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SPONSORED BY: Brad Winter, by request

2 AMENDING SECTION 4-4-1 ET SEQ., ROA 1994, THE LODGERS' TAX
3 ORDINANCE, TO INCLUDE THE DEFINITION OF MARKETPLACE PROVIDER,
4 ELIMINATE AN EXEMPTION, AND REQUIRE MARKETPLACE PROVIDERS TO
5 COLLECT AND REMIT OCCUPANCY TAXES; AND AMENDING SECTION 4-8-1
6 ET SEQ., ROA 1994, THE HOSPITALITY FEE ORDINANCE, TO INCLUDE THE
7 DEFINITION OF MARKETPLACE PROVIDER, ELIMINATE AN EXEMPTION, AND
8 REQUIRE MARKETPLACE PROVIDERS TO COLLECT AND REMIT
9 HOSPITALITY FEES.

12 SECTION 1. Section 4-4-1 et seq., ROA 1994, is amended to read:

14 This article shall be known as and may be cited as “City of Albuquerque
15 Lodgers' Tax Ordinance.”

17 This article is officially adopted by the City Council pursuant to the
18 provisions of Sections 3-38-13 through 3-38-24 NMSA 1978 as authorized by
19 the “Lodgers' Tax Act”.

21 The purpose of this article is to impose a tax which will be borne by
22 persons using commercial lodging accommodations which tax will provide
23 revenues for advertising, publicizing and promoting certain recreational and
24 tourist facilities as well as for the acquisition and construction of such
25 facilities as provided by law.

1

1 For the purpose of this article, the following definitions shall apply unless
2 the context clearly indicates or requires a different meaning.

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

5 LODGING. The transaction of furnishing rooms or sleeping
6 accommodations by a vendor to a vendee who for a rent, uses, possesses or
7 has the right to use or possess any room or rooms or other units of
8 accommodations in or at a taxable premises.

9 LODGINGS. The rooms or sleeping accommodations furnished by a
10 vendor to a vendee by a taxable service of lodging.

11 MARKETPLACE PROVIDER. A person who facilitates the rental of
12 lodging by:

13 (A) advertising the lodging by any means, whether physical or
14 electronic, including by internet website, online booking platform, catalog,
15 television or radio broadcast, and

16 (B) collecting payment from the vendee and transmitting that payment to
17 the vendor either directly or indirectly through agreements or arrangements
18 with the vendor, regardless of whether the marketplace provider receives
19 compensation or consideration in exchange for the marketplace provider's
20 services.]

21 MAYOR. The Mayor of the city or his designated representative.

22 OCCUPANCY TAX. The tax on lodging, authorized by this article.

23 PERSON. A corporation, firm, other body corporate, partnership,
24 association or individual, includes an executor, administrator, trustee, receiver
25 or other representative appointed according to law and acting in a
26 representative capacity, but does not include the United States of America, the
27 State of New Mexico, any corporation, department, instrumentality or agency
28 of the federal government or the state government, or any political subdivision
29 of the state.

30 RENT. The consideration received by a vendor in money, credits,
31 property or other consideration valued in money for lodgings subject to an
32 occupancy tax authorized in this article.

1 **TAXABLE PREMISES.** A hotel, apartment, apartment hotel, apartment
2 house, lodge, lodging house, rooming house, motor hotel, guest house, bed
3 and breakfast, guest ranch, ranch resort, mobile home, motor court, auto
4 court, auto camp, trailer court, trailer camp, trailer park, tourist camp, cabin or
5 other premises used for lodging.

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

8 **TOURIST-RELATED EVENTS.** Events that are planned for, promoted to
9 and attended by tourists.

10 **TOURIST-RELATED FACILITIES AND ATTRACTIONS.** Facilities and
11 attractions that are intended to be used by or visited by tourists.

12 **TOURIST-RELATED TRANSPORTATION SYSTEMS.** Transportation
13 systems that provide transportation for tourists to and from tourist-related
14 facilities and attractions and tourist-related events.

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

17 **VENDOR.** A person furnishing lodgings in the exercise of the taxable
18 service of lodging.

19 **§ 4-4-5 LODGERS' TAX APPLICATION.**

20 Any person desiring an application pursuant to Section 3-38-23 through
21 3-38-24 NMSA 1978 and the City of Albuquerque Lodgers' Tax ordinance shall
22 file an application with the Mayor upon a form to be provided by the Mayor.
23 The application shall include, but not be limited to, the following information:

24 **(A)** List the name, mailing address, telephone number, fax number and
25 other related necessary information to register Taxable Premises such as:
26 Federal Tax Identification Number, New Mexico State Gross Receipts Tax
27 Identification Number, New Mexico Public Regulation Commission (NMPRC)
28 number on file, City of Albuquerque Business Registration number on file with
29 the city.

