

**CITY OF ELEPHANT BUTTE
ORDINANCE NO. 209**

**AMENDING THE PROVISIONS OF SECTION 31.66, 31.67 OF THE LODGER'S TAX
ORDINANCE PERTAINING TO THE COLLECTION OF LODGERS' TAX AND THE
LODGERS' TAX ADVISORY BOARD.**

WHEREAS, the Code of Ordinances of the City of Elephant Butte contains the Lodgers Tax Ordinance in sections 31.60 through 31.69, 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 an amendment to the provisions relating to the Collection and Payment of Occupancy Tax Proceeds and the Lodgers' Tax Advisory Board; and

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. That section 31.66 and 31.67 shall be amended to read as follows:

§ 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 monthly on forms provided by the Clerk. 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 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 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 to the Clerk 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.
- (J) For transactions where a vendor uses a Marketplace Provider to facilitate the sale of lodgings, the City may use a “Marketplace Provider” as follows:
 1. Definition: a Marketplace Provider means any person who facilitates a retail sale by a vendor by listing or advertising for sale or furnishing by the vendor, in any manner, rooms, lodging, or other accommodations through agreements or arrangements with 3rd parties.
 2. Marketplace Providers shall be responsible for collecting all applicable lodgers taxes and remitting the same to the City. The marketplace provider shall be considered an agent of the vendor for the purposes of lodgers’ tax collections and remittance responsibilities as set forth in this ordinance.
 3. A Marketplace Provider operating exclusively on the internet, who operates in compliance with the subsection 2 above, shall be presumed to be in compliance with this ordinance, except that the marketplace provider remains responsible for compliance with the administrative penalty provisions described in this section.

§ 31.67 LODGERS TAX ADVISORY BOARD.

- (A) The Mayor shall make the recommendation with City Council approval to appoint a five (5) member Advisory Board. The board is to consist 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 public. The City Council may appoint an alternate member to the Lodgers' Tax advisory Board.

- (B) Board Members shall serve on a two-year term.
- (C) The Board shall designate both a Chair and Co-Chair to serve on the Lodgers' Tax Advisory Board. Alternate members are not eligible for Chair or Co-Chair seats.
- (D) Members of the Board shall serve at the pleasure of the Mayor and City Council. The Board shall identify possible projects and advise the City Council on the expenditure 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.
- (E) The Board shall submit to the City Council recommendations for the expenditure of funds authorized pursuant to this ordinance for advertising, publicizing, and promoting tourist-related attractions, facilities and events in the city and the county.
- (F) 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.

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 of adoption.

PASSED, APPROVED AND ADOPTED by the Governing Body of the City of Elephant Butte, New Mexico, this _____ day of _____, 2023.

Phillip Mortensen, Mayor

Attest:

Lindsey Cobleigh, City Clerk