

## **ORDINANCE 2004-04**

### **LINCOLN COUNTY LODGERS' TAX**

AN ORDINANCE IMPOSING A TAX ON PERSONS USING COMMERCIAL LODGING FACILITIES; UTILIZING REVENUE THEREFROM FOR THE PURPOSE OF PROMOTING TOURISM WITHIN LINCOLN COUNTY; PROVIDING FOR EXEMPTIONS, LICENSING, COLLECTION OF TAXES, REPORTING, DUTIES OF VENDORS, AUDITS, AND ENFORCEMENT; REAFFIRMING THE LODGERS' TAX COMMITTEE; REQUIRING THE DISCLOSURE OF INFORMATION; PROVIDING FOR PENALTIES; SETTING REQUIREMENTS FOR FINANCIAL REPORTING; PROVIDING FOR THE SEVERABILITY OF PARTIES HEREOF, THE REPEAL OF ORDINANCES IN CONFLICT, AND FOR AN EFFECTIVE DATE.

**WHEREAS**, the Board of County Commissioners of the County of Lincoln, New Mexico, desires to amend and re-enact its ordinance imposing a tax on persons using commercial lodging facilities; and

**WHEREAS**, the revenue from such imposition of tax will serve to promote and publicize tourist-related attractions, facilities, and events or attractions within the area;

**WHEREAS**, the Board of County Commissioners of the County of Lincoln, New Mexico, finds that repealing Lincoln County Lodgers' Tax Ordinance 2002-07 and amending and re-enacting the Lincoln County Lodgers' Tax Ordinance will serve to promote the prosperity, order, comfort, and convenience of the County of Lincoln or its inhabitants.

**NOW, THEREFORE, BE IT ORDAINED** by the Board of County Commissioners of Lincoln County, New Mexico, that the Lincoln County Lodgers' Tax Ordinance be as follows:

**Section 1. Purpose.**

The purpose of this Ordinance is to impose a tax, which will be borne by persons using commercial lodging accommodations, which will provide revenues for the purpose of advertising, publicizing, and promoting County tourist-related attractions, facilities and events, and acquiring, establishing and operating tourist related facilities, attractions or transportation systems, as authorized in Section 4 of this Ordinance.

**Section 2. Definitions.**

As used in this Ordinance:

1. “Board or Committee” means the Lodgers’ Tax Committee established herein to make recommendations to the Board of County Commissioners of Lincoln County, keep minutes of its proceedings and submit its recommendations, correspondence and other pertinent documents to the Board of County Commissioners.
2. “County Clerk” means the County Clerk or County Manager, or the Finance Department of the County, the County Treasurer, or other designated representatives of the County Clerk or County Manager as the case may be.
3. “County” or “Lincoln County” means all parts of the County of Lincoln outside the incorporated units of any municipality within the County of Lincoln.
4. “County Manager” means the chief executive officer of the County of Lincoln or his or her designee which may include the County Clerk.
5. “Gross taxable rent” means the total amount of rent paid for lodging, not including the state gross receipts or a local sales tax.
6. “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.
7. “Lodgings” means the rooms or other accommodations furnished by a vendor to a vendee by a taxable service of lodgings.
8. “Occupancy tax” means the tax on lodging authorized by the Lodgers’ Tax Act.
9. “Person” means 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.

10. “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 Lodgers’ Tax Act.
11. “Taxable premises” means 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.
12. “Tourist” means a person who travels for the purpose of business, pleasure or culture to a municipality or county imposing an occupancy tax.
13. “Tourist-related events” means events that are planned for, promoted to, and attended by tourists.
14. “Tourist-related facilities and attractions” means facilities and attractions that are intended to be used by or visited by tourists.
15. “Tourist-related transportation systems” means transportation systems that provide transportation for tourists to and from tourist-related facilities; and attractions, and tourist-related events.
16. “Vendee” means a natural person to whom lodgings are furnished in the exercise of the taxable service or lodging.
17. “Vendor” means a person furnishing lodgings in the exercise of the taxable service of lodging.