30 **(B)** List the name, mailing address, telephone number, fax number of
31 accounting firm or officer handling Tax Premises' financial records associated
32 with reporting lodgers' tax reports and payments.

33 **§ 4-4-6 IMPOSITION OF TAX, USE OF PROCEEDS.**

1 (A) There is hereby imposed an occupancy tax of 5% of gross taxable
2 rent for lodging paid to vendors after December, 1984.

3 (B) Not less than one-half of the proceeds of such occupancy tax shall
4 be used for the purpose of advertising, publicizing and promoting tourist-
5 related attractions, facilities and events. Notwithstanding the preceding
6 sentence, the payment of principal and interest on outstanding bonds issued
7 prior to July 1, 1977 pursuant to Section 3-38-23 or 3-38-24 NMSA 1978, shall
8 be in accordance with the retirement schedules of the bonds established at
9 the time of issuance.

10 (C) Any balance of the occupancy tax proceeds not used for the purpose
11 set forth above may be used to defray the costs of:

12 (1) Collecting and otherwise administering the tax, including the
13 performance of audits required by the Lodgers' Tax Act, Sections 3-38-13 to 3-
14 38-24 NMSA 1978, pursuant to guidelines issued by the State of New Mexico
15 Department of Finance and Administration;

16 (2) The Mayor's Office or designated representative will administer
17 all Lodger's Tax audits. Audits Schedule of Taxable Premises will be
18 submitted for review to the City's Lodgers' Tax Advisory Board at their
19 monthly meeting in August.

20 (3) Establishing, operating, purchasing constructing, otherwise
21 acquiring, reconstructing, extending, improving, equipping, furnishing or
22 acquiring real property or any interest in real property for the site or grounds
23 for tourist-related facilities, attractions or transportation systems of the
24 municipality, the county in which the municipality is located or the county;

25 (4) The principal of and interest on any prior redemption premiums
26 due in connection with and any other charges pertaining to revenue bonds
27 authorized by Section 3-38-23 or 3-38-24 NMSA 1978;

28 (5) Advertising, publicizing, and promoting tourist-related facilities
29 and attractions and events of the municipality or county and tourist facilities
30 or attractions within the area;

31 (6) Providing police and fire protection and sanitation service for
32 tourist-related events, facilities and attractions located in the city or county; or

(7) Any combination of the foregoing purposes or transactions stated in this section but for no other municipal or county purpose.

(D) Every vendor who is furnishing any lodgings within a municipality or county is exercising a taxable privilege.

§ 4-4-7 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 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 30 consecutive days;

(B) If the rent paid by a vendee is less than \$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 limitation 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 vendor does not offer at least three rooms within or attached to a taxable premises for lodging or at least three other premises for lodging or a combination of these within the taxing jurisdiction.]~~

§ 4-4-8 DETERMINATION OF EXEMPTION; APPEAL.

The Mayor shall make the determination of whether or not a vendor is exempt from the occupancy tax. In the event the vendor is dissatisfied with any decision of the Mayor with respect to this article, he may appeal the decision to the City Hearing Officer. The burden of proof shall be upon the vendor to sustain his claim to an exemption.

§ 4-4-9 COLLECTION OF THE TAXES; REPORTING CHANGE IN OWNERSHIP.

(A) Every vendor providing lodgings within this city shall collect the occupancy tax thereon on behalf of the city and shall act as a trustee therefor.

1 (B) The occupancy tax shall be collected from vendees in accordance
2 with this section and shall be charged separately from the rent fixed by the
3 vendor for the lodgings.

4 (C) On and after June 1, 1969, each vendor shall be liable to the city for
5 the tax provided herein on the rent paid for lodging.

6 (D) (1) Each vendor shall make a report by the 25th day of each month
7 on forms provided by the Mayor of the receipts for lodging paid to him in the
8 preceding calendar month and shall remit therewith payment of the total
9 amount of the occupancy tax due to the city. The report shall include
10 sufficient information to enable the city to audit the report and shall be verified
11 on oath by the vendor. Occupancy taxes not paid and posted to the city's
12 Lodgers Subsidiary Ledger Vendors' Account by the 25th of the month as
13 provided herein shall be considered delinquent.

14 (2) If the 25th day of the month falls on a weekend or holiday, the
15 return shall be due on the next business day.

16 (E) The Mayor shall select for annual random audits one or more
17 vendors to verify the amount of gross rent subject to the occupancy tax and to
18 ensure that the full amount of occupancy tax on that rent is collected. Copies
19 of audits completed shall be filed with the State of New Mexico local
20 government division of the Department of Finance and Administration.

