

**CITY OF ELEPHANT BUTTE  
ORDINANCE NO. 151**

**AMENDING THE PROVISIONS OF SECTIONS 31.62, 31.64, 31.65 AND 31.66 OF THE LODGER'S TAX ORDINANCE GENERALLY CLARIFYING PROCEDURES FOR ADMINISTRATION OF THE TAX, ADDING ENFORCEMENT PROVISIONS, AND INCREASING CIVIL PENALTIES AS REQUIRED BY STATE LAW; AMENDING THE PROVISIONS OF SECTION 31.67 RELATING TO QUALIFICATIONS FOR MEMBERS OF THE LODGERS TAX ADVISORY BOARD AND CLARIFYING THE DUTIES OF THE BOARD, AND ADDING NEW SECTIONS 31.68, SPECIFYING ELIGIBLE USE OF THE PROCEEDS OF THE OCCUPANCY TAX, AND 31.69, AUTHORIZING THE GOVERNING BODY TO CONTRACT FOR MANAGEMENT OF PROGRAMS AND ACTIVITIES FUNDED WITH PROCEEDS OF THE OCCUPANCY TAX.**

WHEREAS, the Code of Ordinances of the City of Elephant Butte contains the Lodgers Tax Ordinance in sections 31.60 through 31.67, providing for the imposition and collection of occupancy taxes as authorized by the New Mexico Lodgers' Tax Act, NMSA 1978, §§ 3-38-13 *et seq.*; and

WHEREAS, a review of the provisions of the ordinance has shown the need for clarification of certain provisions relating to administration of the tax, enforcement, penalties, the composition of the Lodgers Tax Advisory Board, and the eligible use of proceeds of the tax; and

WHEREAS, the governing body wishes to amend the ordinance to clarify these matters and to bring the provisions of the ordinance into compliance with the provisions of the state act;

**NOW THEREFORE, BE IT ORDAINED** by the Governing Body of the City of Elephant Butte that the Lodger's Tax Ordinance be amended as follows:

**Section One.** The Lodger's Tax Ordinance is amended as follows:

**§ 31.62 DEFINITIONS.**

For the purpose of this subchapter, the following definitions shall apply unless the context indicates or requires a different meaning.

**GROSS TAXABLE RENT.** The total amount of rent paid for lodging, not including the state gross receipts or local sales taxes.

**LODGING.** 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.** The rooms or other accommodations furnished by a vendor to a vendee by a taxable service of lodgings.

**OCCUPANCY TAX.** The tax on lodging authorized by the Lodgers Tax Ordinance of the City of Elephant Butte.

**PERSON.** A corporation, firm, other body corporate, partnership, association or individual, and including an executor, administrator, trustee, receiver or other representative appointed according to law and acting in a representative capacity, but not including 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.** 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 Ordinance.

**TAXABLE PREMISES.** 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, RV park, trailer court, trailer camp, trailer park, tourist camp, motel, cabin or other premises used for lodging.

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

***TOURIST-RELATED EVENTS.*** Events that are planned for, promoted to and attended by tourists.

***TOURIST-RELATED FACILITIES AND ATTRACTIONS.*** Facilities and attractions that are intended to be used by or visited by tourists.

***TOURIST-RELATED TRANSPORTATION SYSTEMS.*** Transportation systems that provide transportation for tourists to and from tourist-related facilities and attractions and tourist-related events.

***VENDEE.*** A natural person to whom lodgings are furnished in the exercise of the taxable service of lodging.

***VENDOR.*** A person furnishing lodgings in the exercise of the taxable service of lodging.

**§ 31.64 EXEMPTIONS.**

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 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 consecutive days.
- (B) If the rent paid by a 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, provided, that lodging accommodations leased

by the city to a vendor shall not be considered institutions of the city and shall be considered taxable premises;

- (D) To lodging accommodations at religious, charitable, educational or philanthropic institutions, including without limitation the accommodations at summer camps operated by the 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; or
- (G) If the vendor does not offer at least three (3) rooms within or attached to a taxable premises for lodging or at least three (3) other premises for lodging or a combination of these within the city.

**§ 31.65 LICENSING AND BUSINESS REGISTRATION.**

- (A) No vendor shall engage in the business of providing lodging within the city who has not first obtained a license as provided in this section. The failure of a person to obtain a license may be investigated and enforced by the Code Enforcement Officer pursuant to the provisions of Chapter 155, "Zoning."
- (B) Applicants for vendor's license shall submit an application to the City Clerk-Treasurer pursuant to the provisions of Chapter 110, "Business Registration and License," together with the following additional information:
  - (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 lodgings and the name or trade names under which the vendor proposes to do business, the physical location, the post office address thereof, and the

Tax Identification Number issued by the New Mexico Department of Taxation and Revenue for the business;

- (2) A description of the facilities, including the number of rooms, cabins, or spaces and usual schedule of rates therefor, with revised figures, as applicable, submitted for these items upon submission of the vendor's annual business registration renewal;
  - (3) Any claim of exemption; and
  - (4) Other information reasonably necessary to effect a determination of eligibility for the license.
- (C) The City Clerk-Treasurer shall review the application and approve or disapprove it as provided in Chapter 110 and shall provide written notice to the applicant.
- (D) A decision of the Clerk may be appealed to the governing body by filing a Notice of Appeal with the City Clerk-Treasurer within fifteen (15) days of the date of the notice of denial, provided, that any such appeal shall be subject to the provisions for appealing denial of a zoning permit or other land-use permit as applicable. The governing body shall conduct a quasi-judicial hearing on the appeal and issue a written decision. The action of the governing body shall be final.

