

0-2019-024

**CITY OF ALBUQUERQUE
CITY COUNCIL**

INTEROFFICE MEMORANDUM

TO: Timothy M. Keller, Mayor

FROM: Stephanie M. Yara, Director of Council Services *SMY 9/16/19*

SUBJECT: Transmittal of Legislation

Transmitted herewith is Bill No. O-19-71 Amending Section 4-4-1 Et Seq., ROA 1994, The Lodgers' Tax Ordinance, To Include The Definition Of Marketplace Provider, Eliminate An Exemption, And Require Marketplace Providers To Collect And Remit Occupancy Taxes; And Amending Section 4-8-1 Et Seq., ROA 1994, The Hospitality Fee Ordinance, To Include The Definition Of Marketplace Provider, Eliminate An Exemption, And Require Marketplace Providers To Collect And Remit Hospitality Fees (Winter, by request), which was passed at the Council meeting of September 4, 2019 by a vote of 9 FOR AND 0 AGAINST.

In accordance with the provisions of the City Charter, your action is respectfully requested.

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Attachment

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1 For the purpose of this article, the following definitions shall apply unless
2 the context clearly indicates or requires a different meaning.

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

5 **LODGING.** The transaction of furnishing rooms or sleeping
6 accommodations by a vendor to a vendee who for a rent, uses, possesses or
7 has the right to use or possess any room or rooms or other units of
8 accommodations in or at a taxable premises.

9 **LODGINGS.** The rooms or sleeping accommodations furnished by a
10 vendor to a vendee by a taxable service of lodging.

11 **MARKETPLACE PROVIDER.** A person who facilitates the rental of
12 lodging by:

13 (A) advertising the lodging by any means, whether physical or
14 electronic, including by internet website, online booking platform, catalog,
15 television or radio broadcast, and

16 (B) collecting payment from the vendee and transmitting that payment to
17 the vendor either directly or indirectly through agreements or arrangements
18 with the vendor, regardless of whether the marketplace provider receives
19 compensation or consideration in exchange for the marketplace provider's
20 services.

21 **MAYOR.** The Mayor of the city or his designated representative.

22 **OCCUPANCY TAX.** The tax on lodging, authorized by this article.

23 **PERSON.** A corporation, firm, other body corporate, partnership,
24 association or individual, includes an executor, administrator, trustee, receiver
25 or other representative appointed according to law and acting in a
26 representative capacity, but does not include the United States of America, the
27 State of New Mexico, any corporation, department, instrumentality or agency
28 of the federal government or the state government, or any political subdivision
29 of the state.

30 **RENT.** The consideration received by a vendor in money, credits,
31 property or other consideration valued in money for lodgings subject to an
32 occupancy tax authorized in this article.

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1 **TAXABLE PREMISES.** A hotel, apartment, apartment hotel, apartment
2 house, lodge, lodging house, rooming house, motor hotel, guest house, bed
3 and breakfast, guest ranch, ranch resort, mobile home, motor court, auto
4 court, auto camp, trailer court, trailer camp, trailer park, tourist camp, cabin or
5 other premises used for lodging.

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

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

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

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

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

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

19 **§ 4-4-5 LODGERS' TAX APPLICATION.**

20 Any person desiring an application pursuant to Section 3-38-23 through
21 3-38-24 NMSA 1978 and the City of Albuquerque Lodgers' Tax ordinance shall
22 file an application with the Mayor upon a form to be provided by the Mayor.

23 The application shall include, but not be limited to, the following information:

24 (A) List the name, mailing address, telephone number, fax number and
25 other related necessary information to register Taxable Premises such as:
26 Federal Tax Identification Number, New Mexico State Gross Receipts Tax
27 Identification Number, New Mexico Public Regulation Commission (NMPRC)
28 number on file, City of Albuquerque Business Registration number on file with
29 the city.

30 (B) List the name, mailing address, telephone number, fax number of
31 accounting firm or officer handling Tax Premises' financial records associated
32 with reporting lodgers' tax reports and payments.

33 **§ 4-4-6 IMPOSITION OF TAX, USE OF PROCEEDS.**

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1 (A) There is hereby imposed an occupancy tax of 5% of gross taxable
2 rent for lodging paid to vendors after December, 1984.

