

**VILLAGE OF MAGDALENA
ORDINANCE NO. 2020-01**

LODGERS' TAX

WHEREAS, NMSA 1978, Section 3-17-1(A)(C)(1) provides that municipalities may adopt ordinances not inconsistent with the laws of the State of New Mexico and may enforce obedience to those ordinances;

WHEREAS, NMSA 1978, Section 3-38-15 provides that municipalities may impose by ordinance an occupancy tax for revenues on lodging within the municipality;

WHEREAS, NMSA 1978, Section 3-38-20 provides that an ordinance imposing an occupancy tax shall comply with certain requirements and not be inconsistent with the Lodgers' Tax Act, NMSA 1978, Section 3-38-13 through 3-38-25;

WHEREAS, NMSA 1978 Section 3-38-1 provides that a governing body may declare, by ordinance, that the licensing or regulation of a business not otherwise exempt by law is conducive to the promotion of the health and general welfare of the municipality and may impose a license fee.

NOW THEREFORE, BE IT ORDAINED that the Board of Trustees of the Village of Magdalena adopts the following Ordinance establishing a tax on lodging within the Village.

Section 1. 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 revenue for advertising, publicizing, and promoting tourist-related attractions, facilities, and events. This updated Ordinance incorporates changes in the law.

Section 2. DEFINITIONS

- A. Gross Taxable Rent. The total amount of rent paid for lodging, not including the state gross receipts tax or local sales taxes.
- B. Lodging. The transaction of furnishing rooms or other accommodations by a vendor to a vendee who for rent uses, possesses or has to right to use or possess the rooms or other units of accommodations in or at a taxable premises.

- C. Lodgings. The rooms or other accommodations furnished by a vendor to a vendee by a taxable service of lodgings.
- D. Occupancy Tax. The tax on lodging authorized by the Lodgers' Tax Act.
- E. Person. 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.
- F. Rent. 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.
- G. Taxable Premises. A hotel, motel, or other premises used for lodging that is not the vendee's household or primary residence.
- H. Temporary Lodging. Lodgings for the purpose of housing a vendee within proximity of the vendee's employment or job location.
- I. Tourist. A person who travels for the purpose of business, pleasure or culture to a municipality imposing an occupancy tax.
- J. Tourist-Related Events. Events that are planned for, promoted to and attended by tourists.
- K. Tourist-Related Facilities and Attractions. Facilities and attractions that are intended to be used or visited by tourists.
- L. Tourist-Related Transportation Systems. Transportation systems that provide transportation for tourists to and from tourist-related facilities and attractions and tourist-related events.
- M. Vendee. A natural person to whom lodgings are furnished in the exercise of the taxable service of lodging.
- N. Vendor. A person or his agent furnishing lodgings in the exercise of the taxable service of lodging.

Section 3. AMOUNT OF TAX

The occupancy tax shall be five percent (5%) of the gross taxable rent.

Section 4. PROCEEDS OF TAX

- A. Portions of the proceeds from the occupancy tax that are collected based on the first thirty days a vendee rents lodgings in taxable premises shall be used only for advertising, publicizing and promoting tourist related facilities and attractions and tourist-related events as follows: Not less than one-half (1/2) of the proceeds from the first three percent (3%) of the tax and not less than one-fourth (1/4) of the proceeds from the tax in excess of three percent (3%).
- B. The proceeds from the occupancy tax that are collected based on the first thirty days a vendee rents lodgings in taxable premises in excess of the amount required to be used for advertising, publicizing and promoting tourist-related attractions, facilities, and events may be used to defray the costs of:
 - a. collecting and otherwise administering the tax, including the performance of audits required by the Lodgers' Tax Act and this Ordinance pursuant to guidelines issued by the Department of Finance and Administration;
 - b. 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 Village;
 - c. the principal of and interest on any prior redemption premiums due in connection with and any other charges pertaining to revenue bonds authorized by NMSA 1978, Section 3-38-23 or 3-38-24;
 - d. advertising, publicizing and promoting tourist-related attractions, facilities and events of the Village and tourist facilities or attractions within the area;
 - e. providing police and fire protection and sanitation service for tourist-related events, facilities and attractions located in the Village; or
 - f. any combination of the foregoing purposes or transactions in this subsection, but for no other Village purpose.