### **Section 3. Imposition of Tax.**

There is hereby imposed an occupancy tax on revenues received from lodging within that part of Lincoln County outside the incorporated limits of any municipality of Lincoln County. The tax shall be four percent (4%) of gross taxable rent for lodging paid to vendors. Not less than one-half of the proceeds from the first three percent of the tax and not less than one-fourth of the proceeds from the tax in excess of three percent (one and three-quarters) ( $1\frac{3}{4}$ ) of the proceeds shall be used for advertising, publicizing, and promoting tourist-related attractions, facilities, and events.

**Section 4. Use of Tax Proceeds .**

The proceeds of the occupancy tax shall be used to defray costs of:

1. Collecting and otherwise administering the tax, including the performance of audits required by the Lodgers' 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 any other charges pertaining to revenue bonds authorized by NMSA 1978, §§3-38-23 or 3-38-24.
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; or
6. Any combination of the foregoing purposes or transactions stated in this Section, but for no other municipal or County purpose.

**Section 5. 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 (30) 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 (30) consecutive days;
2. if the rent paid by a vendee is less than Two Dollars (\$2.00) a day;
3. to lodging accommodations at institutes of the federal government, the state or any political subdivision thereof;

4. to lodging accommodations at religious, charitable, educational or philanthropic institutions, including without limitation such accommodations as 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. if the vendor does not offer at least three rooms within or attached to a taxable premises for lodging or at least three other premises for lodging or a combination of these within the taxing jurisdiction.

**Section 6.     **Licensing.****

1. No vendor shall engage in the business of providing lodging in the County who has not first obtained a license as provided in this section.
2. Applicants for a vendor's license shall submit an application to the County Manager stating:
  - A. 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 vendor proposes to do business and the post office address thereof;
  - B. a description of the facilities, including the number of rooms and the usual schedule of rates therefor;
  - C. a description of other facilities provided by vendor or others to users of the lodgings such as restaurant, bar, cleaning, laundry, courtesy car, stenographic, tailor or others, and a statement identifying the license issued, to whom issued, the authority issuing, and the period for which issued, if applicable, and identification number provided by the Bureau of Taxation and Revenue of the State of New Mexico;
  - D. the nature of the business practices of the vendor and to the extent, if any, his business is exempt from the Lodgers' Tax; and
  - E. other information reasonably necessary to effect a determination of eligibility for such license.

3. The County Manager shall review applications for a license within ten (10) days of receipt thereof and grant the license in due course if he or she finds the applicant is doing business subject to the Lodgers' Tax.
4. If the County Manager finds that the applicant is not qualified to do business subject to the Lodgers' Tax, he or she shall, not more than ten (10) days after receipt of the application, advise the applicant of his or her decision and give the reasons therefor. The notice of such action shall be given by registered mail, postage prepaid, addressed to the applicant at the address given on the application, deposited in a Lincoln County post office on the date thereof.
5. If the County Manager finds the applicant not exempt under the terms of this Ordinance, he or she shall, not more than ten (10) days after receipt of the application, advise the applicant of his or her decision and give the reasons therefor.
6. An applicant who is dissatisfied with the decision of the County Manager may appeal the decision to the County Commission by written notice to the County Manager of such appeal to be made within fifteen (15) days of the date of the decision of the County Manager on the application. The matter shall be referred to the County Commission for hearing at a regular or special meeting in the usual course of business. The decision of the County Commission made thereof shall be expressed in writing and be communicated in the same manner as the decision of the County Manager is transmitted. The action of the County Commission shall be final.
7. If the County Commission finds for the applicant, the County Manger shall issue the appropriate license or other notice conforming to the decision made by the County Commission.

**Section 7.     **Collection of The Tax; Reporting.****

1. Every vendor providing lodgings within the County shall collect the proceeds of the tax thereon on behalf of the County and shall act as a trustee therefor.
2. The 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.
3. On and after July 1, 1985, each vendor licensed under this Ordinance shall be liable to the County for payment of the proceeds of the occupancy tax provided herein on the rent paid for lodging.
4. Each vendor shall make a report by the twenty-fifth (25<sup>th</sup>) day of each month on forms provided by the County Manager of the receipts for lodging paid to him in the preceding calendar month and shall remit therewith payment of the amounts due to the County. When the last day for filing a report and payment of taxes falls on a Saturday, Sunday, or legal state or national holiday, the act of filing the report and payment of taxes is timely if performed (paid or postmarked) on the next

succeeding day which is not a Saturday, Sunday, or a legal state or national holiday. The report shall include sufficient information to enable the County to audit the report and shall be verified on oath by the vendor. Monthly reports shall be due from each vendor regulated by this Ordinance even if no tax is due during such reporting period.