21 (F) Failure to notify the Mayor within 30 working days of a change of
22 ownership on a taxable premises shall subject vendor to a \$500 penalty.

23 (G) A nonrefundable hearing fee of \$50.00 shall accompany each appeal
24 to the City Hearing Officer filed pursuant to §§ 4-4-6 or 4-4-9 ROA 1994.

25 § 4-4-10 RECORDS OF VENDOR.

26 Each vendor shall maintain adequate records of facilities subject to the
27 occupancy tax and of proceeds received for the use thereof. The records to
28 be maintained shall include but are not limited to: federal income tax returns,
29 State of New Mexico form CRS-1, financial statements, general and subsidiary
30 ledgers, sales journals, charts of accounts, daily summaries and reports,
31 monthly summaries, registration cards, bank statements, and year-end
32 adjusting entries. The records shall be maintained in Albuquerque and shall

1 be open to inspection by the city during reasonable hours and shall be
2 retained for three years.

3 § 4-4-11 FAILURE TO PAY TAX OR MAKE RETURN; PENALTY;
4 COLLECTION OF DELINQUENCIES; CONTINUOUS SURETY BOND; APPEAL.

5 (A) In addition to other penalties that may be applicable under this
6 article, if any vendor makes a return as required by this article without paying
7 the occupancy tax then due, he shall be liable for the tax and a penalty equal
8 to 10% thereof or \$100, whichever is greater. Promptly after receipt of such
9 return, the city shall give the delinquent vendor written notice of the tax and
10 penalty.

11 (B) If any vendor neglects or refuses to make a return and pay the
12 occupancy tax as required by this article, the Mayor shall make an estimate
13 based upon an examination of the vendor's books and records, or upon any
14 information in its possession or that may come into its possession, of the
15 amount of the rent of the delinquent vendor for the period in respect to which
16 he has failed to make a return, and upon the basis of said estimated amount
17 shall compute and assess the tax payable by the delinquent vendor, adding to
18 this amount a penalty equal to 10% thereof or \$100, whichever is greater.
19 Promptly thereafter the city shall give the delinquent vendor written notice of
20 the estimated tax and penalty.

21 (C) If payment is not made by the vendor within 15 days of the date of
22 the notice that the occupancy tax is delinquent, the Mayor may bring an action
23 in law or equity in the district court for the collection of any amounts due,
24 including without limitation penalties thereon, interest on the unpaid principal
25 at a rate of not exceeding 1% a month, the costs of collection and reasonable
26 attorneys' fees incurred in connection therewith.

27 (D) A Continuous Surety Bond naming the city as beneficiary in the
28 amount of \$3,000 plus \$60 per room or individual sleeping accommodation
29 available for use by the public shall be posted and filed with the City Clerk
30 upon vendor's failure to remit occupancy tax for two consecutive months. If
31 payment or posting Continuous Surety Bond is not made by the vendor within
32 15 days of the date of notice that the occupancy tax is delinquent, the Mayor
33 may bring an action in law or equity in the district court for the collection of

1 any amount due, including without limitation penalties thereon, interest on the
2 unpaid principal at a rate not exceeding 1% a month, the costs of collection
3 and reasonable attorney's fees incurred in connection therewith. Continuous
4 Surety Bond shall remain in force three years from date of issuances per
5 arrear incident applicable. Surety Bond may be augmented or applied to any
6 succeeding arrear Lodger's Tax payments due the City of Albuquerque.

7 (E) A vendor who disputes the assessment of any occupancy tax or
8 related penalties and interest may, within five working days of the date of the
9 notice from the city that the tax is delinquent, appeal the Mayor's decision to
10 the City Hearing Officer as set forth in § 4-4-9.

11 § 4-4-12 LIEN FOR TAX; PAYMENT; CERTIFICATE OF LIENS.

12 All delinquent occupancy taxes and penalty shall constitute a lien in favor
13 of the city on the personal and real property of the vendor providing lodging.
14 The lien may be enforced as provided in Sections 3-36-1 through 3-36-7 NMSA
15 1978.

16 (A) Under process or order of the court, no person shall sell the property
17 of any vendor without first ascertaining from the Treasurer of the city the
18 amount of any occupancy tax due to the city. Any occupancy tax due the city
19 shall be paid from the proceeds of the sale before payment is made to the
20 judgment creditor or any other person with a claim on the sale proceeds.

21 (B) The Treasurer of the city shall furnish to any person applying for
22 such a certificate, a certificate showing the amount of all liens in the records
23 of the municipality against any vendor.

24 § 4-4-13 LODGERS' TAX ADVISORY BOARD.

