

CITY OF BELEN
ORDINANCE NO. 2022-10
AN ORDINANCE TO AMEND ORDINANCE 1997-6 CHAPTER 3.16
LODGING TAX

3.16.010 - Title.

This chapter shall be known as and cited as the "lodgers' tax ordinance."

3.16.020 - Purpose.

The purpose of this chapter 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 recreational and entertainment facilities, attractions, transportation systems, and for other municipal purposes, as authorized in Section 3.16.170 of this chapter.

3.16.030 - Definitions.

As used in this chapter:

"Committee" and "Lodgers' Tax Committee" 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.

"City clerk" means the city clerk of Belen, 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 the 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.

"Occupancy tax" means the tax on lodging authorized by the Lodgers' Tax Act [3-38-13 through 3-38-25 NMSA (as amended)] (the "Lodger's Tax Act").

"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, 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 an occupancy tax authorized in the Lodgers' Tax Act and this Ordinance.

"Taxable premises" means a hotel, motel, 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 including but not limited to condominium, town home, casita, time-share and fractional-share lodge, for lodging that is not the vendee's household or primary residence.

"Temporary lodging" means lodging for the purpose of housing a vendee within proximity of the vendee's employment or job location.

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

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

"Vendor" means a person or the person's agent furnishing lodgings in the exercise of the taxable service of lodging.

3.16.040 – Rate and Authorization of Tax – Limitations on Use of Proceeds.

- A. There is imposed an occupancy tax of five percent (5%) of gross taxable rent for lodging within the City paid to vendors, pursuant to NMSA 1978 §3-38-15.
- B. Every vendor who is furnishing any lodgings within the City is exercising a taxable privilege.
- C. The proceeds from the occupancy tax that are collected pursuant to this ordinance shall be used according to the specific formula outlined in section 3-38-15-D of the New Mexico Lodgers' Tax Act.

3.16.050 - Licensing.

- A. No vendor shall engage in the business of providing lodging in the City of Belen who has first not obtained a license as provided in this section.
- B. Applicants for a vendor's license shall submit an application to the city clerk stating:
 1. The name of the vendor, including identification of any person, as defined in this chapter, 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 Department of Taxation and Revenue] of the state of New Mexico;
 4. The nature of the business practices of the vendor and to what extent, if any, the business is exempt from the lodgers' tax;
 5. Other information reasonably necessary to effect a determination of eligibility for such license.
- C. The city 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 lodgers' tax.
 - D. An applicant who is dissatisfied with the decision of the city clerk may appeal the decision to the governing body by written notice to the city clerk within fifteen (15) days of the date of the decision. The matter shall be referred to the governing body for hearing at a regular or special meeting in the usual course of business. The governing body's decision shall be communicated to the applicant in writing. The governing body's decision is final.
 - E. If the governing body finds for the applicant, the city clerk shall issue the appropriate license or other notice conforming to the decision made by the governing body.

3.16.060 – Exemptions pursuant to NMSA section 3-38-16.

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, 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, unless those premises are temporary lodging;
- 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; or
- F. To privately-owned and operated convalescent homes, or homes for the aged, infirm, indigent or chronically ill;

3.16.070 - Collection of the tax and reporting procedures.

The amount of tax imposed under this Ordinance is five percent (5 %). Each vendor providing lodgings in the City, subject to this Ordinance, shall collect the occupancy tax of 5% of gross taxable rent on behalf of the City

- A. Every vendor providing lodgings in the City of Belen shall collect the tax on the proceeds thereof on behalf of the City and ~~shall~~ act as a trustee therefor.

- B. The tax shall be collected from vendees in accordance with the ordinance and shall be charged separately from the rent fixed by the vendor for the lodgings.
- C. Each vendor licensed under this chapter shall be liable to the City of Belen for the tax provided herein on the rent paid for lodging at a taxable premises.
- D. Each vendor shall make a report by the twenty-fifth (25th) day of each month, on forms provided by the city clerk, of all receipts for lodging in the preceding calendar month, and shall submit the proceeds of the lodgers' tax to the City Manager's office in the form of cash or check or automatic electronic payment to the City's bank account on or before the 25th day of each month for the previous calendar month's lodging and include sufficient information to enable the City to audit the reports and shall be verified on oath by the vendor.

3.16.080 - Duties of the vendor.

