Reporting and Collection of Tax.**

- a. Every vendor shall collect the proceeds of the occupancy tax, on behalf of the County, and shall act as a trustee thereof.
- b. The occupancy tax shall be collected from vendees, in accordance with this Ordinance ~~Act~~, and said tax shall be charged separately from the rent, fixed by the vendor, for the lodgings.
- c. Each vendor shall file a report, to be received at the Taos County Finance Department by the twenty-fifth (25th) day of each calendar month, on forms provided by the Finance Department, of the receipts for lodging received in the preceding calendar month, and shall remit therewith payment of the proceeds of the occupancy tax due the County.
- d. Each vendor shall maintain adequate records of his/her provision of lodgings and of rent collected or received for the use thereof. Such records, or a true and accurate copy thereof, shall be maintained within the jurisdictional limits of Taos County and shall be open to inspection by the County or its agent during reasonable hours. Such records shall be retained, by the vendor, for a period of not less than seven (7) years.

- 9. Audits.** The County Commission pursuant to Section 3-38-17.1 NMSA (1978) shall annually order audits of vendors selected at random, of one or more vendors to verify the amount of gross taxable rent subject to the occupancy tax and to ensure that the full amount of occupancy tax is collected. In addition, the County, with reasonable cause, may conduct an audit of any vendor at any time. A copy of each audit shall be filed annually with the Local Government Division of the New Mexico Department of Finance and Administration.

- 10. Lodgers' Tax Advisory Board.** An Advisory Board is hereby authorized and continued, as required by Section 3-38-22 NMSA (1978), for a County Commission imposing a Lodgers' Tax. The Advisory Board was formed and functions pursuant to the requirements of State Law.

- a. The chairman of every county commission that imposes an occupancy tax pursuant to the Lodgers' Tax Act 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 unincorporated area of the county, two members who are owners or operators of industries located within the unincorporated area of the county that primarily provide services or products to tourists and one member who is a resident of the unincorporated area of the county who represents the general public.
- b. Members of the boards created under this section shall serve at the pleasure of the respective appointing authorities. The boards shall advise the respective governing bodies on the expenditure of funds authorized by Section 3-38-15 NMSA 1978 for advertising, publicizing and promoting tourist attractions and facilities in the respective counties.
- c. The advisory board shall submit to the county commission recommendations for the expenditures of funds authorized pursuant to the Lodgers' Tax Act for advertising, publicizing and promoting tourist-related attractions, facilities and events in the respective counties.

**11. Eligible uses of tax proceeds.**

- a. Subject to the limitations contained in Section 3-38-15 NMSA 1978, a county imposing an occupancy tax may use the proceeds from the occupancy tax to defray costs of:

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- (1) collecting and otherwise administering the occupancy tax, including the performance of audits required by the Lodgers' Tax Act [3-38-13 through 3-38-24 NMSA 1978] 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 and attractions or tourist-related 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 3-38-24 NMSA 1978;
- (4) advertising, publicizing and promoting tourist-related attractions, facilities and events of the county and tourist-related facilities, attractions and events within the area;
- (5) providing police and fire protection and sanitation service for tourist-related facilities, attractions and events located in the respective county;
- (6) providing a required minimum revenue guarantee for air service to the county to increase the ability of tourists to easily access the county'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 county purpose.

**12. *Civil Penalties. Liens and Sales by Creditors.***

- a. If, for a given month, any vendor fails to file a monthly report, or fails to pay the occupancy tax then due for that month, he/she shall be liable for the tax due for that month and a penalty equal to ten percent (10%) of the tax due or one hundred dollars (\$100), whichever is greater, and interest, not exceeding one percent (1%) per month, on all unpaid principal shall be immediately due and payable to the County without further notice from the County.
- b. Upon failure of a vendor to file a report or to pay tax, the Lodger's Tax Manager ~~County Clerk~~ shall give the vendor written notice of his/her delinquency and of the penalty and interest provided in this Ordinance ~~Act~~. Said notice shall be served personally or by certified mail-return receipt requested. If the report, that is due, is not filed and/or the tax, penalty and interest, that is due, is not paid within fifteen (15) calendar days of receipt of such notice by the vendor, the Lodger's Tax Manager ~~County Clerk~~ shall bring an action in New Mexico 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 (1%) a month, and the costs of collection and reasonable attorney's fees incurred in connection therewith.
- c. The occupancy tax shall constitute a preferred lien, in favor of the County, upon the personal and real property of each vendor. The lien may be enforced as provided in Sections 3-36-1 through 3-36-7 NMSA 1978, as amended. Priority of the lien shall be determined from the date of filing.
- d. The Lodger's Tax Manager shall furnish a certificate, showing the amount of all liens in the records of the County against a vendor pursuant to Chapter 3, Article 38 NMSA 1978, as amended, to any person requesting such a certificate.
- e. No person shall sell the property of any vendor under process or order of court without first ascertaining from the Lodger's Tax Manager ~~County Clerk~~ the amount of any occupancy tax, penalty and/or interest due, the County from the vendor. Any of occupancy tax so due shall be paid from the proceeds of the sales before payment is made to the judgement creditor or any other person with a claim on the sale proceeds.