25 (A) There is created the Lodgers' Tax Advisory Board, which shall
26 consist of seven members all of whom shall be residents of the city; two of
27 whom shall represent the lodging industry, two of whom are directly involved
28 in tourist-related industries and three members at large who shall represent
29 the public. The members of the Lodgers' Tax Advisory Board shall be
30 appointed by the Mayor with the advice and consent of the City Council.

31 (B) The term of each member of the Lodgers' Tax Advisory Board shall
32 be three years.

1 (C) Except as provided in this article, the qualifications appointment and
2 conduct of the members of the Lodgers' Tax Advisory Board and the
3 organizational structure of the Lodgers' Tax Advisory Board shall be
4 governed by § 2-6-1-1 et seq.

5 (D) The Lodgers' Tax Advisory Board shall advise the Mayor and City
6 Council on the expenditure of funds authorized by Section 3-38-15 NMSA 1978
7 for advertising, publicizing and promoting tourist attractions and facilities in
8 the city. In addition, the Lodgers' Tax Advisory Board shall:

9 (1) Review past and current performance of any organization
10 contracting with the city to supply advertising, publicizing and promotion of
11 tourist attractions, conventions and tourist related activities;

12 (2) Advise the Mayor as to the performance of such contractors on
13 a quarterly basis, and make recommendations to the Mayor concerning
14 whether such contracts should be renewed or canceled.

15 [§4-4-14 MARKETPLACE PROVIDER RESPONSIBILITIES.]

16 (A) Marketplace providers shall be responsible for collecting all
17 applicable occupancy taxes and remitting the same to the City. The
18 marketplace provider shall be considered an agent of the vendor for purposes
19 of occupancy tax collections and remittance responsibilities as set forth in
20 this Ordinance;

21 (B) Marketplace providers shall disclose to the City on a monthly basis
22 each lodging listing located in the City, the names of the persons responsible
23 for each such listing, the address of each such listing, the length of stay for
24 each such listing and the price for each stay;

25 (C) Safe Harbor. A marketplace provider operating exclusively on the
26 internet, who operates in compliance with subsections (A) and (B) above, shall
27 be presumed to be in compliance with this Ordinance, except that the
28 marketplace provider remains responsible for compliance with the
29 administrative penalty provision in § 4-4-99 of this Ordinance.]

30 § 4-4-99 PENALTY.

31 A vendor shall be guilty of a misdemeanor and subject to the penalty
32 provisions set forth in § 4-1-99 of this code of ordinances for a violation of the
33 provisions of this article for a failure to pay the occupancy tax, to remit the

1 proceeds thereof to the city or to account properly for any lodging and the
2 occupancy tax proceeds pertaining thereto.

3 SECTION 2. Section 4-8-1 et seq., ROA 1994, is amended to read:

4 § 4-8-1 SHORT TITLE.

5 This article may be cited as the “City of Albuquerque Hospitality Fee
6 Ordinance.”

7 § 4-8-2 AUTHORITY AND PURPOSE.

8 The fee imposed under this article is imposed pursuant to the Hospitality Fee
9 Act, Section 3-38A-1 to 3-38A-12 NMSA 1978. The City of Albuquerque is
10 located in a class A county with a population of more than 250,000 according
11 to the 2000 federal decennial census. The Albuquerque City Council desires
12 to equip and furnish the convention center and contract to purchase
13 advertising that publicizes and promotes tourist-related attractions, facilities
14 and events in the municipality.

15 § 4-8-3 DEFINITIONS.

16 For the purpose of this article, the following definitions shall apply unless the
17 context clearly indicates or requires a different meaning.

18 GROSS TAXABLE RENT. The total amount of rent paid for lodging, not
19 including the state gross receipts tax, lodgers’ tax or local sales taxes.

20 LODGING. The transaction of furnishing rooms or sleeping
21 accommodations by a vendor to a vendee who for a rent, uses, possesses or
22 has the right to use or possess any room or rooms or other units of
23 accommodations in or at a taxable premises.

24 LODGINGS. The rooms or sleeping accommodations furnished by a
25 vendor to a vendee by a taxable service of lodging.

26 MARKETPLACE PROVIDER. A person who facilitates the rental of
27 lodging by:

28 (A) advertising the lodging by any means, whether physical or
29 electronic, including by internet website, online booking platform, catalog,
30 television or radio broadcast, and

31 (B) collecting payment from the vendee and transmitting that payment to
32 the vendor either directly or indirectly through agreements or arrangements
33 with the vendor, regardless of whether the marketplace provider receives

compensation or consideration in exchange for the marketplace provider's services.]

MAYOR. The Mayor of the city or his designated representative.

PERSON. 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.

PROPRIETOR. A person who furnishes tourist lodging.

