

LODGERS' TAX ORDINANCE NO. 2016-09

AN ORDINANCE IMPOSING A LODGERS 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 MUNICIPALITY OF EDGEWOOD, NEW MEXICO:

**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 facilities, tourist attractions, and acquisition, construction and maintenance of tourist attractions and recreational facilities, and for all other legally permissible purposes.

**Definitions.** As used in this section.

**Board** refers to the lodgers' tax advisory board established herein to make recommendations for advertising, publicizing and promoting tourist-related attractions, facilities and events to the governing body, keep minutes of its proceedings and submit its recommendations, correspondence and other pertinent documents to the governing body.

**Town Clerk/Treasurer** means the Town Clerk/Treasurer of Edgewood, New Mexico.

**Gross taxable rent** means the total amount of rent paid for lodging, not including the state gross receipts tax or local sales taxes.

**Lodging** means the transaction of furnishing rooms or other accommodations by a vendor to a vendee who for a 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.

**Lodgings** means the rooms or other accommodations furnished by a vendor to a vendee by a taxable service of lodgings.

**Lodgers tax** means tax on lodging authorized by the Lodgers' Tax Ordinance

**Person** means a corporation, firm, other body corporate, partnership, association or individual, includes a property management company, 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.

**Rent** means the consideration received by a vendor in money, credits, property or other consideration valued in money for lodgings subject to a lodgers' tax authorized in the Lodgers' Tax Ordinance.

**Taxable premises** means a hotel, apartment, apartment hotel, apartment house, condominium, town home, casita, time-share and fractional-share lodge, lodging house, rooming house, motor hotel, bed and breakfast, 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, short-term rental unit or other premises for lodging.

**Tourist** means a person who travels for the purpose of business, pleasure or culture to the town of Edgewood.

**Tourist-related events** means events that are planned for, promoted to and attended by tourists.

**Tourist-related facilities and attractions** means facilities and attractions that are intended to be used by or visited by tourists.

**Town** means the Town of Edgewood, New Mexico.

**Vendee** means a natural person to whom lodgings are furnished in the exercise of the taxable service of lodging.

**Vendor** means a person furnishing lodgings in the exercise of the taxable service of lodging.

#### **Imposition of Tax.**

There is imposed a lodgers' tax of three percent (3%) of gross taxable rent for lodging at a taxable premise within the town of Edgewood paid to vendors.

#### **Presumption of Taxability.**

Every vendor who is providing lodging within the town of Edgewood is exercising a taxable privilege. The vendor must provide documentation as to any applicable exception under this section, if requested by the town.

#### **Registration.**

A. No vendor shall engage in the business of providing lodging in the town of Edgewood who has first not obtained a business registration as provided in this subsection

B. Applicants for a vendor's business registration shall submit an application to the Town of Edgewood stating:

- (1) The name of the vendor, including identification of any person, as defined in this section, 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 physical address(es), the number of rooms and the usual schedule of rates;
- (3) A description of other facilities provided by the vendor or others to users of the lodgings such as restaurant, bar, cleaning, laundry, courtesy car, stenographer, tailor or others, and a statement identifying the license/registration issued, to whom issued, the authority

- issuing, and the period for which issued. If applicable, also the identification number provided by the taxation and revenue department of the state of New Mexico;
- (4) The nature of the business practices of the vendor and to what extent, if any, his business is exempt from the lodgers' tax;
  - (5) State of New Mexico gross receipts tax number (C.R.S. ID #); and
  - (6) Other information reasonably necessary to effect a determination of eligibility for such license;

C. The Town of Edgewood shall review applications for registration and grant the registration in due course if the applicant is doing business subject to the lodgers' tax;

### **Change of Ownership.**

Upon any change in, or transfer of ownership of lodging facilities, the vendor is required to notify the town of Edgewood in writing:

- A. The nature of the ownership change;
- B. Documentation of sale or incorporation, if applicable;
- C. The effective date of the ownership change; and
- D. The name and business address of the new owner.

### **Exemptions.**

The lodgers tax shall not apply to any portion of the gross taxable rent:

A. If a vendee:

- (1) Has been a permanent resident of the taxable premises for a period of at least thirty (30) consecutive days as evidenced by a lease or other long-term lodging documentation; or
- (2) Enters into or has entered into a written agreement for lodgings at the taxable premises for a period of at least thirty (30) 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;

### **Collection of the Tax and Reporting Procedures.**

A. Every vendor providing lodgings shall collect the tax thereon on behalf of the town of Edgewood 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 registered under this section shall be liable to the town of Edgewood for the tax provided herein on the rent paid for lodging at his respective place of business.

D. Failure of the vendor to collect the tax is not cause for the town to forgive the tax due and owed by the vendor.

E. 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 of Edgewood and include sufficient information to enable the town to audit the reports and shall be verified on oath by the vendor.

F. Lodgers' tax payments are due (postmarked by the United States Post Office or other such provider or hand delivered to and receipted by the town) by the twenty-fifth day of each month for receipts of lodging in the preceding calendar month. The town, however, is not obligated to retain all envelopes as it is the responsibility of the vendor to ensure timely payments;

G. Upon application approved in writing by the town, a vendor may report and submit payments on a quarterly basis, which are due on the twenty-fifth day of the month after the end of the quarter for the receipts of lodging in the preceding calendar quarter, using separate reporting forms for each month in the quarter;

#### **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 Edgewood, New Mexico, and shall be open to the inspection of the town during reasonable hours and shall be retained for three (3) years.

