



TOWN OF TAOS ORDINANCE 22-18

AN ORDINANCE REPLACING CHAPTER 4.12 OF THE TOWN OF TAOS MUNICIPAL CODE REGARDING LODGERS' TAX IN RESPONSE TO CHANGES TO STATE LAW

WHEREAS, The Town of Taos Ordinance 97-32 was adopted on the 16th of December, 1997 and amended through Ordinance 00-13 on the 20th of June, 2000; and

WHEREAS, recent amendments to NM State Statute Chapter 3 Article 38 require a Town of Taos Municipal Code amendment to comply;

NOW, THEREFORE, BE IT ORDAINED by the Governing Body of the Town of Taos, meeting in Regular Session on the 25th day of October 2022, and after having held a public hearing on the matter, the following ordinance is hereby adopted, approved, and ratified:

CHAPTER 4.12 LODGERS' TAX

SECTION:

- 4.12.010: Short Title
- 4.12.020: Purpose
- 4.12.030: Definitions
- 4.12.040: Imposition Of Tax
- 4.12.050: Exemptions
- 4.12.060: Collection Of The Tax
- 4.12.070: Monthly Reports
- 4.12.080: Records
- 4.12.081: Sale Or Closure Of Lodging Establishment
- 4.12.090: Failure To Pay Tax
- 4.12.100: Failure To Make Return
- 4.12.110: Court Action To Collect Delinquencies
- 4.12.120: Refunds And Credits
- 4.12.130: Use Of Lodgers' Tax Money
- 4.12.140: Advisory Board
- 4.12.150: Audits
- 4.12.160: Occupancy Tax Is A Lien
- 4.12.170: Contracting For Services
- 4.12.180: Local Government Division Rules
- 4.12.190: Vendor's Business Registration Required
- 4.12.200: Criminal Penalties

4.12.010: SHORT TITLE:

This chapter shall be known as and may be cited as THE LODGERS' TAX ORDINANCE.

4.12.020: PURPOSE:

The purpose of this chapter is to impose a tax borne by persons using commercial lodging accommodations, which tax will provide revenues for the purpose of advertising, publicizing and promoting tourist related facilities, tourist attractions, and acquisition, construction and maintenance of tourist attractions and recreational facilities, and for all other legally permissible purposes.

4.12.030: DEFINITIONS:

For the purposes of this chapter the following words, terms and phrases shall have the meanings respectively ascribed to them:

ACCOMMODATIONS: In addition to rooms, all facilities and/or amenities, that are provided as a part of the taxable service of lodgings, including those that are an essential and integral part of the provision or use of lodgings whether or not advertised and/or billed separately, unless the separate advertising/billing procedure is first approved in writing by the Town administrator.

BOARD: The Lodgers' Tax Advisory Board

FINANCE DIRECTOR: The Town of Taos finance department head or other designated representative thereof.

GROSS TAXABLE RENT: The total amount of rent paid for lodging, or other accommodations, not including the state gross receipts tax or local sales tax.

LEASE AGREEMENT: A written agreement signed and executed by a vendor and vendee, for lodgings, for a period of at least thirty (30) days, and which may automatically renew on a month to month basis unless specific action is taken by the parties.

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

MINIMUM REVENUE GUARANTEE: An amount of money guaranteed by the Town of Taos to be earned by an airline providing air services thereto, which is the difference between the minimum flight charge revenue specified in the contract between the Town and said airline, and the amount of actual flight charge revenue received by the airline that is less than that contractual amount.

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

PERMANENT RESIDENT: An individual residing and domiciled, or intending to reside and domicile, within a location for 185 days or more.

PERSON: An individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, limited liability company, limited liability partnership, joint venture, syndicate or other association, but not including the United States of America, the state of New Mexico or 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 and other accommodations subject to an occupancy tax authorized in the Lodgers' Tax Act.

TAXABLE PREMISES: A hotel, motel or other premises used for lodging that is not the vendee's household or primary residence.

TEMPORARY LODGING: Lodgings for the purpose of housing a vendee within proximity of the vendee's employment or job location.

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.

TOWN ADMINISTRATOR: The Town manager of the Town of Taos, or other designated representative thereof.

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.

4.12.040: IMPOSITION OF TAX:

There is imposed an occupancy tax of revenues of five percent (5%) of gross taxable rent for lodging within the municipality paid to vendors after the effective date hereof.

4.12.050: EXEMPTIONS:

Deleted: lodgers'

Deleted: tax

Deleted: act

Commented [KA1]: Should this be Permanent Residence? Or, should Permanent Residence definition be Primary Residence?