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 this article.

TAXABLE PREMISES. A hotel, apartment, apartment hotel, apartment house, lodge, lodging house, rooming house, motor hotel, guest house, bed and breakfast, guest ranch, ranch resort, mobile home, motor court, auto court, auto camp, trailer court, trailer camp, trailer park, tourist camp, cabin or other premises used 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 ATTRACTIONS, FACILITIES AND EVENTS. Facilities and attractions that are intended to be used by or visited by tourists.

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

VENDOR. A person furnishing lodgings in the exercise of the taxable service of lodging.

§ 4-8-4 IMPOSITION OF FEE, USE OF PROCEEDS.

(A) There is hereby imposed a hospitality fee of 1% of gross taxable rent for lodging paid to vendors after the effective date of this article.

(B) Fifty percent of such hospitality fee shall be used for the purpose of purchasing advertising to publicize and promote tourist-related attractions, facilities and events.

1 (C) Fifty percent of such hospitality fee shall be used to equip and
2 furnish the City of Albuquerque Convention Center.

3 (D) Every vendor who is furnishing any lodgings within a municipality or
4 county is exercising a taxable privilege.

5 § 4-8-5 EXEMPTIONS.

6 The hospitality fee shall not apply:

7 (A) If a vendee:

8 (1) Has been a permanent resident of the taxable premises for a period
9 of at least 30 consecutive days; or

10 (2) Enters into or has entered into a written agreement for lodgings at
11 the taxable premises for a period of at least 30 consecutive days;

12 (B) If the rent paid by a vendee is less than \$2 a day.

13 (C) To lodging accommodations at institutions of the federal
14 government, the state or any political subdivision thereof.

15 (D) To lodging accommodations at religious, charitable, educational or
16 philanthropic institutions, including without limitation such accommodations
17 at summer camps operated by such institutions.

18 (E) To clinics, hospitals or other medical facilities.

19 (F) To privately-owned and operated convalescent homes or homes for
20 the aged, infirm, indigent or chronically ill.

21 ~~[(G) If the vendor does not offer at least three rooms within or attached to~~
22 ~~a taxable premises for lodging or at least three other premises for lodging or a~~
23 ~~combination of these within the taxing jurisdiction.]~~

24 § 4-8-6 DETERMINATION OF EXEMPTION; APPEAL.

25 The Mayor shall make the determination of whether or not a vendor is exempt
26 from the hospitality fee. In the event the vendor is dissatisfied with any
27 decision of the Mayor with respect to this article, he may appeal the decision
28 to the City Hearing Officer. The burden of proof shall be upon the vendor to
29 sustain his claim to an exemption.

30 § 4-8-7 HOSPITALITY APPLICATION.

31 Any vendor that is required to remit the hospitality fee to the City of
32 Albuquerque shall register to pay with the Mayor upon a form to be provided

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1 by the Mayor. The application shall include, but not be limited to, the following
2 information:

3 (A) The name, mailing address, telephone number, fax number and other
4 related necessary information to register taxable premises such as: Federal
5 Tax Identification Number, New Mexico State Gross Receipts Tax Identification
6 Number, New Mexico Public Regulation Commission (NMPRC) number on file,
7 City of Albuquerque Business Registration number on file with the city.

8 (B) The name, mailing address, telephone number, facsimile number of
9 accounting firm or officer handling tax premises' financial records associated
10 with reporting hospitality fee reports and payments.

11 § 4-8-8 COLLECTION OF THE FEE; REPORTING CHANGE IN OWNERSHIP.

12 (A) Every vendor providing lodgings within this city shall collect the
13 hospitality fee thereon on behalf of the city and shall act as a trustee therefor.

14 (B) The hospitality fee shall be collected from vendees in accordance
15 with this section and shall be charged separately from the rent fixed by the
16 vendor for the lodgings.

17 (C) After the effective date of this article, each vendor shall be liable to
18 the city for the hospitality fee provided herein on the rent paid for lodging.

19 (D) (1) Each vendor shall make a report by the 25th day of each
20 month on forms provided by the Mayor of the receipts for lodging paid to him
21 in the preceding calendar month and shall remit therewith payment of the total
22 amount of the hospitality fee due to the city. The report shall include
23 sufficient information to enable the city to audit the report and shall be verified
24 on oath by the vendor. Any hospitality fee not paid and posted to the city's
25 Lodgers Subsidiary Ledger Vendors' Account by the 25th of the month as
26 provided herein shall be considered delinquent.

27 (2) If the 25th day of the month falls on a weekend or holiday, the return
28 shall be due on the next business day.

