

**City of Aztec
Ordinance 2019-497**

Amending Chapter 27, Article II Lodgers' Tax

WHEREAS: The State of New Mexico has changed its Statute regarding Lodgers Tax; and

WHEREAS: The City of Aztec will adopt the Lodgers' Tax code as set forth in the State of New Mexico State Statutes; and

NOW, THEREFORE, BE IT ORDAINED by the Governing Body of the City of Aztec, New Mexico that Ordinance 2019-497 Amending Chapter 27, Article II Lodgers' Tax as attached.

PASSED, APPROVED, SIGNED AND ADOPTED THIS _____ day of _____ 2020
by the Aztec City Commission, City of Aztec, New Mexico.

Mayor Victor C. Snover

ATTEST:

Karla Sayler, City Clerk CMC

APPROVE AS TO FORM:

City Attorney

Advertised Date of Final Adoption: _____

Effective Date of Ordinance: _____

ARTICLE II. LODGERS' TAX

Sec. 27-401. Title.

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

(Code 2007, 27-401)

Sec. 27-402. 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 attractions, facilities and events, and acquiring, establishing and operating tourist-related facilities, attractions or transportation systems, as ~~authorized in Section 27-417 of this article~~ established in New Mexico State Statute §3-38-15 through 3-38-24.

(Code 2007, 27-402)

Sec. 27-403. Definitions.

As used in this article:

Board

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.

City clerk

The city clerk of Aztec, New Mexico.

City Manager

The City Manager of Aztec, New Mexico or another designee or department official as the city manager may deem necessary.

Gross taxable rent

The total amount of rent paid for lodging, not including the state gross receipts tax or local sales taxes.

Lodging

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.

Lodgings

The rooms or other accommodations furnished by a vendor to a vendee by a taxable service of lodgings.

Occupancy tax

The tax on lodging authorized by the Lodgers' Tax Act.

Person

A corporation, firm, other body corporate, partnership, association or individual; personally 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.

Rent

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.

Taxable premises

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.

Tourist

A person who travels for the purpose of business, pleasure or culture to a municipality or county imposing an occupancy tax.

Tourist-related events

Events that are planned for, promoted to and attended by tourists.

Tourist-related facilities and attractions

Facilities and attractions that are intended to be used by or visited by tourists.

Tourist-related transportation systems

Transportation systems that provide transportation for tourists to and from tourist-related facilities, attractions and events.

Vendee

A natural person to whom lodgings are furnished in the exercise of the taxable service of lodging.

Vendor

A person or his agent furnishing lodgings in the exercise of the taxable service of lodging.
(Code 2007, 27-403)

Sec. 27-404. Imposition of Tax.

There is hereby imposed an occupancy tax of five (5) percent of gross taxable rent for lodging within the municipality paid to vendors.
(Code 2007, 27-404)

Sec. 27-405. Licensing.

1. No vendor shall engage in the business of providing lodging in the city who has first not obtained a license as provided in this section.

2. Applicants for a vendor's license shall submit an application to the city **clerk manager** 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 therefore;
 - (3) A description of 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 taxation and revenue department** 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; and
 - (5) Other information reasonably necessary to effect a determination of eligibility for such license.
3. The city **clerk manager** shall review all 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.
4. An applicant who is dissatisfied with the decision of the city **clerk manager** may appeal the decision to the governing body by written notice to the city **clerk manager** of such appeal to be made within fifteen (15) days of the date of the decision of the city **clerk manager** on the application. The matter shall be referred to the governing body for hearing at 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 manager** is transmitted. The action of the governing body shall be deemed final.
5. If the governing body finds for the applicant, the city **clerk manager** shall issue the appropriate license or other notice conforming to the decision made by the governing body.
(Code 2007, 27-405)

Sec. 27-406. Exemptions.

