

(c) *Specific exemptions.* No municipal infrastructure gross receipts tax shall be imposed on the gross receipts arising from:

- (1) Transporting persons or property for hire by railroad, motor vehicle, air transportation or any other means from one point within the municipality to another point outside the municipality; or
- (2) A business located outside the boundaries of a municipality on land owned by that municipality for which a state gross receipts tax distribution is made pursuant to NMSA 1978, § 7-1-6.4.

(d) *Dedication.* Revenue from the municipal infrastructure gross receipts tax will be used for the purpose of public safety.

(e) *Effective date.* The effective date of the municipal infrastructure gross receipts tax shall be either January 1, or July 1, whichever date occurs first after the expiration of three months from the date the ordinance from which this section is derived is adopted, unless an election is held on the question of approving the ordinance, in which case the effective date shall be either January 1, or July 1, whichever date occurs first after the expiration of three months from the date when the results of the election are certified to be in favor of the ordinance's adoption and the adopted ordinance is delivered or mailed to the taxation and revenue department.

(f) *Delayed repeal.* This section is repealed on June 30, 2014, or ten years from the date of implementation, whichever comes later. (Ord. No. 1085, §§ 1—6, 3-9-2004)

State law reference—Municipal infrastructure gross receipts tax, NMSA 1978, § 7-19D-11.

Secs. 44-92—44-109. Reserved.

ARTICLE III. LODGER'S TAX*

Sec. 44-110. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Board means the advisory board established in this article to:

- (1) Make recommendations to the governing body;
- (2) Keep minutes of its proceedings; and
- (3) Submit its recommendations, correspondence and other pertinent documentation to the governing body.

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 rent uses, possesses or has the right to use or possess the rooms or other units of accommodations in or at a taxable premises. The term "lodging" means the room or other accommodation furnished by a vendor to a vendee by a taxable service of lodgings.

Occupancy tax means the tax on lodging authorized by the Lodgers' Tax Act.

Persons means a corporation, firm or other body corporate, partnership, association or individual. The term "person" includes an executor, administrator, trustee, receiver or other designated representative appointed according to law and acting in a representative capacity, but does not include the United

***Editor's note**—Ord. No. 961, §§ 1—17, adopted August 12, 1996, superseded Ord. No. 850, adopted August 12, 1996.

State law reference—Lodger's Tax Act, NMSA 1978, § 3-38-12 et seq.

States of America, the state, 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 an occupancy tax authorized in the Lodgers' Tax Act.

Taxable premises means a hotel, apartment, apartment hotel, apartment house, lodge, lodginghouse, roominghouse, motor hotel, guesthouse, 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.

Tourist means a person who travels for the purpose of business, pleasure or culture to a municipality or county imposing an occupancy tax.

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.

Tourist-related transportation system means transportation systems that provide transportation for tourists to and from tourist-related facilities, attractions and events.

Town clerk means the clerk of the Town of Silver City, 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 or agent furnishing lodgings in the exercise of the taxable services of lodging.
(Code 1979, § 27-103; Code 2005, § 110.082; Ord. No. 961, § 3, 8-12-1996)

State law reference—Similar provisions, NMSA 1978, § 3-38-14.

Sec. 44-111. Title.

This article shall be known as and cited as the "Lodger's Tax Ordinance."
(Code 1979, § 27-101; Code 2005, § 110.080; Ord. No. 961, § 1, 8-12-1996)

Sec. 44-112. Purpose.

The purpose of this article 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 44-126.
(Code 1979, § 27-102; Code 2005, § 110.081; Ord. No. 961, § 2, 8-12-1996)

Sec. 44-113. Imposed.

There is hereby imposed an occupancy tax of five percent of gross taxable rent for lodging within the municipality paid to vendors.
(Code 1979, § 27-104; Code 2005, § 110.083; Ord. No. 961, § 4, 8-12-1996)

State law reference—Tax authorized, NMSA 1978, § 3-38-15.

Sec. 44-114. License.