f. All penalties, interests and costs, recovered by the County, shall be deposited to the general fund.

**13. *Criminal Penalties.*** Any person who violates the provisions of this Ordinance, by failure to file the required monthly report, pay the occupancy tax, and/or remit the proceeds thereof, to the County, or to account properly for any lodging and the tax proceeds pertaining thereto, shall be guilty of a misdemeanor and shall be subject to a fine of not more than Five Hundred dollars (\$500) or imprisonment for not more than ninety (90) days or both. For purposes of this section, each failure to file a monthly report, or to remit the occupancy tax proceeds due for said month, shall constitute a separate violation.

**14. *Refund and Credits.***

a. If any vendor believes that he/she has made payment, of any occupancy tax, in excess of that for which he/she was liable, he/she may claim a refund/credit thereof by delivering, to the Lodger's Tax Manager ~~County Clerk~~, no later than ninety (90) calendar days from the date payment was made, a written claim for refund/credit.

b. Every claim shall state, in specific detail and accompanied by copies of all receipts and/or other written documentation, the nature of the vendor's complaint/overpayment.

c. The Lodger's Tax Manager shall, based on the written appeal, either allow the claim in whole or in part or may deny it.

d. Refunds/credit of tax erroneously paid and amounting to One Hundred dollars (\$100) or more shall be subject to prior approval of the County Commission.

**15. *Appeal To Taos County Board of Commissioners.***

a. In the event that a vendor is not satisfied with the decision of the Lodger's Tax Manager, he/she may appeal the decision, in writing, to the County Commission.

b. The written appeal shall be set for hearing, by the County Commission Chairperson, within forty-five (45) calendar days of receipt by the Lodger's Tax Manager.

c. The appeal hearing, before the County Commission, shall accord the vendor a full and fair opportunity to present his/her case and present any evidence in favor of their position.

d. The County Commission shall render a written decision within thirty (30) calendar days after the conclusion of the appeal hearing. Said decision shall be final. An aggrieved vendor may proceed to file an appeal with the Eighth Judicial District Court upon the filing of a bond, with the Court, in an amount equal to the total amount due and payable to the County.

**16. *Severability.*** If any provision of this Ordinance is held to be unenforceable, by a court of competent jurisdiction, such provision shall be deemed void only to the extent of such unenforceability and shall be deemed separate from, and shall not invalidate, any other provision of this Ordinance,

**17. *Recordation & Effective Date.*** This Ordinance was recorded in the Office of the Taos County Clerk on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ in Book No. \_\_\_\_, Pages \_\_\_\_ through \_\_\_\_\_. This Ordinance shall be effective \_\_\_\_\_.

**SIGNATURE PAGE TO FOLLOW**

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**PASSED, ADOPTED, AND APPROVED**, by the Taos County Board of Commissioners, meeting in regular session on this \_\_\_\_ day of \_\_\_\_\_, 2021.

**BOARD OF COUNTY COMMISSIONERS  
OF TAOS COUNTY, NEW MEXICO**

\_\_\_\_\_  
Candyce O'Donnell, Commission Chair

**Attest:**

\_\_\_\_\_  
Valerie Montoya, Taos County Clerk

**Approved as to legal form:**

\_\_\_\_\_  
Randy Autio, Contract County Attorney

<b>VOTE RECORD:</b>				
J. Fambro	yes	no	abstain	absent
M. Gallegos	yes	no	abstain	absent
A. Brush	yes	no	abstain	absent
D. Vigil	yes	no	abstain	absent
C. O'Donnell	yes	no	abstain	absent