The occupancy tax shall not apply:

1. 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;
2. If the rent paid by the vendee is less than two dollars (\$2.00) a day;
3. If lodging accommodations at institutions of the federal government, the state or any political subdivision thereof;
4. If lodging accommodations at religious, charitable, educational or philanthropic institutions, including without limitation such accommodations at summer camps operated by such institutions;
5. If clinics, hospitals or other medical facilities;
6. If privately owned and operated convalescent homes, or homes for the aged, infirm, indigent or chronically ill; ~~or.~~
- ~~7. If the taxable premises does not have at least three (3) rooms or three (3) other units of accommodation for lodging.~~
(Code 2007, 27-406)

Sec. 27-407. Collection of Tax and Reporting Procedures.

1. Every vendor providing lodgings shall collect the tax thereon on behalf of the municipality and shall act as a trustee therefore.
2. The tax shall be collected from vendees and shall be charged separately from the rent fixed by the vendor for the lodgings.
3. Each vendor licensed under this article shall be liable to the city for the tax provided herein on the rent paid for lodging at his respective place of business.
4. Each vendor shall make a report by the twenty-fifth day of each month, on forms provided by the city ~~clerk~~ **manager**, 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.
(Code 2007, 27-407)

Sec. 27-408. Duties of 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 the city and shall be open to the inspection of the municipality during reasonable hours and shall be retained for three (3) years.
(Code 2007, 27-408)

Sec. 27-409. Enforcement.

1. 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.
2. 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.
3. 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.
(Code 2007, 27-409)

Sec. 27-410. Failure to Make Return; Computation; Civil Penalty and Notice; Collection of Delinquencies; Occupancy Tax is a Lien.

1. 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 (10) percent of the amount not remitted or one hundred dollars (\$100.00). The city ~~clerk~~ **manager** shall give the delinquent vendor written notice of the delinquency, which notice shall be mailed to the vendor's local address.
2. 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 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.
3. 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, ~~ffi~~ § 3-36-1 through 3-36-7. Priority of the lien shall be determined from the date of filing.
4. 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 proceeds of the sale.
(Code 2007, 27-410)

Sec. 27-411. Criminal Penalties.

Any person who violates the provisions of this article 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 ~~27-185~~ **27-415** 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.
(Code 2007, 27-411)

Sec. 27-412. 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 manager**, 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 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 (\$100.00) or more may be made only with the approval of the governing body.

(Code 2007, 27-412)

Sec. 27-413. Vendor Audits.

1. Options.

(1) Option A, for municipalities that collect more than two hundred fifty thousand dollars (\$250,000.00) per year in occupancy tax: The governing body shall select for annual random audit(s) one (1) 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.

(2) Option B, for municipalities collecting less than two hundred fifty thousand dollars (\$250,000.00) per year in occupancy tax: The governing body shall conduct random audits to verify full payment of occupancy tax receipts.

2. Number to audit. The governing body shall determine each year the number of vendors within the municipality to audit.

3. Administration. The audit(s) may be performed by the city **clerk 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.

(Code 2007, 27-413)

Sec. 27-414. Financial Reporting.

1. 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 NMSA 1978 Chapter 6, Article 6 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.

2. 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.

(Code 2007, 27-414)

Sec. 27-415. 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 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 city 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.

(Code 2007, 27-415)

Sec. 27-416. Administration of Lodgers' Tax Monies Collected.

The governing body shall, through the advice of the Lodgers' Tax Advisory Board, administer the lodgers' tax monies collected.

(Code 2007, 27-416)

Sec. 27-417. Eligible Uses of Lodgers' Tax Proceeds.

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 NMSA 1978 § 3-38-23 or § 3-38-24;
4. Advertising, publicizing and promoting tourist-related attractions, facilities and events of the municipality or county and tourist facilities or attractions within the area ~~(at least one-half (1/2) of the first three (3) percent collected must be used for this purpose, and twenty-five (25) percent of that amount over three (3) percent collected must be used for this purpose) as defined by NMSA 1978 § 3-38-15.D.~~ All such dedicated funds collected for this purpose after January 1, 1996, shall be so spent within two (2) years of collection;
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.

(Code 2007, 27-417)