(a) *Required.* No vendor shall engage in the business of providing lodging in the town who has first not obtained a license as provided in this section.

(b) *Application; contents.* Applicants for a vendor's license shall submit an application to the town clerk stating:

- (1) The name of the vendor, including the identification of any person, as defined in this article, 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 mailing address thereof;

- (2) A description of the facilities, including the number of rooms and the usual schedule of rates thereof;
- (3) A description of other facilities provided by vendor 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 state taxation and revenue department;
- (4) The nature of the business of the vendor and to what extent, if any, his business is exempt from the lodger's tax; and
- (5) Other information reasonably necessary to effect a determination of eligibility for such license.

(c) *Review.* The town clerk shall review applications for license within ten days of receipt thereof, and grant the license in due course if the applicant is doing business subject to the lodger's tax.

(d) *Appeals.* An applicant who is dissatisfied with the decision of the town clerk may appeal the decision to the governing body by written notice to the town clerk of such appeal to be made within 15 days of the date of the town clerk's decision on the application. The matter shall be referred to the governing body for a hearing at a regular or special meeting in the usual course of business. The decision of the governing body made thereof shall be expressed in writing and be communicated in the same manner as the decision of the town clerk is transmitted. The action of the governing body shall be deemed final.

(e) *Issuance of appropriate license or other notice.* If the governing body finds for the applicant, the town clerk shall issue the

appropriate license or other notice conforming to the decision made by the governing body.

(Code 1979, § 27-105; Code 2005, § 110.084; Ord. No. 961, § 5, 8-12-1996)

State law reference—Mandatory ordinance requirements, NMSA 1978, § 3-38-20.

Sec. 44-115. Exemptions to article.

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 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 30 consecutive days;
- (2) If the rent paid by the vendee is less than \$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, without limitation, such 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) 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.

(Code 1979, § 27-106; Code 2005, § 110.085; Ord. No. 961, § 6, 8-12-1996)

State law reference—Similar provisions, NMSA 1978, § 3-38-16.

Sec. 44-116. Collection and reporting procedure.

(a) Every vendor providing lodgings shall collect the tax thereon on the municipality's behalf and shall act as a trustee thereof.

(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 article shall be liable to the town for the tax provided in the article on the rent paid for lodging at his respective place of business.

(d) Each vendor shall make a report by the 25th day of each month, on forms provided by the town clerk, of the receipts for lodging in the preceding calendar month, and shall submit the proceeds of the lodger's tax to the municipality and include sufficient information to enable the municipality to audit the reports and shall be verified on oath by the vendor.

(Code 1979, § 27-107; Code 2005, § 110.086; Ord. No. 961, § 7, 8-12-1996)

State law reference—Similar provisions, NMSA 1978, § 3-38-17.

Sec. 44-117. Duty of vendor to maintain records.

The 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 town and shall be open to the municipality's inspection during reasonable hours and shall be retained for three years.

(Code 1979, § 27-108; Code 2005, § 110.087; Ord. No. 961, § 8, 8-12-1996)

Sec. 44-118. Enforcement.

(a) An action to enforce the Lodgers' Tax Act may be brought by:

- (1) 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 Lodgers' Tax Act.

(c) The court shall award cost and reasonable attorneys' fees to the prevailing party in a court action to ensure the provisions of the Lodgers' Tax Act.

(Code 1979, § 27-109; Code 2005, § 110.088; Ord. No. 961, § 9, 8-12-1996)

State law reference—Similar provisions, NMSA 1978, § 3-38-17.3.

Sec. 44-119. Failure to make return; computation, civil penalty and notice; collection of delinquencies; occupation 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 ten percent of the amount not remitted, or \$100.00. The town 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 15 days of the mailing of the notice, the municipality may bring an action in law or equity in the district court for the collection of any amounts due including, without limitation,

penalties thereon, and interest on the unpaid principal at a rate not exceeding one percent a month. If the town attempts collection through an attorney or the town attorney for any purpose with regard to this article, the vendor shall be liable to the municipality for all costs, fees paid to the attorney or town attorney, and all other expenses incurred in connection therewith.

