

THE VILLAGE OF TAOS SKI VALLEY

ORDINANCE 2012-14

AMENDED LODGER'S TAX ACT Ordinance No. 2004-14

AN ORDINANCE IMPOSING A LODGER'S TAX; SETTING FORTH DEFINITIONS; PROVIDING FOR EXEMPTIONS; ESTABLISHING CIVIL AND CRIMINAL PENALTIES; PROVIDING FOR AUDITS; ESTABLISHING ADMINISTRATIVE PROCEDURES AND ESTABLISHING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE GOVERNING BODY OF THE VILLAGE OF TAOS SKI VALLEY, NEW MEXICO:

SECTION 1. SHORT TITLE

This section shall be known as and may be cited as "The Lodger's Tax Ordinance." (Ordinance. No. 12-14)

SECTION 2. PURPOSE

The purpose of this Ordinance 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 17 of this Ordinance.

SECTION 3. DEFINITIONS - As used in the Lodger's Tax Ordinance:

- A. "Accommodations" means, in addition to rooms, all facilities or amenities or both that are provided as a part of the taxable service of lodgings, and includes facilities or amenities or both that are an essential and integral part of the provision or use of lodgings or that are not advertised and billed separately from the lodgings. Accommodations does not include facilities or amenities that are advertised and billed separately from the taxable service of lodgings, provided that the separate advertising and the billing procedure if first approved by the Village's Lodger's Tax Advisory Board;
- B. "Board" means 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;

- C. "Gross taxable rent" means the total amount of rent paid for lodging, not including the state gross receipts tax or local sales taxes;
- D. "Lodging" means 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 any room or rooms or other units of accommodations in or at a taxable premises;
- E. "Lodgings" means the rooms or other accommodations furnished by a vendor to a vendee by a taxable service of lodgings;
- F. "Occupancy tax" means the tax on lodging authorized by the Lodger's Tax Act;
- G. "Person" means a corporation, firm, other body corporate, partnership, association or individual; person includes and executor, administrator, trustee, receiver or other representative appointed according to law and acting in a representative capacity, but does not include the United State of America, the State of New Mexico, any corporation, department, instrumentality or agency of he federal government or the state government, or any political subdivision of the state;
- H. "Rent" means 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 Lodger's Tax Act;
- I. "Taxable premises" means a hotel, apartment, apartment hotel, apartment house, bed and breakfast, 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;
- J. "Tourist" means a person who travels for the purpose of business, pleasure or culture to a municipality or county imposing an occupancy tax;
- K. "Tourist-related events" means events that are planned for, promoted to and attended by tourists;
- L. "Tourist-related facilities and attractions" means facilities and attractions that are intended to be used by or visited by tourists;
- M. "Tourist-related transportation systems" means transportation systems that provide transportation for tourists to and from tourist-related facilities, attractions and events;

- N. "Vendee" means a natural person to whom lodgings are furnished in the exercise of the taxable service of lodging; and
- O. "Vendor" means a person or by a person, including but not limited to, property managers, property management companies or real-estate managers, who furnish lodgings in the exercise of the taxable service of lodging.
- P. "Village" means the Village of Taos Ski Valley, New Mexico;
- Q. "Village Clerk" means the Village Clerk of Taos Ski Valley, New Mexico;
- R. "Village Council" means the Governing Body of the Village.

SECTION 4. IMPOSITION OF TAX

The imposed occupancy tax of three and one-half percent (3.5%) of gross taxable rent for lodging within the Village paid to vendors is hereby increased to five percent (5%) effective July 1, 2004.

SECTION 5. LICENSING

- A. No vendor shall engage in the business of providing lodging in the Village who has not first obtained a license as provided in this section.
- B. Applicants for a vendor's license shall submit an application to the Village Clerk stating:
 - (1) The name of the vendor, including identification of any person, as defined in this Ordinance, 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 therefor;
 - (3) A description of other 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 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 Lodger's Tax;
 - (5) Other information reasonably necessary to effect a determination of eligibility for such license.
- C. The Village Clerk shall review 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 Lodger's Tax;
- D. An applicant who is dissatisfied with the decision of the Village Clerk may appeal the decision to the Village Council by written notice to the Village Clerk of such appeal to be made within fifteen (15) days of the date of the decision of the Village Clerk on the application. The matter shall be referred to the Village Council for hearing at a regular or special meeting in the usual course of business. The decision of the Village Council made thereof shall be expressed in writing and be communicated in the same manner as the decision of the Village Clerk is transmitted. The action of the Village Council shall be deemed final:
- E. If the Village Council finds for the applicant, the Village Clerk shall issue the appropriate license or other notice conforming to the decision made by the Village Council.

SECTION 6. 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 thirty consecutive days;
- B. if the rent paid by the vendee is less than two dollars (\$2.00) 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; or
- G. if the taxable premises does not have at least three (3) rooms or three (3) other units of accommodation for lodging.

SECTION 7. COLLECTION OF THE TAX AND REPORTING PROCEDURES

- A. Every vendor providing lodgings shall collect the tax thereon on behalf of the Village and shall act as a trustee therefor.
- B. The tax shall be collected from vendees and shall be charged separately from the rent fixed by the vendor for the lodgings.
- C. Each vendor licensed under this Ordinance shall be liable to the Village for the tax provided herein on the rent paid for lodging at his respective place of business.
- D. Each vendor shall make a report by the Twenty-fifth (25th) day of each month, on forms provided by the Village Clerk, of the receipts for lodging in the preceding calendar month, and shall submit the proceeds of the Lodger's Tax to the Village and include sufficient information to enable the Village to audit the reports and shall be verified on oath by the vendor.

