

COLFAX COUNTY
ORDINANCE NO. 2019-_____

**IMPOSING A LODGERS' TAX, TAX RATE AND LODGERS' TAX COLLECTION
AND RECORD KEEPING PROCEDURES**

SECTION 1. **SHORT TITLE.** This Ordinance shall be cited as the "Lodgers' Occupancy Tax Ordinance".

SECTION 2. **DEFINITIONS.** For the purposes of this Ordinance, the following words and phrases have the following meaning:

- A. COUNTY CLERK. The County Clerk for the County of Colfax, New Mexico;
- B. GROSS TAXABLE RENT. The total amount of rent paid for lodging, not including the state gross receipts tax or local sales taxes;
- C. LODGING. 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 accommodations in or at a taxable premise;
- D. LODGINGS. The rooms or other accommodations furnished by a vendor to a vendee by a taxable service of lodging;
- E. OCCUPANCY TAX. The tax on lodging authorized by the Lodgers' Tax Act, NMSA 1978 §§3-38-13 through 3-38-24 (as amended), and this Ordinance;
- F. PERSON. A corporation, firm, other body corporate, partnership, association, or individual. "Person" includes an executor, administrator, trustee, receiver or other representative appointed according to law and acting in a representative capacity. "Person" 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;
- G. RENT. The consideration received by a vendor in money, credits, property or other considerations valued in money for lodgings subject to an occupancy tax authorized in the Lodgers' Tax Act, NMSA 1978 §§3-38-13 through 3-38-24 (as

amended), and this Ordinance;

- H. 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 used for lodging;
- I. VENDEE. A natural person to whom lodgings are furnished in the exercise of the taxable service of lodging; and
- J. VENDOR. A person or his agent furnishing lodging in the exercise of the taxable service of lodging.

SECTION 3. IMPOSITION OF TAX; REPORTS; PENALTY; COLLECTION.

- A. STATUTORY AUTHORITY. The Board of County Commissioners of Colfax County, pursuant to NMSA 1978 §3-38-15 (1996) hereby impose an occupancy tax of 4% on gross taxable rent revenues on lodging within that part of Colfax County which is outside of the municipal limits of any incorporated municipality in the County.
- B. EXEMPTIONS. The occupancy tax shall not apply:
 - (1) if a vendee:
 - (a) has been a permanent resident of the taxable premises for a period of at least thirty consecutive days; or
 - (b) enters into or has entered into a written agreement for lodgings at the taxable premises for a period of at least thirty consecutive days;
 - (2) if the rent paid by a vendee is less than two dollars (\$2.00) a day;
 - (3) to lodging accommodations at institutions of the federal government, the state or any political subdivision thereof;
 - (4) to lodging accommodations at religious, charitable, educational or philanthropic institutions, including accommodations at summer camps operated by such institutions;

- (5) to clinics, hospitals or other medical facilities;
- (6) to privately owned and operated convalescent homes or homes for the aged, infirm, indigent or chronically ill; or
- (7) From the date of enactment of this ordinance until January 1, 2020 at which time this exemption expires, 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.

C. AMOUNT AND COLLECTION OF TAX. The amount of tax imposed under this Ordinance is four percent (4%). Each vendor providing lodgings in Colfax County, subject to this Ordinance, shall collect the occupancy tax of 4% of gross taxable rent on behalf of the County and shall act as a trustee therefore. Said tax shall be collected from vendees in accordance with this Ordinance and shall be charged separately from the rent fixed by the vendor for the lodgings. **NOTE: CAN BE AS HIGH AS 5% (3-38-15(B)).**

- (1) DATE DUE. The occupancy tax collected by the vendor shall be paid by the vendor in the form of cash or check to the County Clerk on or before the 25th day of each month for the previous calendar month's lodging.
- (2) REPORTS DUE. The vendor shall complete, sign and submit, together with the payment set forth hereinabove, the Colfax County Lodger's Tax Report and a copy of the vendor's monthly CRS gross receipts tax form on or before the 25th day of each month.
- (3) RESPONSIBILITY FOR PAYMENT OF TAX, PENALTY AND INTEREST. The vendor is liable for the payment of the proceeds of any occupancy tax collected and for any occupancy tax that the vendor fails to remit to the County due to the vendor's failure to collect the tax or otherwise. In addition to the vendor's liability for any collected unpaid funds or uncollected funds, a civil penalty of one hundred dollars (\$100.00) or ten percent (10%) of the amount of the occupancy tax due, whichever is greater, plus

interest at the rate of one percent (1%) per month will be assessed and collected against any vendor whose payments are either delinquent or late.

(4) COLLECTION OF DELINQUENCIES. The County may bring an action in law or equity in the Eighth Judicial District Court for the collection of any amounts due, including without limitation penalties thereon, interest on the unpaid principal as above stated, the cost of collection and reasonable attorney's fees incurred in connection therewith.

(5) LIENS FOR OCCUPANCY TAX. The occupancy tax imposed herein, constitutes a lien in favor of the County upon the personal and real property of the vendor providing lodgings in the County. Said lien may be enforced pursuant to NMSA 1978 §§3-36-1 through 3-36-7. Priority of the lien shall be determined from the date of filing. The vendor shall be liable for any and all costs and reasonable attorney's fees associated with the collection of funds under this Section.

D. CRIMINAL PENALTIES. It shall be a misdemeanor punishable by a fine of not more than five hundred dollars (\$500.00) or imprisonment for not more than ninety (90) days or both for any person to violate provisions of this Occupancy Tax Ordinance, by failing to collect the tax, by failing to remit the proceeds thereof to the County, or by failing to account properly for any lodging and the tax proceeds pertaining thereto.

SECTION 4. LICENSING OF VENDORS.