(c) The occupancy tax imposed by a municipality constitutes a lien in favor of the municipality upon the personal and real property of the vendor providing lodgings. The lien may be enforced as provided in NMSA 1978, §§ 3-36-1—3-36-7. 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 town finance director the amount of any occupancy tax due the municipality. Any occupancy tax due the municipality 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. (Code 1979, § 27-110; Code 2005, § 110.089; Ord. No. 961, § 10, 8-12-1996)

Sec. 44-120. Criminal penalty.

Any person who violates the provisions of this article for failure to pay the tax, remit proceeds thereof to the municipality, or properly account for any lodging and tax proceeds pertaining thereto for the violation of the confidentiality provisions of section 44-124 shall be guilty of a municipal offense and upon conviction shall be punished according to general penalty section 1-9.

(Code 1979, § 27-111; Code 2005, § 110.090; Ord. No. 961, § 11, 8-12-1996)

State law reference—Penalty authorized, NMSA 1978, § 3-38-19.

Sec. 44-121. Refund and credit procedure.

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, no later than 90 days from the date the payment was made, a written claim for the refund. Every claim for refund shall state the nature of the person's complaint and the affirmative relief requested. The town clerk shall allow the claim in whole or in part or may deny it. Refunds of tax and interest erroneously paid and amounting to \$100.00 or more may be made only with approval of the governing body.

(Code 1979, § 27-112; Code 2005, § 110.091; Ord. No. 961, § 12, 8-12-1996)

Sec. 44-122. Vendor audits.

(a) The municipality shall conduct random audits to verify full payment of occupancy tax receipts.

(b) The municipality shall determine each year the number of vendors within the municipality to audit.

(c) The audit may be performed by the town clerk or by any other designee of the governing body. A copy of the audit shall be filed annually with the local government division of the department of finance and administration.

(Code 1979, § 27-113; Code 2005, § 110.092; Ord. No. 961, § 13, 8-12-1996)

State law reference—Audit of vendors, NMSA 1978, § 3-38-17.1.

Sec. 44-123. Reports.

(a) The finance director shall furnish to the advisory board that portion of any proposed budget, report or audit filed or received by the governing body pursuant to either NMSA 1978, § 6-6-1 et seq. or the Audit Act (NMSA 1978, § 12-6-1 et seq.) that relates to the expenditure of occupancy tax funds within ten days of the filing or receipt of such proposed budget, report or audit by the governing body.

(b) The governing body 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 advisory board when it is filed with the division.

(Code 1979, § 27-114; Code 2005, § 110.093; Ord. No. 961, § 14, 8-12-1996)

Sec. 44-124. Confidentiality of return and audit.

It is unlawful for any employee of the town to reveal to any individual other than another employee of the town any information contained in the return or audit of any taxpayer, including vendors subject to the Lodgers' Tax Act (NMSA 1978, § 3-38-13 et seq.), except to a court of competent jurisdiction in response to an order thereof in an action relating to taxes to which the city is a party, and in which information sought is material to the inquiry; to the taxpayer himself or an authorized representative; and in such manner, for statistical purposes, the information revealed is not identified as applicable to any individual taxpayer.

(Code 1979, § 27-115; Code 2005, § 110.094; Ord. No. 961, § 15, 8-12-1996)

Sec. 44-125. Advisory board created; composition; disposition of proceeds.

The governing body shall administer the lodgers' 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 occupancy tax within the municipality, two members who are owners or operators of industries located 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 board

shall advise the governing body on the expenditure of funds authorized under section 44-126 for advertising, publicizing and promoting tourist attractions and facilities in the municipality and surrounding area.

(Code 1979, § 27-116; Code 2005, § 110.095; Ord. No. 961, § 16, 8-12-1996)

Sec. 44-126. Eligible uses of proceeds.

The governing body 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 Lodgers' Tax Act (NMSA 1978, § 3-38-13 et seq.) 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;
- (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, 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 services 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 purposes.