Commented [KA2]: Should "Temporary Lodging" be added as it has been in the State Statutes?

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 (30) consecutive days, [unless those premises are temporary lodging](#), or
2. Enters into or has entered into a lease agreement as defined by this chapter for lodgings at the taxable premises, [unless those premises are temporary lodging](#);

B. If the rent paid by a 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, or

F. To privately owned and operated convalescent homes, or homes for the aged, infirm, indigent or chronically ill.

4.12.060: COLLECTION OF THE TAX:

A. Every vendor providing lodgings shall collect the tax thereon on behalf of the Town, and shall act as a trustee therefor.

B. The tax shall be collected from the vendees and shall be charged separately from the rent fixed by the vendor for the lodgings.

C. Every vendor shall specify to the Town, on a form provided by the Town, whether the vendor is using a cash or accrual method of accounting in reporting and paying lodgers' taxes.

4.12.070: MONTHLY REPORTS:

Each vendor shall make a report by the twenty-fifth day of each month, on forms provided by the Town, of the receipts for lodging in the preceding calendar month, and shall submit the proceeds of the lodgers' tax to the Town and include sufficient information to enable the Town to audit the report, and such report shall be verified on oath by the vendor.

4.12.080: RECORDS:

A. A vendor shall maintain adequate records of facilities subject to the occupancy tax and of proceeds received for the use thereof. Such records shall be maintained in the Town, shall be open to the inspection of the Town during reasonable hours and shall be retained for three (3) years. The vendor shall provide such records to the Town upon thirty (30) days' notice.

B. Failure of the vendor to maintain adequate records or to allow inspection of said records as required under this section shall subject the vendor to penalties as provided in section 4.12.200 of this chapter.

4.12.081: SALE OR CLOSURE OF LODGING ESTABLISHMENT:

Upon a change of ownership of the lodging establishment or upon the closing of the lodging establishment, the vendor shall notify the Town of Taos in writing stating the date of the change in ownership or the date that the lodging establishment will be closed.

4.12.090: FAILURE TO PAY TAX:

A vendor is liable for the payment of any occupancy tax not remitted to the Town, whether due to their failure to collect the tax or otherwise. Said liability shall include the tax, a civil penalty equal to the greater of ten percent (10%) of the unremitted amount or one hundred dollars (\$100.00), and for every month that the vendor fails to remit the amount due, interest of one percent (1%) per month. The Town shall give the vendor written notice of the delinquency, which notice shall be mailed to the vendor.

4.12.100: FAILURE TO MAKE RETURN:

If any vendor neglects or refuses to pay the tax as required by this chapter, the Town of Taos finance department may make an estimate of said vendor's rent for the period which they have failed to make a return, and upon the basis of said estimated amount, compute and assess the tax due, including any penalties and interest. Promptly thereafter the Town shall give the delinquent vendor written notice of such assessment, which shall be served by certified mail.

4.12.110: COURT ACTION TO COLLECT DELINQUENCIES:

If the payments are not made by the vendor within fifteen (15) days of a notice of estimated tax given under section 4.12.090 or 4.12.100 of this chapter, the Town clerk shall 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 percent (1%) a month, the costs of collection and reasonable attorney fees incurred in connection therewith.

4.12.120: REFUNDS AND CREDITS:

If any person believes they have made payment of any lodgers' tax in excess of that for which they were liable, they may claim a refund thereof by directing to the Town finance director, not 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 complaint and the affirmative relief requested. The Town finance director may allow the claim in whole or in part, or may deny it.

4.12.130: USE OF LODGERS' TAX MONEY:

Proceeds of the occupancy tax collected based on the first thirty (30) days of lodging shall be used as follows:

A. At least one-half (1/2) of the proceeds from the first three percent (3%) of the tax and at least one-fourth (1/4) of the proceeds from the tax in excess of three percent (3%) shall be used for the purpose of advertising, publicizing and promoting the community's tourist related attractions, facilities and events. Proceeds for such purposes shall be used within two years of the close of the fiscal year in which they were collected and shall not be accumulated beyond that date or used for any other purpose.

B. Not more than one percent (1%) of the proceeds shall be used for the purpose of providing public transportation within the Town and adjacent tourist destination areas.

Commented [KA3]: Why do we have this listed?