- C. The Village may use the proceeds from the occupancy tax that are collected based on the thirty-first and subsequent days a vendee rents lodgings in taxable premises for any Village purpose.

Section 5. REGISTRATION OF VENDORS

- A. No vendor shall engage in the operation of taxable premises in the Village of Magdalena who has not first registered as provided in the Registration of Business Activities Ordinance. Vendors who have registered under that Ordinance shall be deemed licensed for the purposes of NMSA 1978, Section 3-38-20.
- B. A vendor who is exempt from obtaining a taxpayer identification number under NMSA 1978, Section 7-9-1 thru 7-9-117 shall register with the Village as a vendor under this Ordinance; providing relevant contact information and a description of the taxable premises. Vendors shall update this information between January 1 and April 1 of each year.

Section 6. EXEMPTIONS

- A. The occupancy tax shall not apply if a vendee:
 - a. 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
 - 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, unless those premises are temporary lodging;
 - c. Pays less than two dollars (\$2.00) per day in rent.
- B. The occupancy tax shall not apply to lodging accommodations:
 - a. At institutions of the federal government, the state, or any political subdivision thereof;
 - b. At religious, charitable, educational or philanthropic institutions, including accommodations at summer camps operated by such institutions;
 - c. At Clinics, hospitals, or other medical facilities;

- d. In privately owned and operated convalescent homes or homes for the aged, infirm, indigent, or chronically ill.

Section 7. CREATION and RETENTION OF RECORDS

- A. Each vendor shall make a report by the twenty-fifth (25th) day of each month on forms (known as returns) provided by the Village Clerk of the receipts for lodging paid in the preceding calendar month, verified on oath of the vendor;
- B. Vendors shall maintain vendee receipts or other accurate and regularly updated records reflecting the number of rooms and the number of nights the rooms are rented, and whether such rentals are claimed as exempt and the reasons(s) therefor;
- C. Vendors shall maintain tax returns or any other records required by any other law;
- D. Vendor shall maintain the above records in Magdalena, New Mexico;
- E. The records shall be available and open to inspection by the Village during reasonable hours;
- F. Records shall be retained for at least three (3) years.

Section 8. COLLECTION and PAYMENT OF TAX

- A. Every vendor providing lodgings shall collect the tax thereon on behalf of the Village and shall act as a trustee therefor;
- B. The tax herein 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;
- C. Each vendor shall be liable to the Village of Magdalena for the tax provided herein on the rent paid for lodging at each taxable premises;
- D. Payment shall be made by the twenty-fifth (25th) day of each month for lodging paid in the preceding calendar month in the form of check or money order; in person at Village offices or by U.S. mail or another reliable shipment or courier service.

Section 9. REFUNDS and CREDITS

- A. If any person believes they have made payment of occupancy tax in excess of that for which they were liable, they may claim a refund thereof by directing to the Village Clerk, no 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 person's complaint and the affirmative relief requested. The Village Clerk shall allow the claim in whole or in part or may deny it within ten (10) working days of receipt of the complaint. If the person is not satisfied with the Clerk's proposed resolution, the person may request an appeal to the governing body within ten (10) working days of receipt of the Clerk's decision.
- B. Refunds of tax erroneously paid and amounting to one hundred dollars (\$100.00) or more may be made only with the approval of the governing body.

Section 10. AUDITS OF VENDORS

- A. Random audits shall be conducted to verify full payment of occupancy tax receipts.
- B. The governing body shall periodically select taxable premises and vendors subject to audit at an open meeting by selecting one of its members to draw from a collection of currently licensed vendors;
- C. No vendor shall be subject to random audit more than once per year;
- D. The audits may be performed by the Village Clerk or by any other designee selected by the governing body;
- E. Copies of audits completed shall be filed annually with the local government division of the department of finance and administration;
- F. It is unlawful for any employee of the Village of Magdalena to reveal to any person other than another employee, member of the governing body of the Village of Magdalena, or employee or representative of the local government division of the department of finance and administration, 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 an action relating to taxes to

which the Village of Magdalena is a party, or to the taxpayer or their authorized representative.

Section 11. ADMINISTRATION and REPORTING

- A. The governing body of the Village of Magdalena shall administer the occupancy tax monies collected;
- B. The governing body 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 Chapter 6, Article 6 NMSA 1978 of the Audit Act that is related to the 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;
- C. 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 Advisory Board when it is filed with the division.