(Code 1979, § 27-117; Code 2005, § 110.096; Ord. No. 961, § 17, 8-12-1996)

Secs. 44-127—44-145. Reserved.

**ARTICLE IV. FRANCHISE
NEGOTIATIONS FEE**

Sec. 44-146. Penalties; cumulative.

All penalties accruing under this article shall be cumulative, and a suit for the recovery of one penalty shall not be a bar to or affect the recovery of any other penalty or forfeiture or be a bar to any criminal prosecution against any public utility, telecommunications entity, corporation or any officer, director, agent or employee thereof or any other corporation or person.

(Code 1979, § 27-142; Code 2005, § 110.999; Ord. No. 946, § 14, 4-15-1996)

Sec. 44-147. Franchise required; review fee.

All business entities without franchises or whose franchises expire within three years that are using or seeking to use the streets, roads and rights-of-way of the town for the erection, construction or operation of a public utility or for telecommunications services shall enter into negotiations with the town for franchise application, renewal or transfer. Upon adoption of the ordinance from which this article is derived, any such business entities shall be required to submit a letter of intent to enter into franchise negotiations, accompanied with a town application form and a partial review fee of \$2,500.00.

(Code 1979, § 27-129; Code 2005, § 110.110; Ord. No. 946, § 1, 4-15-1996)

Sec. 44-148. Town to maintain record of expenses.

From the time of the initial franchise application, through franchise negotiations and up to and including the time that a new franchise or franchise renewal takes effect, the town shall maintain accurate records for all expenses incurred including, but not limited to:

- (1) Staff costs;
- (2) Consulting fees;
- (3) Publication fees;
- (4) Legal fees;
- (5) Election expenses; and
- (6) Any other expenses related to the franchising process.

(Code 1979, § 27-130; Code 2005, § 110.111; Ord. No. 946, § 2, 4-15-1996)

Sec. 44-149. Notification to franchisee of final review costs.

Within 30 days after the effective date of the franchise ordinance from which this article is derived, or 30 days after the termination of franchise negotiations, the town shall send to the franchisee, by certified mail, return receipt requested, an accounting which shall contain an itemization of all costs incurred by the town as set forth in section 44-148.

(Code 1979, § 27-131; Code 2005, § 110.112; Ord. No. 946, § 3, 4-15-1996)

Sec. 44-150. Final payment of final review fee.

In the event the costs incurred by the town, as set forth in section 44-149, are less than the franchisee's initial \$2,500.00 payment, the town shall refund the difference to the franchisee, which shall be mailed with the accounting. Should the costs incurred by the town exceed the initial payment made by the franchisee, the franchisee shall be re-

quired to pay the difference to the town within 30 days of the receipt of the accounting, which payment shall constitute the final installment of the franchise application review fee. Failure to pay any final application review fee payment due shall constitute a material breach of, or noncompliance with, the terms of the franchise agreement.

(Code 1979, § 27-132; Code 2005, § 110.113; Ord. No. 946, § 4, 4-15-1996)

Sec. 44-151. Disputes over final review costs (binding arbitration).

If the franchisee disputes the reasonableness of the final franchise application review fee, as described in section 44-150, the franchisee shall, upon receipt of the charges seek to negotiate with the town toward a good-faith resolution of the dispute. If, within 15 days of the franchisee's receipt of the accounting statement and after good faith negotiations, the parties have not resolved the dispute as to the reasonableness of the charges, the franchisee may seek review of the charges by submitting the disputed fee to binding arbitration pursuant to the New Mexico Uniform Arbitration Act (NMSA 1978, § 44-7A-1 et seq.) (hereinafter Arbitration Act). If the franchisee fails to submit to arbitration within the 15-day period, the fee is deemed reasonable and shall be payable as set out in section 44-149.

(Code 1979, § 27-133; Code 2005, § 110.114; Ord. No. 946, § 5, 4-15-1996)

Sec. 44-152. Hearing procedures.