29 (E) The Mayor shall select for annual random audits one or more
30 vendors to verify the amount of gross rent subject to the hospitality fee and to
31 ensure that the full amount of hospitality fee on that rent is collected. Copies
32 of audits completed shall be filed with the State of New Mexico local
33 government division of the Department of Finance and Administration.

1 (F) Failure to notify the Mayor within 30 working days of a change of
2 ownership on a taxable premises shall subject vendor to a \$500 penalty.

3 (G) A nonrefundable hearing fee of \$50 shall accompany each appeal to
4 the City Hearing Officer filed pursuant to §§ 4-4-6 or 4-4-9, ROA 1994.

5 § 4-8-9 RECORDS OF VENDOR.

6 Each vendor shall maintain adequate records of facilities subject to the
7 hospitality fee and of proceeds received for the use thereof. The records to be
8 maintained shall include but are not limited to: federal income tax returns,
9 State of New Mexico form CRS-1, financial statements, general and subsidiary
10 ledgers, sales journals, charts of accounts, daily summaries and reports,
11 monthly summaries, registration cards, bank statements, and year-end
12 adjusting entries. The records shall be maintained in Albuquerque and shall
13 be open to inspection by the city during reasonable hours and shall be
14 retained for three years.

15 § 4-8-10 FAILURE TO PAY FEE OR MAKE RETURN; PENALTY;
16 COLLECTION OF DELINQUENCIES; CONTINUOUS SURETY BOND; APPEAL.

17 (A) In addition to other penalties that may be applicable under this
18 article, if any vendor makes a return as required by this article without paying
19 the hospitality fee then due, he shall be liable for the fee and a penalty equal to
20 10% thereof or \$100, whichever is greater. Promptly after receipt of such
21 return, the city shall give the delinquent vendor written notice of the fee and
22 penalty.

23 (B) If any vendor neglects or refuses to make a return and pay the
24 hospitality fee as required by this article, the Mayor shall make an estimate
25 based upon an examination of the vendor's books and records, or upon any
26 information in its possession or that may come into its possession, of the
27 amount of the rent of the delinquent vendor for the period in respect to which
28 he has failed to make a return, and upon the basis of said estimated amount
29 shall compute and assess the fee payable by the delinquent vendor, adding to
30 this amount a penalty equal to 10% thereof or \$100, whichever is greater.
31 Promptly thereafter the city shall give the delinquent vendor written notice of
32 the estimated fee and penalty.

1 (C) If payment is not made by the vendor within 15 days of the date of
2 the notice that the hospitality fee is delinquent, the Mayor may bring an action
3 in law or equity in the district court for the collection of any amounts due,
4 including without limitation penalties thereon, interest on the unpaid principal
5 at a rate of not exceeding 1% a month, the costs of collection and reasonable
6 attorneys' fees incurred in connection therewith.

7 (D) A Continuous Surety Bond naming the city as beneficiary in the
8 amount of \$3,000 plus \$60 per room or individual sleeping accommodation
9 available for use by the public shall be posted and filed with the City Clerk
10 upon vendor's failure to remit hospitality fee for two consecutive months. If
11 payment or posting Continuous Surety Bond is not made by the vendor within
12 15 days of the date of notice that the hospitality fee is delinquent, the Mayor
13 may bring an action in law or equity in the district court for the collection of
14 any amount due, including without limitation penalties thereon, interest on the
15 unpaid principal at a rate not exceeding 1% a month, the costs of collection
16 and reasonable attorney's fees incurred in connection therewith. The
17 Continuous Surety Bond shall remain in force for three years from the date of
18 issuance and may be extended or augmented to cover succeeding delinquent
19 hospitality fee payments due the City of Albuquerque.

20 (E) A vendor who disputes the assessment of any hospitality fee or
21 related penalties and interest may, within five working days of the date of the
22 notice from the city that the tax is delinquent, appeal the Mayor's decision to
23 the City Hearing Officer as set forth in § 4-4-9, ROA 1994.

24 § 4-8-11 LIEN; PAYMENT; CERTIFICATE OF LIENS.

25 All delinquent hospitality fees and penalty shall constitute a lien in favor of the
26 city on the personal and real property of the vendor providing lodging. The
27 lien may be enforced as provided in Sections 3-36- 1 through 3-36-7 NMSA
28 1978.

29 (A) Under process or order of the court, no person shall sell the property
30 of any vendor without first ascertaining from the Treasurer of the city the
31 amount of any hospitality fee due to the city. Any hospitality fee due the city
32 shall be paid from the proceeds of the sale before payment is made to the
33 judgment creditor or any other person with a claim on the sale proceeds.

(B) The Treasurer of the city shall furnish to any person applying for such a certificate, a certificate showing the amount of all liens in the records of the municipality against any vendor.