#### **Failure to Make Return; Computation, Civil Penalty and Notice; Collection of Delinquencies; Lodgers' Tax Is a Lien.**

A. Every vendor is liable for the payment of the proceeds of any lodgers' tax that the vendor failed to remit to the town, whether due to vendor's failure to collect the tax or otherwise. Vendor shall be liable for the tax plus a civil penalty equal to the greater of ten percent (10%) of the amount not remitted or one hundred dollars (\$100.). The town shall give the delinquent vendor written notice of the delinquency, which notice shall be mailed either to the vendor's local or business address, informing the lodging facility of the delinquency and penalty due. Failure to receive the notice does not abate the delinquency and penalty fee.

B. If payment is not received within fifteen (15) days of the date due, interest will accrue at the rate of one percent (1%) per month or prorated for a partial month on the unpaid balance of the tax and penalty.

C. If payments are not received within fifteen (15) days of the mailing of the notice, the town 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 percent (1%) a month. If the town attempts collection through an attorney or the town attorney for any purpose with regard to this section, the vendor shall be liable to the town for all costs, fees paid to the attorney or town attorney, and all other expenses incurred in connection therewith.

D. The lodgers tax fee imposed by the town of Edgewood constitutes a lien in favor of the town upon the personal and real property of the property owner of the 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.

E. The payments due under this section, together with all penalties, fees, interest and other charges prescribed, shall become a personal liability of the owner of the property. In addition to collection through foreclosure of the lien, collection may be enforced on such personal liability by resort to any other legal procedure available for the enforcement of personal liabilities.

F. Under process or order of court, no person shall sell the property of a vendor without first ascertaining from the town clerk/treasurer the amount of any lodgers' tax fee due the town. Any lodgers tax fee due the town shall be paid from the proceeds of the sale before payment is made to any judgment creditor or any other person with a claim on the proceeds of the sale.

#### **Criminal Penalties; Other Sanctions.**

A. Any person who violates the provisions of the lodgers' tax ordinance for a failure to pay the tax, to remit proceeds thereof to the town or to properly account for any lodging and tax proceeds pertaining thereto shall be guilty of a petty misdemeanor and upon conviction shall be fined in an amount not to exceed five hundred dollars (\$500.) and/or imprisonment not to exceed ninety (90) days, or both.

B. The town may bring an action in the district court for collection of amounts due, including without limitation, penalties on the amounts due on the unpaid principal at a rate not exceeding one percent (1%) per month, the costs of collection and reasonable attorney fees incurred in connection with the court action to collect the unpaid tax.

#### **Refunds and Credits.**

A. If any person believes he has made payment of any lodgers' tax in excess of that for which he was liable, he may claim a refund thereof by directing to the town clerk/treasurer, no later than ninety (90) days from the date payment was made, a written claim for refund accompanied by a restated lodgers' tax reporting form for that period. Every claim for refund shall state the nature of the person's complaint and the affirmative relief requested. The town clerk/treasurer shall allow the claim in whole or in part or may deny it.

B. A refund may be made by the town unilaterally to a vendor in consideration of documentation presented in an audit report received as detailed in subsection

### **Vendor Audits.**

A. The town clerk/treasurer may conduct random audit(s) to verify the amount of gross rent subject to the lodgers' tax and to ensure that the full amount of lodgers' tax on the rent is collected from each vendor thus audited. The town clerk/treasurer may also conduct audits as necessary to verify compliance with this section.

B. The audit(s) may be performed by the town clerk/treasurer or by any other designee. A copy of the audit shall be submitted to the town's lodgers' tax 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.

### **Confidentiality of Return and Audit.**

It is unlawful for any employee of the town of Edgewood to reveal to any individual other than another employee or elected official of the town of Edgewood any information contained in the return or audit of any taxpayer including vendors subject to the Lodgers' Tax Act, except:

A. To a court of competent jurisdiction in response to an order thereof in an action relating to taxes to which the town of Edgewood is a party, and in which information sought is material to the inquiry;

B. To the taxpayer himself or to his authorized representative;

C. In such manner, for statistical purposes, the information revealed is not identified as applicable to any individual taxpayer; and

D. For the identity of vendors subject to the Lodgers' Tax Act.

### **Advisory Board.**

The governing body shall administer the lodgers' tax monies collected. The mayor shall appoint an advisory board of five (5) members; two (2) of whom shall be owners or operators of lodgings 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 (1) 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 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.

### **Use of Lodger's Tax Monies.**

Lodgers Tax monies may be used for:

(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 tourist-related facilities or attractions of the municipality in which the municipality is located;

(4) Advertising, publicizing and promoting tourist-related attractions, facilities and events of the municipality 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;

(6) Any combination of the foregoing purposes or transactions stated in this section, but for no other municipal uses.

**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.

**Severability.**

If any subsection, sentence, clause, phrase or portion of this section 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 section.

**Effective Date.**

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

NOW, THEREFORE, BE IT RESOLVED:

The Governing Body of the Town of Edgewood hereby adopts Lodgers Tax Ordinance No. 2016-21

PASSED, APPROVED AND ADOPTED this 7<sup>th</sup> day of DECEMBER, 2016

  
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John Bassett, Mayor

ATTEST:

  
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Juan Torres, Clerk-Treasurer