A. Each vendor providing lodging in the County subject to this Ordinance shall obtain a County Vendor Lodging License.

B. LICENSE APPLICATION. Each vendor must submit an application providing the following information:

(1) the name of the vendor, including identification of any person, as defined in this Ordinance, who owns or operates a place of lodging, the name or trade names under which the vendor proposes to do business, a phone number, the mailing and street address thereof;

- (2) a description of the facilities, including the number of rooms and the usual schedule of rates therefore;
- (3) a description of other facilities provided by the vendor or others to users of the lodgings such as a restaurant, bar, cleaning, laundry, courtesy car, stenographer, tailor or others and a statement containing phone numbers and addresses for those facilities; and

(4) State of New Mexico gross receipts tax number (CRS ID#).

- C. REVIEW OF APPLICATION. The County shall review the application for licensure and approve or reject said application within fifteen (15) days of receipt thereof. In the event the application is approved, a license shall be issued. In the event the application is rejected, the County will provide a written decision identifying the reasons for rejection.
- D. REFUNDS. Any vendor claiming a refund for overpayment of occupancy tax must file a request, in writing, with the County within ninety (90) days of the alleged overpayment. The request shall clearly document the gross rent for the payment period, the amount of occupancy tax collected, the amount remitted to the County, and the amount of overpayment claimed. The County shall review the refund request and take action to approve or deny the request within fifteen (15) days of receipt of the request.
- E. DISPUTE PROCEDURE. An applicant who is dissatisfied with a decision of the County under Paragraphs C and D above may appeal the decision to the Board of County Commissioners by written notice to the County Clerk of such appeal, said notice to be given within fifteen (15) days of receipt of the decision. The matter shall be referred to the Board of County Commissioners for hearing in the usual course of business. The action of the Board of County Commissioners shall be deemed final.

SECTION 5. USE OF TAX PROCEEDS.

- A. Not less than fifty percent (50%) of the proceeds from the first three percent (3%) and twenty-five percent (25%) of the proceeds from the next one percent (1%) of the occupancy tax shall be used for the purpose of advertising, publicizing, or promoting tourist-related attractions, facilities, and events in Colfax County.
- B. FACILITIES. The remaining fifty percent (50%) of the proceeds from the first three percent (3%) and seventy-five percent (75%) of the proceeds from the next one percent (1%) of the occupancy tax shall be used in collecting and otherwise administering the occupancy tax, including the performance of audits required by the Lodgers' Tax Act; and to equip, furnish, and improve the

County Fairgrounds, exposition field houses, auditoriums, welcome centers, tourist information centers, museums, transportation facilities, and performing art facilities; or to acquire suitable sites, grounds, or other property for the facilities described hereinabove; to advertise, publicize and promote those facilities hereinabove; or to use the occupancy tax proceeds in any combination of the foregoing purposes or transactions.

- C. The proceeds collected pursuant to this Ordinance must be expended within two (2) years of the fiscal year in which they were collected.

SECTION 6. ADVISORY BOARD CREATED.

- A. The Chairman of the County Commission shall appoint a five (5) member advisory board, subject to confirmation by the County Commission, to serve at the pleasure of the County Commission. The advisory board shall consist of the following: two (2) members who are owners or operators of lodging subject to the occupancy tax within the unincorporated area of the County; two (2) members who are owners or operators of industries located within the unincorporated area of the County that primarily provides services or products to tourists; and one (1) member who is a resident of the unincorporated area of the County who represents the general public.
- B. The advisory board shall advise the County Commission on and submit recommendations for the expenditure of funds authorized by §3-38-15 NMSA 1978 for advertising, publicizing and promoting tourist attractions and facilities in the County.
- C. The advisory board shall hold open meetings, pursuant to the New Mexico Open Meetings Act, and shall abide by the rules and regulations for the conduct of public meetings, as promulgated by the Board of County Commissioners and in compliance with state law.

SECTION 7. COUNTY AUDIT; RECORDS; REPORTS.

- A. NUMBER OF AUDITS. The Board of County Commissioners shall determine each year the number of vendors within the County to be audited. The determinations shall be based

on a recommendation from the County Treasurer.

- B. RANDOM AUDIT. The County Treasurer shall select at random for audit, one or more vendors, as determined by the Board of County Commissioners, to verify reported gross rent, full collection and payment of occupancy tax and accuracy of the information contained in the reports and forms required under this Ordinance.
- C. NOTICE. Vendors selected for audit shall be given notice, not to be less than twenty-one (21) calendar days, of an audit.
- D. PROCEDURE FOR AUDIT. Required audits may be performed by the County Treasurer or by any other designee of the Board of County Commissioners. A copy of any audit shall be filed annually with the local government division of the Department of Finance and Administration.
- E. CONFIDENTIALITY. No employee of the County of Colfax shall reveal to any individual, other than another employee of the County or the taxpayer or its authorized representative, any information contained in the return or audit of any taxpayer including vendors subject to the Lodgers' Tax Act unless otherwise provided by law. Information for statistical purposes may be revealed as long as it is revealed in such a manner that does not identify an individual taxpayer.
- F. RECORD PRESERVATION AND DESTRUCTION. All vendors shall maintain adequate records of facilities subject to the tax and of proceeds received for the use thereof. Such records shall be maintained in Colfax County and shall be open to inspection by the County during reasonable hours and shall be retained for at least three (3) years.

SECTION 9: EFFECTIVE DATE.

This Ordinance has been PASSED, APPROVED AND ADOPTED on the ____ day of _____, 2019, AND SHALL TAKE EFFECT ON _____, 2019.

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

Bobby LeDoux, Chairman

Landon Newton, Vice-Chair

Roy Fernandez, Member

ATTESTED:

Rayetta Trujillo, Colfax County Clerk