Vendor shall maintain adequate records of facilities subject to the tax and of proceeds received for the use thereof. The records to be maintained shall include but are not limited to: federal income tax returns, State of New Mexico form CRS-1, financial statements, general and subsidiary ledgers, sales journals, charts of accounts, daily summaries and reports, monthly summaries, registration cards, bank statements, and year-end adjustment entries. Such records shall be maintained in Belen, New Mexico, and shall be open to the inspection of the City during reasonable hours and shall be retained for three (3) years.

3.16.090 - Enforcement.

- A. An action to enforce the Lodgers' Tax Act may be brought by:
 - 1. The attorney general or the district attorney in the Thirteenth Judicial District Court; or
 - 2. A vendor who is collecting the proceeds of an occupancy tax in the county of jurisdiction; or
 - 3. The City may bring an action in law or equity in the Thirteenth Judicial District Court or the City's Municipal Court for the collection of any amounts due, including without limitation penalties thereon, interest on the unpaid principal as above stated, the cost of collection and reasonable attorney's fees incurred in connection therewith.
- 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 costs and reasonable attorneys' fees to the prevailing party in a court action to enforce the provisions of the Lodgers' Tax Act.

3.16.100 - 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 City, whether due to his failure to collect the tax or otherwise. They shall be liable for the tax plus a civil penalty equal to the greatest of ten percent (10%) of the amount not remitted or one hundred dollars (\$100.00). The City 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 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, interest on the unpaid principal at a rate not exceeding one percent (1%) a month. If the City attempts collection through an attorney or the City

attorney for any purpose with regard to this chapter, the vendor shall be liable to the City for all costs, fees paid to the attorney or city 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 Sections 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 city clerk or treasurer the amount of any occupancy tax due the City. Any occupancy tax due the City 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. The City Clerk/Treasurer shall furnish to any person applying for such a certificate, a certificate showing the amount of all liens in the records of the City against any vendor. Priority of the lien shall be determined from the date of filing. The vendor shall be liable for any and all costs and reasonable attorneys' fees associated with the collection of funds under this Section.

3.16.110 - Criminal penalties.

Any person who violates the provisions of this chapter for a failure to pay the tax, to remit proceeds thereof to the City, or to properly account for any lodging and tax proceeds pertaining thereto, or for violating the confidentiality provisions of Section 3.16.150 of 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.

3.16.120 - Refunds and credits.

If any person pays any lodgers' tax in excess of the tax required, a refund thereof may be claimed by directing a written claim to the City clerk, no later than ninety (90) days from the date payment was made. Every claim for refund shall state the nature of the ~~pro~~ complaint and the affirmative relief requested. The city 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 (\$100.00) or more may be made only with the approval of the governing body of the City.

3.16.130 - Vendor audits.

An audit of vendors subject to Lodgers Tax will be performed as part of the City's financial audit biannually.

The determinations shall be based on a recommendation from the City Clerk/Treasurer pursuant to NMSA § 3-38-17.1.

3.16.140 - Financial reporting.

- A. The governing body shall furnish to the Lodgers' Tax Committee that portion of any proposed budget, report or audit filed or received by the governing body 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 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 Sections 3-38-15 and 3-38-21 NMSA 1978 and shall furnish a copy of this report to the Lodgers' Tax Committee when it is filed with the division.

3.16.150 - Confidentiality of return and audit.

It is unlawful for any employee of the City of Belen to reveal to any individual other than other employees of the City of Belen any information contained in the return or audit of any taxpayer, including vendors subject to the Lodgers' Tax Act, except to a court of competent jurisdiction in response to an order thereof in an action relating to taxes to which the City of Belen is a party, and in which information sought is material to the inquiry; to the taxpayer them self or to their authorized representative; and in such manner, for statistical purposes, that the information revealed is not identified as applicable to any individual taxpayer.

3.16.160 - Administration of lodgers' tax monies collected – Lodgers' Tax Committee Created - Duties.