§ 4-8-12 FINANCIAL REPORTING.

The city will:

(A) Furnish to any municipal advisory board dealing with the occupancy, lodging or accommodation taxes or fees information on that portion of a proposed budget report or audit filed or received by the governing body pursuant to either Chapter 6, Article 6 NMSA 1978 or the Audit Act [Sections 12-6-1 to 12-6-14 NMSA 1978] that relates to the expenditure of hospitality fee proceeds within ten days of the filing or receipt of that proposed budget, report or audit; and

(B) Report quarterly to the Local Government Division of the New Mexico Department of Finance and Administration on the expenditure of hospitality fee proceeds pursuant to Section 3-38-15 and 3-38-21 NMSA 1978.

§4-8-13 MARKETPLACE PROVIDER RESPONSIBILITIES.

(A) Marketplace providers shall be responsible for collecting all applicable hospitality fees and remitting the same to the City. The marketplace provider shall be considered an agent of the vendor for purposes of hospitality fee collections and remittance responsibilities as set forth in this Ordinance;

(B) Marketplace providers shall disclose to the City on a monthly basis each lodging listing located in the City, the names of the persons responsible for each such listing, the address of each such listing, the length of stay for each such listing and the price for each stay;

(C) Safe Harbor. A marketplace provider operating exclusively on the internet, who operates in compliance with subsections (A) and (B) above, shall be presumed to be in compliance with this Ordinance, except that the marketplace provider remains responsible for compliance with the administrative penalty provision in § 4-8-99 of this Ordinance.]

§ 4-8-99 PENALTY.

A vendor shall be guilty of a misdemeanor and subject to the penalty provisions set forth in § 1-1-99 of this code of ordinances for a violation of the

1 provisions of this article for a failure to pay the hospitality fee, to remit the
2 proceeds thereof to the city or to account properly for any lodging and the
3 hospitality fee proceeds pertaining thereto.

4 SECTION 3. SEVERABILITY CLAUSE. If any section, paragraph, sentence,
5 clause, word or phrase of this ordinance is for any reason held to be invalid or
6 unenforceable by any court of competent jurisdiction, such decision shall not
7 affect the validity of the remaining provisions of this ordinance. The Council
8 hereby declares that it would have passed this ordinance and each section,
9 paragraph, sentence, clause, word or phrase thereof irrespective of any
10 provision being declared unconstitutional or otherwise invalid.

11 SECTION 4. COMPILATION. This ordinance shall be incorporated in and
12 compiled as part of the Revised Ordinances Of Albuquerque, New Mexico,
13 1994.

14 SECTION 5. EFFECTIVE DATE. This ordinance, as amended, shall take
15 effect January 1, 2020.

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[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion



CITY OF ALBUQUERQUE
Albuquerque, New Mexico
Office of the Mayor

Mayor Tim Keller

INTER-OFFICE MEMORANDUM

July 26, 2019

TO: Klarissa J. Peña, President - City Council

FROM: Tim Keller, Mayor 

SUBJECT: Amending Ordinance: Amending Section 4-4-1 ET SEQ., ROA 1994, The Lodger's Tax Ordinance, to Include the Definition of Marketplace Provider, Eliminate an Exemption, and Require Marketplace Providers to Collect and Remit Occupancy Taxes;

The attached ordinance will amend language to both the Lodger's Tax and Hospitality Fee ordinances to comply with changes to state law. It will require "Marketplace Providers" (i.e. VRBO/HomeAway, Airbnb, FlipKey etc.) to collect lodger's tax/hospitality fees from their Short-Term Rental (STR) hosts and remit the taxes and fees to the City for promotion and capital improvements. It will also eliminate the three room exemption to ensure City ordinances remain consistent with the statutory change that will go in to effect January 1, 2020.

The attached proposed ordinance is hereby forwarded to the Council for its consideration and action.

Amending Ordinance: Amending Section 4-4-1 ET SEQ., ROA 1994, The Lodger's Tax Ordinance, to Include the Definition of Marketplace Provider, Eliminate an Exemption, and Require Marketplace Providers to Collect and Remit Occupancy Taxes;

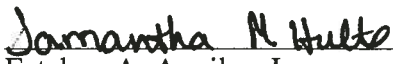
Approved:

SMH


Sarita Nair
Chief Administrative Officer

8/5/19
Date

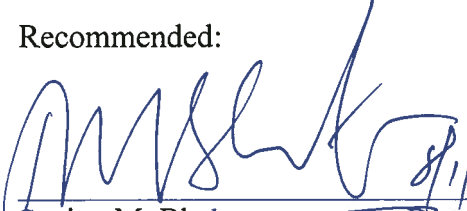
Approved as to Legal Form:



Samantha N. Hult
City Attorney

8/1/19 (AV)
Date

Recommended:



Sanjay M. Bhakta
Chief Financial Officer

8/1/19
Date

Recommended:



Lawrence Rael
Chief Operating Officer

7/31/19
Date

Cover Analysis

1. What is it?

The attached proposed ordinance amends the Lodger's Tax and Hospitality Fee ordinances.

