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

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

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

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

12 SECTION 2. Section 4-4-14, MARKETPLACE PROVIDER  
13 RESPONSIBILITIES, is amended as follows:

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

19 [~~(B) Marketplace providers shall disclose to the city on a monthly basis~~  
20 ~~each lodging listing located in the city, the names of the persons responsible~~  
21 ~~for each such listing, the address of each such listing, the length of stay for~~  
22 ~~each such listing and the price for each stay;~~]

23 [(B)] [(C)] *Safe Harbor*. A marketplace provider operating exclusively on  
24 the internet, who operates in compliance with subsection[s] (A) [~~and (B)~~]  
25 above, shall be presumed to be in compliance with this ordinance, except that  
26 the marketplace provider remains responsible for compliance with the  
27 administrative penalty provision in § 4-4-99 of this ordinance.

28 SECTION 3. SEVERABILITY CLAUSE. If any section, paragraph, sentence,  
29 clause, word or phrase of this ordinance is for any reason held to be invalid or  
30 unenforceable by any court of competent jurisdiction, such decision shall not  
31 affect the validity of the remaining provisions of this ordinance. The Council  
32 hereby declares that it would have passed this ordinance and each section,

1 paragraph, sentence, clause, word or phrase thereof irrespective of any  
2 provision being declared unconstitutional or otherwise invalid.

3 SECTION 4. COMPILATION. This ordinance shall be incorporated in and  
4 compiled as part of the Revised Ordinances of Albuquerque, New Mexico,  
5 1994.

6 SECTION 5. EFFECTIVE DATE. This ordinance shall take effect five days  
7 after publication by title and general summary.

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Mayor Tim Keller

# CITY OF ALBUQUERQUE

## Albuquerque, New Mexico

### Office of the Mayor

**INTER-OFFICE MEMORANDUM**

April 29, 2021

**TO:** Cynthia D. Borrego, President - City Council

**FROM:** Tim Keller, Mayor 

**SUBJECT:** Ordinance: Amends Section(s) 4-4-9 and 4-4-14 of the City of Albuquerque Lodgers' Tax Ordinance.

The attached Ordinance amends Section(s) 4-4-9 and 4-4-14 of the City of Albuquerque Lodgers' Tax Ordinance. It removes existing language requiring Marketplace providers to disclose on a monthly basis host & guest information. Also, new language has been added to require lodging establishments to report revenue each month whether or not any tax is due.

The removal of the requirement for the Marketplace Provider to disclose host and guest identification data is consistent with several legal decisions adverse to this specific clause based on federal data privacy laws. This amendment will have no impact on collections, as the data at issue is already provided by the City's Short-Term Rental (STR) enforcement contractor.

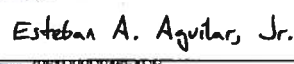
The attached proposed ordinance is hereby forwarded to the Council for its consideration and action.

Ordinance: Amends Section(s) 4-4-9 and 4-4-14 of the City of Albuquerque Lodgers' Tax Ordinance

Approved:

  
\_\_\_\_\_  
Sarita Nair Date 8/13/21  
Chief Administrative Officer


Approved as to Legal Form:


DocuSigned by:  
  
\_\_\_\_\_  
Esteban A. Aguilar, Jr. 5/10/2021 | 10:18 AM MDT  
1961D89D040F4DE...  
Esteban A. Aguilar, Jr. Date  
City Attorney

Recommended:

  
\_\_\_\_\_  
Sanjay M. Bhakta Date 8/12/21  
Chief Financial Officer

Recommended:

  
\_\_\_\_\_  
Lawrence Rael Date 8/12/21  
Chief Operating Officer

DocuSigned by:  
  
\_\_\_\_\_  
Renee Martinez 5/10/2021 | 7:04 AM PDT  
03FCD26AD26748C...  
Renee Martinez  
DFAS Director

DS  
CR as to Legal Form

## **Cover Analysis**

### **1. What is it?**

The attached Ordinance amends Section(s) 4-4-9 and 4-4-14 of the City of Albuquerque Lodgers' Tax Ordinance.

### **2. What will this piece of legislation do?**

The attached Ordinance amends Section(s) 4-4-9 and 4-4-14 of the City of Albuquerque Lodgers' Tax Ordinance. It removes existing language requiring Marketplace providers to disclose on a monthly basis host & guest information. Also, new language has been added to require lodging establishments to report revenue each month whether or not any tax is due.

### **3. Why is the project needed?**

The removal of the requirement for the Marketplace Provider to disclose host and guest identification data is consistent with several legal decisions adverse to this specific clause based on federal data privacy laws. This amendment will have no impact on collections, as the data at issue is already provided by the City's Short-Term Rental (STR) enforcement contractor.

Mandatory monthly reporting regardless of room rental revenue is consistent with Gross Receipts Tax reporting and allows the City to more efficiently distinguish vendors who are not complying with the Ordinance from those who had no taxable revenue in the reporting period.

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

There is no cost associated with amending the Lodgers' Tax Ordinance.

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

N/A

**FISCAL IMPACT ANALYSIS**

TITLE: AMENDING SECTION(S) 4-4-9 and 4-4-14 OF THE CITY OF ALBUQUERQUE  
 LODGERS' TAX ORDINANCE

R: xxxx O:  
 FUND: 220  
 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:

		Fiscal Years			
		2021	2022	2023	Total
Base Salary/Wages					-
Fringe Benefits	35.54%	-	-	-	-
Subtotal Personnel		-	-	-	-
Operating Expenses			-		-
Debt Service					-
Property			-		-
Indirect Costs	2.50%	-	-	-	-
Total Expenses		\$ -	\$ -	\$ -	\$ -
[ ] Estimated revenues not affected					
[x] Estimated revenue impact					
Revenue from Fund 405		0	-	\$	-
Amount of Grant					
City Cash Match -Fund 405					
City In-kind Match					
City IDOH					
Total Revenue		\$ -	\$ -	\$ -	\$ -

These estimates do not include any adjustment for inflation.  
 \* Range if not easily quantifiable.

Number of Positions created

COMMENTS: There is no cost associated with amending the Lodgers' Tax Ordinance.

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

PREPARED BY:

DocuSigned by:  
*Celia E. Rojasloro* 5/10/2021 | 8:00 AM MDT  
 FISCAL ANALYST

APPROVED:

DocuSigned by:  
*Renee Martinez* 5/10/2021 | 7:04 AM PDT  
 DIRECTOR (date)

REVIEWED BY:

DocuSigned by:  
*Jayne Aranda* 5/10/2021 | 9:39 AM MDT  
 EXECUTIVE BUDGET ANALYST

DocuSigned by:  
*LaMonica L. Davis* 5/10/2021 | 10:01 AM MDT  
 BUDGET OFFICER (date)

DocuSigned by:  
*Christine Boerner* 5/10/2021 | 10:17 AM MDT  
 CITY ECONOMIST