5. Reporting forms shall include whether the taxpayer is utilizing a cash or accrual basis of accounting. Vendor's revenue recognition for lodgers' tax reporting shall be consistent with gross receipts tax reporting regulations as specified under NMSA 1978, §§7-9-1 through 7-9-91.

**Section 8. Duty of 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 Lincoln County and shall be open and available for immediate inspection at the vendor's place of business during reasonable hours and shall be retained for three (3) years.

**Section 9. Audit of Vendors.**

1. The County Commission shall select for annual random audits of 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 that rent is collected from each vendor thus audited. The County Commission shall annually determine first the number of vendors to be audited, and then the vendor(s) by lot.
2. The County may also, at any time deemed appropriate by the County Manager, audit any vendor 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 audited.
3. A copy of each audit conducted under this Section shall be filed annually with the Local Government Division of the Department of Finance and Administration.
4. Procedures for audits under this Section shall be established by the County Manager and approved by the County Commission.

**Section 10. Failure to File Report; Failure to Pay Tax; Failure to Make Return; Computation, Civil Penalty, and Notice; Collection of Delinquencies; Occupancy Tax Is a Lien.**

1. If any vendor fails to file a report due under the provisions of this Ordinance, or if any vendor makes a return as required by this Ordinance without paying the tax then due, he or she shall be liable for the tax and a civil penalty for any such failure in an amount equal to the greater of ten percent (10%) of the amount that was not duly remitted to the County or One Hundred Dollars (\$100.00), whichever amount is greater.

2. If any vendor neglects or refuses to make a return and pay the tax as required by this Ordinance, the County may institute any appropriate action or proceedings to:
  - A. prevent the conduct of the business;
  - B. restrain, correct or abate the violation; or
  - C. prevent the occupancy of the building, structure or land on which the business is located.
3. In addition to the remedies provided in subsections 1 and 2 above, the business license fee and the business registration fee may be collected and enforced by the County by suit in District Court or under such other regulation as the County may provide by ordinance.
4. The County may initiate any appropriate action or proceeding as provided in subsections 1 and 2 of this section at any time up to four (4) years after the violation.
5. The occupancy tax imposed by a municipality or county constitutes a lien in favor of that municipality or county upon the personal and real property of the vendor providing lodgings in that municipality or county. The lien may be enforced as provided in NMSA 1978, §§ 3-36-1 and 3-37-7. Priority of the lien shall be determined from the date of filing.
6. Under process or order of court, no person shall sell the property of any vendor without first ascertaining from the County Clerk or Treasurer the amount of any occupancy tax due the County. Any occupancy tax due 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 sale proceeds.
7. The County Clerk or Treasurer shall furnish to any person applying for such a certificate a certificate showing the amount of all liens in the records of the County against any vendor pursuant to NMSA 1978, Chapter 3, Article 38.

**Section 11. Enforcement.**

1. An action to enforce the Lodgers' Tax Act may be brought by:
  - A. The attorney general or the district attorney in the county of jurisdiction; or
  - B. A vendor who is collecting the proceeds of an occupancy tax in the county of jurisdiction.
2. A district court may issue a writ of mandamus or order an injunction or other appropriate remedy to enforce the provisions of the Lodgers' Tax Act.

3. The court shall award costs and reasonable attorney's fees to the prevailing party in a court action to enforce the provisions of the Lodgers' Tax Act.

**Section 12. Lodgers' Tax Committee, Creation.**

The Chairman of the County Commission shall appoint a five-member committee that consists of two members who are owners or operators of lodgings subject to the occupancy tax within the unincorporated area of the County, two members who are owners or operators of industries located within the unincorporated area of the County that primarily provide services or products to tourists, and one member who is a resident of the unincorporated area of the County who represents the general public. The committee shall serve at the pleasure of the County Commission and shall advise the County on the expenditure of funds authorized by Section 4 of this Ordinance for advertising, publicizing, and promoting tourist attractions and facilities in the County. The committee shall submit to the County Commission recommendations for the expenditure of funds authorized pursuant to the Lodgers' Tax Act for advertising, publicizing, and promoting tourist-related attractions, facilities, and events in the County.