3 (B) Not less than one-half of the proceeds of such occupancy tax shall
4 be used for the purpose of advertising, publicizing and promoting tourist-
5 related attractions, facilities and events. Notwithstanding the preceding
6 sentence, the payment of principal and interest on outstanding bonds issued
7 prior to July 1, 1977 pursuant to Section 3-38-23 or 3-38-24 NMSA 1978, shall
8 be in accordance with the retirement schedules of the bonds established at
9 the time of issuance.

10 (C) Any balance of the occupancy tax proceeds not used for the purpose
11 set forth above may be used to defray the costs of:

12 (1) Collecting and otherwise administering the tax, including the
13 performance of audits required by the Lodgers' Tax Act, Sections 3-38-13 to 3-
14 38-24 NMSA 1978, pursuant to guidelines issued by the State of New Mexico
15 Department of Finance and Administration;

16 (2) The Mayor's Office or designated representative will administer
17 all Lodger's Tax audits. Audits Schedule of Taxable Premises will be
18 submitted for review to the City's Lodgers' Tax Advisory Board at their
19 monthly meeting in August.

20 (3) Establishing, operating, purchasing, constructing, otherwise
21 acquiring, reconstructing, extending, improving, equipping, furnishing or
22 acquiring real property or any interest in real property for the site or grounds
23 for tourist-related facilities, attractions or transportation systems of the
24 municipality, the county in which the municipality is located or the county;

25 (4) The principal of and interest on any prior redemption premiums
26 due in connection with and any other charges pertaining to revenue bonds
27 authorized by Section 3-38-23 or 3-38-24 NMSA 1978;

28 (5) Advertising, publicizing, and promoting tourist-related facilities
29 and attractions and events of the municipality or county and tourist facilities
30 or attractions within the area;

31 (6) Providing police and fire protection and sanitation service for
32 tourist-related events, facilities and attractions located in the city or county; or

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1 (7) Any combination of the foregoing purposes or transactions
2 stated in this section but for no other municipal or county purpose.

3 (D) Every vendor who is furnishing any lodgings within a municipality or
4 county is exercising a taxable privilege.

5 **§ 4-4-7 EXEMPTIONS.**

6 The occupancy tax shall not apply:

7 (A) If a vendee:

8 (1) Has been a permanent resident of the taxable premises for a
9 period of at least thirty consecutive days; or

10 (2) Enters into or has entered into a written agreement for lodgings
11 at the taxable premises for a period of at least 30 consecutive days;

12 (B) If the rent paid by a vendee is less than \$2 a day.

13 (C) To lodging accommodations at institutions of the federal
14 government, the state or any political subdivision thereof.

15 (D) To lodging accommodations at religious, charitable, educational or
16 philanthropic institutions, including without limitation such accommodations
17 at summer camps operated by such institutions.

18 (E) To clinics, hospitals or other medical facilities.

19 (F) To privately-owned and operated convalescent homes or homes for
20 the aged, infirm, indigent or chronically ill.

21 **§ 4-4-8 DETERMINATION OF EXEMPTION; APPEAL.**

22 The Mayor shall make the determination of whether or not a vendor is
23 exempt from the occupancy tax. In the event the vendor is dissatisfied with
24 any decision of the Mayor with respect to this article, he may appeal the
25 decision to the City Hearing Officer. The burden of proof shall be upon the
26 vendor to sustain his claim to an exemption.

27 **§ 4-4-9 COLLECTION OF THE TAXES; REPORTING CHANGE IN**
28 **OWNERSHIP.**

29 (A) Every vendor providing lodgings within this city shall collect the
30 occupancy tax thereon on behalf of the city and shall act as a trustee therefor.

31 (B) The occupancy tax shall be collected from vendees in accordance
32 with this section and shall be charged separately from the rent fixed by the
33 vendor for the lodgings.

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1 (C) On and after June 1, 1969, each vendor shall be liable to the city for
2 the tax provided herein on the rent paid for lodging.

3 (D) (1) Each vendor shall make a report by the 25th day of each month
4 on forms provided by the Mayor of the receipts for lodging paid to him in the
5 preceding calendar month and shall remit therewith payment of the total
6 amount of the occupancy tax due to the city. The report shall include
7 sufficient information to enable the city to audit the report and shall be verified
8 on oath by the vendor. Occupancy taxes not paid and posted to the city's
9 Lodgers Subsidiary Ledger Vendors' Account by the 25th of the month as
10 provided herein shall be considered delinquent.