SECTION 8. DUTIES OF THE 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 Village, and shall be open to the inspection of the Village during reasonable hours and shall be retained for three (3) years.

SECTION 9. ENFORCEMENT

- A. An action to enforce the Lodger's Tax Act may be brought by:
 - (1) a duly licensed attorney acting on behalf of the Village, 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.
- B. A district court may issue a writ of mandamus or order an injunction or other appropriate remedy to enforce the provisions of the Lodger's Tax Act.

- C. The court shall award costs and reasonable attorneys' fees to the prevailing party in a court action to enforce the provisions of the Lodger's Tax Act.

SECTION 10. FAILURE TO MAKE RETURN; COMPUTATION, CIVIL PENALTY AND NOTICE, COLLECTION OF DELINQUENCIES; OCCUPANCY TAX IS A LIEN.

- A. 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 10 percent of the amount not remitted or one hundred dollars. (\$100). The Village Clerk shall give the delinquent vendor written notice of the delinquency, which notice shall be mailed to the vendor's local address.
- B. If payments are not received within fifteen (15) days of the mailing of the notice, the Village 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 Village attempts collection through an attorney or the Village Attorney for any purpose with regard to this Ordinance, the vendor shall be liable to the Village for all costs, fees paid to the attorney or Village Attorney, and all other expenses incurred in connection therewith.
- C. The occupancy tax imposed by the Village constitutes a lien in favor of the Village upon the personal and real property of the vendor providing lodgings. The lien may be enforced as provided in Section 3-36-1 through 3-36-7 NMSA 1978. Priority of the lien shall be determined from the date of filing.
- D. Under process or order of court, no person shall sell the property of a vendor without first ascertaining from the Village Clerk the amount of any occupancy tax due the Village. Any occupancy tax due the Village shall be paid from the proceeds of the sale before payment is made to the judgment creditor or any other person with a claim on the proceeds of the sale.

SECTION 11. CRIMINAL PENALTIES

Any person who violates the provisions of the Lodger's Tax Ordinance for a failure to pay the tax, to remit proceeds thereof to the Village, to properly account for any lodging and tax proceeds pertaining thereto, or for violating the confidentiality provisions of Section 15 of this Ordinance shall be guilty of a petty misdemeanor and

upon conviction shall be fined in an amount not to exceed five hundred dollars (\$500) or by imprisonment not to exceed ninety (90) days, or both.

SECTION 12. REFUNDS AND CREDITS

If any person believes he has made payment of any Lodger's Tax in excess of that for which he was liable, he may claim a refund thereof by directing to the Village Clerk, no later than ninety (90) days from the date of 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 Village Clerk 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) or more may be made only with the approval of the Village.

SECTION 13. VENDOR AUDITS

- A. The Village shall select for annual random audit(s) one 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.
- B. The Village shall determine each year the number of vendors within the Village to audit.
- C. The audit(s) may be performed by the Village Clerk or by any other designee of the Village. A copy of the audit(s) shall be filed annually with the local government division of the Department of Finance and Administration.

SECTION 14. FINANCIAL REPORTING

- A. The Village shall furnish to the Advisory Board that portion of any proposed budget, report or audit filed or received by the Village of Taos Ski Valley pursuant to either Chapter 6, Article 6 NMSA 1978 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 Village of Taos Ski Valley.
- B. The Village 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 Sections 3-38-15 and 3-38-21 NMSA 1978 and shall furnish a copy of this report to the Advisory Board when it is filed with the division.

SECTION 15. CONFIDENTIALITY OF RETURN AND AUDIT

It is unlawful for any employee of the Village to reveal to any individual other than another employee of the Village any information contained in the return or audit of any taxpayer, including vendors subject to the Lodger's Tax Act, except to a court of competent jurisdiction in response to an order thereof in an action relating to taxes to which the Village 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.

SECTION 16. ADMINISTRATION OF LODGER'S TAX MONIES COLLECTED

The Village shall administer the Lodger's Tax monies collected. The Mayor 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 Village, two members who are owners or operators of industries located within the Village that primarily provide services or products to tourists and one member who is a resident of the Village and represents the general public. The Board shall advise the Mayor and Village Council on the expenditure of funds authorized under Section 17 of this Ordinance for advertising, publicizing and promoting tourist attractions and facilities in the Village.

SECTION 17. ELIGIBLE USES OF LODGER'S TAX PROCEEDS

Revenue from the Lodger's Tax Ordinance will be used for the purposes set forth in the Lodger's Tax Act Sections 3-38-13 et seq. as amended by the laws of 1996, or as subsequently amended.

- A. 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 Lodger's 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 Section 3-38-23 or Section 3-38-24 NMSA 1978.

- (4) advertising, publicizing and promoting tourist-related attractions, facilities and events of the municipality or county and tourist facilities or attractions within the area;
- (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.

SECTION 18. SEVERABILITY

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Ordinance.

SECTION 19. REPEALER

All Ordinances and parts of Ordinances in conflict with the provisions of this Ordinance are hereby repealed.

SECTION 20. EFFECTIVE DATE

This amended Ordinance shall be in full force and effect from and after its passage and publication as provided by law.

PASSED, APPROVED AND ADOPTED this 8th day of May, 2012.

Vote: For 4, Against 0


MAYOR

ATTEST:


VILLAGE CLERK