Section 12. ADVISORY BOARD

- A. The Mayor shall appoint a five (5) -member advisory board that consists of two (2) members who are owners or operators of lodgings subject to the occupancy tax within the Village, two (2) members who are owners or operators of industries located within the Village that primarily provide services or products to tourists, and one (1) member who is a resident of the Village and represents the general public.
- B. Members of the Advisory Board shall serve at the pleasure of the Mayor.
- C. The Advisory Board shall advise the governing body on the expenditure of funds to be used for advertising, publicizing and promoting tourist-related attractions, facilities and events in the Village.
- D. The Advisory Board shall submit to the government body recommendations for the expenditures of funds for advertising, publicizing and promoting tourist-related attractions, facilities and events in the Village.

Section 13. CONTRACTING FOR SERVICES

- A. The governing body may contract for the management of programs and activities funded with the revenue from the tax authorized for use for advertising, publicizing and promoting tourist-related attractions, facilities and events. The governing body shall require periodic reports to the governing body, at least quarterly, listing the expenditures for those periods. Within ten (10) days of receiving the reports, the governing body shall furnish copies of them to the Advisory Board. Funds provided to the contracting person or governmental agency shall be maintained in a separate account established for that purpose and shall not be commingled with any other money.
- B. A person or governmental agency with whom the Village contracts under this Section to conduct an activity authorized by Section 4(B) of this Ordinance shall maintain complete and accurate financial records of each expenditure of the tax revenue made and upon request of the governing body, shall make such records available for inspection.
- C. The occupancy tax revenue spent for a purpose authorized by this Ordinance may be spent for day-to-day operations, supplies, salaries, office rental, travel expenses and other administrative costs only if those administrative costs are incurred directly for that purpose.
- D. A person or governmental agency with whom the Village contracts under this Section may subcontract with the approval of the governing body. A subcontractor shall be subject to the same terms and conditions as the contractor regarding separate financial accounts, periodic reports and inspection of records.

Section 14. CIVIL ENFORCEMENT and LIENS

- A. A vendor is liable for the payment of the proceeds of any occupancy tax that the vendor failed to remit to the Village, due to failure to collect the tax or otherwise.
- B. The Village may bring an action in law or equity in the Seventh Judicial 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 a month, the costs of collection and reasonable attorneys' fees incurred in connection therewith;

- C. The civil penalty for failure to remit payment in a timely manner is an amount equal to the greater of ten percent (10%) of the amount that was not duly remitted or one hundred dollars (\$100.00).
- D. The occupancy tax constitutes a lien in favor of the Village 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.
- E. Under process or order of court, no person shall sell the property of any vendor without first ascertaining from the Village Clerk the amount of any occupancy tax due the Village. Any occupancy tax due the Village 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.

Section 15. CRIMINAL PENALTY

Any person who violates the provision of this Lodgers' Tax Ordinance by a failure to pay the tax, to remit proceeds thereof to the Village, or to account properly for any lodging and the tax proceeds pertaining thereto, shall be guilty of a misdemeanor and upon conviction shall be fined in an amount of not more than five hundred dollars (\$500) or imprisonment of not more than ninety (90) days, or both.

Section 16. SEVERABILITY


If any section, subsection, sentence, clause, word or phrase of this ordinance is for any reason held to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Trustees hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, word or phrase thereof irrespective of the fact that any one or more section, subsection, sentence, clause, word or phrase thereof be held unconstitutional or otherwise invalid.


Section 17. REPEALER

Ordinance 2015-06 is repealed. Any other ordinance, resolution, or rule directly in conflict with this ordinance is hereby repealed to the extent of such conflict.

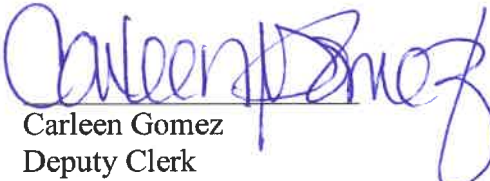
Passed, Approved, and Adopted this 14th day of September, 2020.

Approved:


Richard Rumpf, Mayor


Katherine Stout, General Counsel as to
legal sufficiency

Attested:


Carleen Gomez
Deputy Clerk