- A. The governing body shall administer the lodgers' tax monies collected.
- B. There is hereby created an advisory board to be known as the city of Belen Lodgers' Tax Committee.
- C. The mayor, with the consent and approval of the City council, shall appoint a five (5) member Lodgers' Tax Committee that consists of: two members who are owners or operators of lodging subject to the occupancy tax within the City; two members who are owners or operators of industries located within the City that primarily provide services or products to tourists; and one member who is a resident of the municipality and represents the general public.
 - a. The Committee shall advise the governing body on expenditure of funds authorized under Section 3.16.170 of this chapter for advertising, publicizing and promoting tourist attractions and facilities in the City and surrounding area. The Committee shall serve without compensation. The Committee shall annually elect one of its members as chairperson and one as vice-chairperson.
 - b. The mayor, the City manager, and the director of finance shall be ex officio members of the Committee. Additionally, the mayor may appoint, with the consent and approval of the City council, one council member as an ex officio member of the Committee. The mayor may appoint, with the approval of council, a council member to act as the mayor's designee in the mayor's capacity as an ex officio member of the Committee. Ex officio members shall have no vote in any of the proceedings.
- D. Term of office: The term of office for the members of the Committee shall be four (4) years beginning on July 1st of the year of appointment and ending four (4) years later. All appointments to vacancies on the Committee shall be for the unexpired term of the member leaving the Committee.
- E. Meetings: The Committee shall meet once a quarter and at such other times as may seem fit and proper to the Committee.
- F. Removal of Committee members: Any Committee member who shall, by their conduct, be subject to removal for cause shall be entitled to a hearing before the city council and is entitled to representation at such hearing and shall be removed if a majority of all members of the city council

find that cause exists for removal of such member.

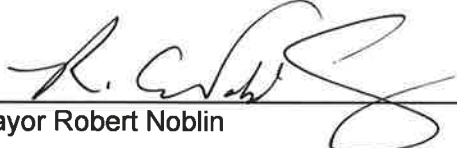
- G. Duties: The Committee shall advise the city council on the expenditure of funds authorized by the Lodgers' Tax Act for advertising, publicizing and promoting tourist attractions and facilities in the City of Belen. The Committee shall submit to the mayor and council recommendations for the expenditures of funds authorized pursuant to the Lodgers' Tax Act for advertising, publicizing and promoting tourist-related attractions, facilities and events in the city of Belen.
- H. Secretary: A designee of the city manager shall be the secretary of the Committee and shall faithfully keep the minutes of the meetings of the Committee and all other correspondence of the Committee but shall have no vote in any of the proceedings.

3.16.170 - Eligible uses of lodger's tax proceeds.

- A. Subject to the limitations contained in this ordinance and the specific formula outlined in section 3-38-15-D of the New Mexico Lodgers' Tax Act, the City may use the proceeds from the occupancy tax collected pursuant to this ordinance to defray the costs of:
 - 1. Collecting and otherwise administering the occupancy 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 and attractions or tourist-related transportation systems of the City, the county in which the municipality is located or the country;
 - 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-related facilities, attractions and events within the area;
 - 5. Providing police and fire protection and sanitation service for tourist-related facilities, attractions and events located in the municipality; or
 - 6. Any combination of the foregoing purposes or transactions stated in this section, but for no other municipal purpose.
- B. Every vendor who is furnishing any lodgings within the City is exercising a taxable privilege.
- C. 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 if applicable and needed. A copy shall be submitted to the Lodgers' Tax Committee.
- D. 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

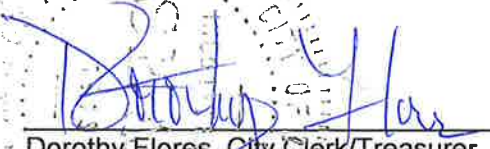
independent provision and such holding shall not affect the validity of the remaining portions of this section.

PASSED, ADOPTED AND APPROVED BY THE MAYOR AND GOVERNING BODY OF The City of
Belen, NM on this 20th day of June, 2022

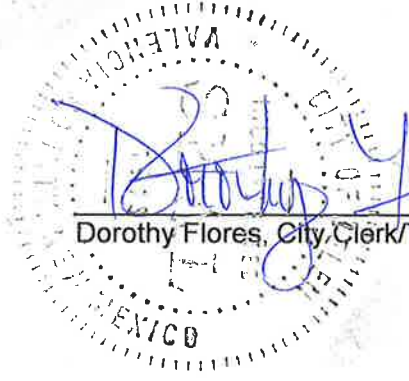


Mayor Robert Noblin

ATTEST:



Dorothy Flores, City Clerk/Treasurer

The seal is circular with a dotted border. The text 'VALENCIA' is at the top, 'CITY OF' is on the right, 'Belen' is in the center, and 'NEW MEXICO' is at the bottom.