C. The proceeds of the occupancy tax not used for the above stated purposes shall be used to defray costs as follows:

1. Collecting and administering the tax;
2. Audits;
3. 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 convention facilities, tourist related facilities, tourist attractions or transportation systems of the municipality or the county in which the municipality is located;
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 respective municipality or county;
6. Principal and interest of revenue bonds issued as authorized by section 3-38-23 or 3-38-24 New Mexico Statutes Annotated, 1978;
7. Providing a required minimum revenue guarantee for air service to the municipality or county to increase the ability of tourists to easily access the municipality's or county's tourist-related facilities, attractions and events; or
8. Any combination of the foregoing purposes or transactions stated in this section; but for no other municipal or county purpose.

Proceeds of the occupancy tax collected based on the thirty-first (31st) and subsequent days of lodging shall be dedicated to the housing fund.

Commented [KA4]: Does this need to be more defined as to which actual fund(s)? Perhaps "a Town" housing fund. I would want to know where this money is going.

4.12.140: ADVISORY BOARD:

The Mayor shall appoint, with the consent of the council, an advisory board of five (5) residents of the municipality, two (2) of whom shall be owners or operators of lodgings industry subject to the tax within the municipality, two (2) of whom are owners or operators of industries within the municipality that primarily provide services or products to tourists and one member who is a resident of the municipality and represents the general public. The members of the board shall serve at the pleasure of the Mayor. The board shall advise the governing body on expenditures of funds authorized under this chapter for advertising, publicizing and promoting tourist attractions and facilities in the municipality and surrounding areas. The recommendations for the expenditures of funds shall be submitted to the governing body by the board. The budget approved by the governing body shall be furnished to the advisory board.

4.12.150: AUDITS:

A. The Town finance director shall select, for annual random audits, 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 Town finance director shall determine each year the number of vendors within the municipality.

C. The audit(s) may be performed by the Town finance director or by any other designee. A copy of the audit(s) shall be submitted to the Town's advisory board for review. A copy of the audit(s) shall be filed annually, with the local government division of the department of finance and administration.

4.12.160: OCCUPANCY TAX IS A LIEN:

A. The occupancy tax imposed shall constitute a lien, in favor of the Town, upon the personal and real property of the owner of the property providing lodgings within the jurisdiction of the Town. The lien may be enforced as provided in sections 3-36-1 through 3-36-7, New Mexico Statutes Annotated (1978 as amended). Priority of the lien shall be determined from the date of filing. The Town finance director shall furnish a certificate showing the amount of all liens against the vendor.

B. Any occupancy tax due the Town shall be paid from the proceeds of any sale, before payment is made, to a judgment creditor or any other person with a claim on the proceeds of the sale.

C. Under process or order of court, no person shall sell the property of a vendor without first ascertaining from the Town finance director the amount of an occupancy tax due the Town.

4.12.170: CONTRACTING FOR SERVICES:

The governing body may contract for the management of programs and activities for advertising, publicizing and promoting tourist related attractions, facilities and events. The contractor shall be required to maintain the funds from the Town in a separate account, not commingled with any other money, maintain complete and accurate financial records of each expenditure, and make such records available for inspection upon request by the Town. Subcontractors shall be subject to the same terms and conditions. Lodgers' tax revenue may be spent for day to day operations, supplies, salaries, office rental, travel expenses and other administrative costs if incurred directly for the purpose of advertising, publicizing and promoting tourist related attractions, facilities and events. Quarterly reports of expenditures made for contracted services shall be made to the governing body and the advisory board.

4.12.180: LOCAL GOVERNMENT DIVISION RULES:

A report shall be made quarterly to the local government division of the state department of finance and administration of expenditure of lodgers' tax. A copy shall be submitted to the advisory board.

4.12.190: VENDOR'S BUSINESS REGISTRATION REQUIRED:

No vendor shall engage in the business of providing lodging in the Town without first obtaining [all applicable registrations or permits](#) as provided in in Chapter 5.04 of this code.

Deleted: an
Deleted: business

4.12.200: CRIMINAL PENALTIES:

Any person who violates the provisions of the lodgers' tax ordinance by failure to pay the tax, to remit the proceeds thereof to the Town, to account properly for any lodging tax proceeds pertaining thereto, or to provide such records to the Town as required in this chapter, 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.

ORDAINED, ADOPTED, AND APPROVED this 25th day of October, 2022 by the following vote:

Mayor Pro Tem Darien Fernandez _____
Councilmember Nathaniel Evans _____
Councilmember Corilia Ortega _____
Councilmember Marietta Fambro _____

Pascualito M. Maestas, Mayor

ATTEST

APPROVED AS TO FORM

Francella Garcia, Town Clerk

Christopher Stachura, Town Attorney