In the event the franchisee submits the disputed fee to binding arbitration, this hearing procedure shall be as outlined in the Arbitration Act (NMSA 1978, § 44-7A-1 et seq.). At the arbitration hearing, the franchisee shall bear the burden of proving that the charges are unreasonable, and may present

evidence regarding the reasonableness of the charges. The town may respond to any allegation of unreasonableness.

(Code 1979, § 27-134; Code 2005, § 110.115; Ord. No. 946, § 6, 4-15-1996)

Sec. 44-153. Purpose of hearing.

The arbitration hearing shall be for the purpose of considering the protest as to the reasonableness of the town's incurred expenses in the franchising process. The arbitrator is not authorized to challenge the town's prerogative in incurring any expenses. Evidence may be received in the form of documents, exhibits and testimony from witnesses. The arbitrator shall have all powers necessary to ensure the fair and efficient conduct of the hearing but shall not be bound by the New Mexico Rules of Evidence.

(Code 1979, § 27-135; Code 2005, § 110.116; Ord. No. 946, § 7, 4-15-1996)

Sec. 44-154. Arbitrator's decision; costs.

The decision of the arbitrator is final and binding upon the parties. Any fee payment determined by the arbitrator to be due either party must be made to the party within ten days of the decision. The town and the franchisee shall share equally in the costs of arbitration.

(Code 1979, § 27-136; Code 2005, § 110.117; Ord. No. 946, § 8, 4-15-1996)

Sec. 44-155. Enforcement of orders and duties.

(a) *Mandamus; injunction.* Whenever the town council shall be of the opinion that any person or entity is failing, or omitting, or about to fail or omit, to do anything required of it by this article or by any related order of the town council, or is doing anything or about to do anything, or permitting anything or about to permit anything to be done, contrary to or in violation of this article or of any order of the town council, it may direct

the town attorney to commence an action or proceeding in the county district court, in the name of the Town of Silver City, New Mexico, for the purpose of having such violations or threatened violations stopped and prevented either by mandamus or injunction.

(b) *Initiation of action; joinder of parties.* The town attorney shall thereupon begin such action or proceeding by petition to such court, alleging the violations or violation complained of, and praying for appropriate relief by way of mandamus or injunction. It shall be the duty of the court to specify a time, exceeding 30 days after the service of the copy of the petition, within which the entity or person complained of must plead, and in the meantime said public utility, telecommunications entity, corporation or person may for good cause shown be restrained. Such corporations or persons as the court may deem necessary or proper to be joined as parties, in order to make its judgment, order or writ effective, may be joined as parties. (Code 1979, § 27-137; Code 2005, § 110.118; Ord. No. 946, § 9, 4-15-1996)

Sec. 44-156. Court decision.

The final judgment in any such action or proceeding shall either:

- (1) Dismiss the action or proceeding;
- (2) Direct that the writ of mandamus or injunction issue or be made permanent as prayed for in the petition; or
- (3) Modify the writ of mandamus or injunction.

(Code 1979, § 27-138; Code 2005, § 110.119; Ord. No. 946, § 10, 4-15-1996)

Sec. 44-157. Action to recover penalties to be before county district court.

Actions to recover penalties under this article shall be brought in the town's name in the county district court.

(Code 1979, § 27-139; Code 2005, § 110.120; Ord. No. 946, § 11, 4-15-1996)

Sec. 44-158. Violation of orders.

Any person which violates any provision of this article or which fails, omits or neglects to obey, observe or comply with any related lawful order, or any part or provision thereof, of the town council is subject to a penalty as prescribed by general penalty section 1-9. (Code 1979, § 27-140; Code 2005, § 110.121; Ord. No. 946, § 12, 4-15-1996)

Sec. 44-159. Separate offense for each violation.

Every violation of the provisions of this article or of any related lawful order of the town council, or any part or portion thereof by any entity, corporation, or person is a separate and distinct offense, and in case of a continuing violation after a first conviction, each day's continuance thereof shall be deemed to be a separate and distinct offense. (Code 1979, § 27-141; Code 2005, § 110.999; Ord. No. 946, § 13, 4-15-1996)