**Section 13. Composition of Lodgers' Tax Committee, Rules Governing the Operation of the Committee.**

1. Notwithstanding the terms established in subsection 2 hereof or any other provisions of law, any person serving on the committee may be removed by majority vote of the County Commission. Vacancies shall be filled by the Chairman of the County Commission. A person appointed to fill a vacancy shall serve the remainder of the term to which he is appointed.
2. The Lodgers' Tax Committee shall elect the following officers:
  - A. Chairman
  - B. Vice Chairman
  - C. Secretary
  - D. Treasurer
3. The Lodgers' Tax Committee shall meet monthly at a date and time established by the Committee. The meeting shall be conducted in compliance with the provisions of NMSA 1978, §10-15-1. The Secretary of the Lodgers' Tax Committee shall take minutes of each meeting, regular or special. Within ten (10) days of any meeting, the Secretary shall forward a copy of the minutes to the County Manager. The County Manager shall not be designated to take minutes.
4. In March of each year, the Lodgers' Tax Committee shall hold a budget hearing for the purpose of receiving public input concerning the expenditures of lodgers' tax monies. No later than April 15<sup>th</sup> of each year, the Lodgers' Tax Committee shall submit to the County Commission a proposed budget for the expenditure of lodgers' tax funds. The recommendation of the Lodgers' Tax

Committee for the expenditures of the funds are advisory only and shall not be binding upon the County Commission.

**Section 14. Disclosure of Information.**

1. It is unlawful for any County official, employee or agent to reveal to any person other than another County official, employee or agent engaged in County tax administration, or an employee of the New Mexico Bureau of Revenue, any information about a vendor licensed by the County under this Ordinance or information acquired as the result of the vendor's collection and remittance of the tax described in this Ordinance. No County official, employee or agent charged with keeping such information shall be required to produce it in any action or proceeding in court except on behalf of:

The County in any action or proceeding under the provisions of NMSA 1978, §§3-38-13 through 3-38-24 (Lodgers' Tax Act) or under the provisions of this Ordinance when the information is directly involved in the action or proceeding, provided that such information is provided in accordance with the New Mexico Rules of Civil Procedure and applicable statutes of the State of New Mexico. In either event, the Court may require the production of and admit in evidence only so much of the information as is pertinent to the action or proceeding.

2. Nothing contained herein shall be construed to:
  - A. Prohibit delivery to a vendor or his representative a copy of any return or report filed by that vendor in connection with the tax;
  - B. Prohibit the publication of statistics prepared so as to prevent the identification of a particular vendor's report or return and its contents; or
  - C. Inspection by the legal representative of the State or County of the report or return of any vendor by or against whom an action or proceeding is contemplated or has been instituted as authorized in NMSA 1978, §§3-38-13 through 3-38-24 (Lodgers' Tax Act) or as authorized in this Ordinance.
3. Reports, statements, and returns shall be preserved for three (3) years.

**Section 15. Criminal Penalties.**

Any person violating any of the provisions of the Lodgers' Tax Ordinance for failure to pay the tax, to remit proceeds thereof to the County, to properly account for any lodging and tax proceeds pertaining thereto, or for violating the confidentiality provisions of Section 14 of this Ordinance shall be guilty of a

misdeemeanor 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.

**Section 16. Financial Reporting.**

1. The County Commission shall furnish to the Lodgers' Tax Committee that portion of any proposed budget, report or audit filed or received by the County Commission pursuant to NMSA 1978, Chapter 6, Article 6, 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 County Commission.
2. The County Commission 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 NMSA 1978, §§3-38-15 and 3-38-21, and shall furnish a copy of this report to the Lodgers' Tax Committee when it is filed with the Division.

**Section 17. 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 18. Repealer.**

All ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed to the extent of such conflict.

**Section 19. Effective Date.**

This Ordinance shall take effect thirty days after recording, at which time Ordinance 2002-07 shall be repealed.

**PASSED, APPROVED, and ADOPTED** this 18<sup>th</sup> day of May, 2004.