**§ 31.66 COLLECTION AND PAYMENT OF OCCUPANCY TAX PROCEEDS.**

- (A) Every vendor who is furnishing any lodgings within a municipality is exercising a taxable privilege and as such is responsible for collecting the tax from the vendee at the time the lodging rent is collected and is acting as a trustee for the city with respect to the funds.

- (B) The vendor shall file reports and make payments of the occupancy tax proceeds to the Clerk-Treasurer on a monthly basis on forms provided by the Clerk-Treasurer. The report and payment shall be due not later than the twenty-fifth day of the month following the end of the reporting period. If vendor has not collected tax in a given month, a “zero” report must be filed.
- (C) Records of lodging receipts and occupancy taxes shall be maintained by the vendor for 3 years. These records and other relevant information will be subject to random audits.
- (D) Upon failure of a vendor to remit timely payments, the City Clerk-Treasurer shall make an estimate based upon information in her possession, or that may come into her possession, of the amount of the tax proceeds due by the delinquent vendor for the period in question to which he or she has failed to make payment, and upon the basis of the estimated amount shall compute and assess the tax payable by the delinquent vendor, adding to the sum thus arrived at a civil penalty in an amount equal to the greater of 10% thereof or \$100. Promptly thereafter the city shall give written notice to the delinquent vendor of the estimated tax, penalty, and interest; which notice shall be served by certified mail. Payment of the delinquent amount shall be due within fifteen (15) days of receipt of the notice. The determination of the Clerk-Treasurer shall be subject to appeal to the governing body according to the appellate provisions of § 31.65(D) herein.
- (E) The city may bring an action 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%) per month, the costs of collection and reasonable attorney fees incurred in connection therewith.

- (F) Any person in violation of the provisions of the Occupancy Tax Ordinance for a failure to pay the tax, to remit the proceeds to the City of Elephant Butte or to account properly for any lodging and the tax proceeds pertaining thereto will be guilty of a misdemeanor and subject to a fine of up to \$500 and up to 90 days imprisonment or both.
- (G) The occupancy tax imposed by the City constitutes a lien in favor of the city upon the personal and real property of the vendor providing lodgings in the city. The lien may be enforced as provided in NMSA §§ 3-36-1 through 3-36-7. Priority of the lien shall be determined from the date of the filing.
- (H) Under process or order of court, no person shall sell the property of any vendor without first inquiring in writing of the Clerk-Treasurer the amount of any occupancy tax due the City. Any occupancy tax due to the City 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 sale proceeds.
- (I) The Clerk-Treasurer shall furnish a certificate showing the amount of all liens in the records of the city against any vendor to any person applying for such a certificate.

**§ 31.67 LODGERS TAX ADVISORY BOARD.**

- (A) The Mayor shall appoint a five (5) member Advisory Board consisting of two (2) members who are owners or operators of lodgings subject to the occupancy tax, two (2) members who are owners or operators of industries located within the city



that primarily provide services or products to tourists of whom are directly involved in tourist-related industries, and one (1) member who is a resident of the city who shall represent the general public.

- (B) Members of the Board shall serve at the pleasure of the Mayor. The Board shall identify possible projects and advise the City Council on the expenditures of funds authorized by NMSA § 3-38-15 for advertising, publicizing, and promoting tourist attractions and facilities in the City of Elephant Butte and Sierra County.
- (C) The Board shall submit to the City Council recommendations for the expenditures of funds authorized pursuant to this ordinance for advertising, publicizing and promoting tourist-related attractions, facilities and events in the city and the county.
- (D) The Board shall meet at least quarterly and more often as required. The meetings of the Board shall be open to the public and announced pursuant to the City Open Meetings Resolution. A record of business conducted shall be maintained.

**§ 31.68 ELIGIBLE USE OF TAX PROCEEDS.**

The city may use the proceeds of the occupancy tax as follows:

- (A) 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 shall be used only for advertising, publicizing and promoting tourist-related attractions, facilities and events. These proceeds shall be used within two (2) years of the close of the fiscal year in which they were collected and shall not be accumulated beyond that date or used for any other purpose.



- (B) The remainder of the proceeds of the occupancy tax not required to be used for the purposes specified in paragraph (A) above may be used to defray the costs of:
- (1) Collecting and otherwise administering the tax, including the performance of audits required by this ordinance 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 city;
  - (3) The principal of an interest on any prior redemption premiums due in connection with and any other charges pertaining to revenue bonds authorized the provisions of NMSA 1978, §§ 3-38-23 or 3-38-24;
  - (4) Advertising, publicizing and promoting tourist-related attractions, facilities and events of the city or within the area;
  - (5) Providing police and fire protection and sanitation service for tourist-related events, facilities and attractions in the city; or
  - (6) Any combination of the foregoing purposes or transactions, but for no other municipal purpose.

**§ 31.69 CONTRACTING FOR SERVICES.**

The governing body may contract for management of programs and activities funded with revenue from the occupancy tax pursuant to the provisions of NMSA 1978, § 3-38-21.1.

**Section Two.** All other provisions of the Lodgers Tax Ordinance not specifically amended in section one herein, shall remain unchanged and in full force and effect as written.

**Section three.** Effective date. This ordinance shall become effective five days following publication.

PASSED, APPROVED AND ADOPTED by the Governing Body of the City of Elephant Butte, New Mexico, this 6th day of May, 2015.

  
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Eunice Kent, Mayor

Attest:

  
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Karen Rieth, City Clerk