2. What will this piece of legislation do?

The attached ordinance will amend the Lodger's Tax and Hospitality Fee ordinance to require "Marketplace Providers" (i.e. VRBO/HomeAway, Airbnb, FlipKey etc.) to collect lodger's tax/hospitality fees from their Short-Term Rental (STR) hosts and remit the taxes and fees to the City for promotion and capital improvements. The amendment also deletes the three room exemption to maintain consistency with the statutory change that will go into effect statewide on January 1, 2020.

3. Why is the project needed?

The project is needed to increase Lodger's Tax/Hospitality Fee revenue and increase efficiency by streamlining Treasury's efforts to collect from the individual STR hosts.

4. How much will it cost and what is the funding source?

There is no cost.

5. Is there a revenue source associated with this contract? If so, what level of income is projected?

The revenue source is Lodger's Tax and Hospitality Fees. The amount of increased annual revenue is estimated at \$125,000.

FISCAL IMPACT ANALYSIS

TITLE:

AMENDING SECTION 4-4-1 LODGERS' TAX ORDINANCE AND
HOSPITALITY FEE ORDINANCE

R:

O: XXX

FUND: 220/221

DEPT: Various

- ☐ No measurable fiscal impact is anticipated, i.e., no impact on fund balance over and above existing appropriations.
- ☒ (If Applicable) The estimated fiscal impact (defined as impact over and above existing appropriations) of this legislation is as follows:

		2020	Fiscal Years 2021	2022	Total
Base Salary/Wages		-	-	-	-
Fringe Benefits at	35.54%	-	-	-	-
Subtotal Personnel		-	-	-	-
Operating Expenses		-	-	-	-
Debt Service		-	-	-	-
Property		-	-	-	-
Indirect Costs	2.50%	-	-	-	-
Total Expenses		\$ -	\$ -	\$ -	\$ -
<input type="checkbox"/> Estimated revenues not affected					
<input checked="" type="checkbox"/> Estimated revenue impact					
Revenue from Fund 220/221		93,750	125,000	\$ 125,000	343,750
Amount of Grant		-	-	-	-
City Cash Match		-	-	-	-
City In-kind Match		-	-	-	-
City IDOH		-	-	-	-
Total Revenue		\$ 93,750	\$ 125,000	\$ 125,000	\$ 343,750

These estimates do not include any adjustment for inflation.

* Range if not easily quantifiable.

Number of Positions created

COMMENTS: It is estimated combined revenue for both lodger's tax/hospitality fee would be \$125,000 per fiscal year. FY 20 will only be 9 months of revenue or 75% of the estimated \$125,000. The assumptions are 299 more Short Term Rentals (net of Airbnb's which currently the city's is receiving revenues from), \$85 average daily rate and 22% average occupancy rate. See attached proforma.

COMMENTS ON NON-MONETARY IMPACTS TO COMMUNITY/CITY GOVERNMENT:

PREPARED BY:

FISCAL ANALYST

APPROVED:

DIRECTOR

(date)

REVIEWED BY:

EXECUTIVE BUDGET ANALYST

BUDGET OFFICER (date)

CITY ECONOMIST

7/30/19

Destination Pro Forma ABQ of VR Units Based on Scrape Taken on 5/11/2018

		Others		Total
		Airbnb	VRBO/HomeAway	
		Already Receiving	FlipKey etc.	
Values from Preliminary Report		1051	299	1350
Duplicate Rate	0%			
Annual License Fee	\$ 35.00			
Average Daily Rate		\$ 85.00	\$ 85.00	
Lodging Tax Rate	6.00%			
Other Taxes	0.00%			
	6.00%			
Current Compliance Rate	0%			
Estimated Listings		1051	299	1350
Market Share		78%	22%	
Gross Bookings		86,182	24,518	
Average Occupancy Rate		22%	22%	
Gross Yield		\$ 7,325,470.00	\$ 2,084,030.00	
Average Yield/Property		\$ 6,970.00	\$ 6,970.00	
Estimated Annual Tax Yield		\$ 439,528.20	\$ 125,041.80	\$ 564,570.00
Estimated Annual License Revenue		\$ 36,785.00	\$ 10,465.00	\$ 47,250.00
Total Annual Taxes/Fees		\$ 476,313.20	\$ 135,506.80	\$ 611,820.00