11 (2) If the 25th day of the month falls on a weekend or holiday, the
12 return shall be due on the next business day.

13 (E) The Mayor shall select for annual random audits one or more
14 vendors to verify the amount of gross rent subject to the occupancy tax and to
15 ensure that the full amount of occupancy tax on that rent is collected. Copies
16 of audits completed shall be filed with the State of New Mexico local
17 government division of the Department of Finance and Administration.

18 (F) Failure to notify the Mayor within 30 working days of a change of
19 ownership on a taxable premises shall subject vendor to a \$500 penalty.

20 (G) A nonrefundable hearing fee of \$50.00 shall accompany each appeal
21 to the City Hearing Officer filed pursuant to §§ 4-4-6 or 4-4-9 ROA 1994.

22 **§ 4-4-10 RECORDS OF VENDOR.**

23 Each vendor shall maintain adequate records of facilities subject to the
24 occupancy tax and of proceeds received for the use thereof. The records to
25 be maintained shall include but are not limited to: federal income tax returns,
26 State of New Mexico form CRS-1, financial statements, general and subsidiary
27 ledgers, sales journals, charts of accounts, daily summaries and reports,
28 monthly summaries, registration cards, bank statements, and year-end
29 adjusting entries. The records shall be maintained in Albuquerque and shall
30 be open to inspection by the city during reasonable hours and shall be
31 retained for three years.

32 **§ 4-4-11 FAILURE TO PAY TAX OR MAKE RETURN; PENALTY;**

33 **COLLECTION OF DELINQUENCIES; CONTINUOUS SURETY BOND; APPEAL.**

1 (A) In addition to other penalties that may be applicable under this
2 article, if any vendor makes a return as required by this article without paying
3 the occupancy tax then due, he shall be liable for the tax and a penalty equal
4 to 10% thereof or \$100, whichever is greater. Promptly after receipt of such
5 return, the city shall give the delinquent vendor written notice of the tax and
6 penalty.

7 (B) If any vendor neglects or refuses to make a return and pay the
8 occupancy tax as required by this article, the Mayor shall make an estimate
9 based upon an examination of the vendor's books and records, or upon any
10 information in its possession or that may come into its possession, of the
11 amount of the rent of the delinquent vendor for the period in respect to which
12 he has failed to make a return, and upon the basis of said estimated amount
13 shall compute and assess the tax payable by the delinquent vendor, adding to
14 this amount a penalty equal to 10% thereof or \$100, whichever is greater.
15 Promptly thereafter the city shall give the delinquent vendor written notice of
16 the estimated tax and penalty.

17 (C) If payment is not made by the vendor within 15 days of the date of
18 the notice that the occupancy tax is delinquent, the Mayor may bring an action
19 in law or equity in the district court for the collection of any amounts due,
20 including without limitation penalties thereon, interest on the unpaid principal
21 at a rate of not exceeding 1% a month, the costs of collection and reasonable
22 attorneys' fees incurred in connection therewith.

23 (D) A Continuous Surety Bond naming the city as beneficiary in the
24 amount of \$3,000 plus \$60 per room or individual sleeping accommodation
25 available for use by the public shall be posted and filed with the City Clerk
26 upon vendor's failure to remit occupancy tax for two consecutive months. If
27 payment or posting Continuous Surety Bond is not made by the vendor within
28 15 days of the date of notice that the occupancy tax is delinquent, the Mayor
29 may bring an action in law or equity in the district court for the collection of
30 any amount due, including without limitation penalties thereon, interest on the
31 unpaid principal at a rate not exceeding 1% a month, the costs of collection
32 and reasonable attorney's fees incurred in connection therewith. Continuous
33 Surety Bond shall remain in force three years from date of issuances per

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1 arrear incident applicable. Surety Bond may be augmented or applied to any
2 succeeding arrear Lodger's Tax payments due the City of Albuquerque.

3 (E) A vendor who disputes the assessment of any occupancy tax or
4 related penalties and interest may, within five working days of the date of the
5 notice from the city that the tax is delinquent, appeal the Mayor's decision to
6 the City Hearing Officer as set forth in § 4-4-9.

7 § 4-4-12 LIEN FOR TAX; PAYMENT; CERTIFICATE OF LIENS.

8 All delinquent occupancy taxes and penalty shall constitute a lien in favor
9 of the city on the personal and real property of the vendor providing lodging.
10 The lien may be enforced as provided in Sections 3-36-1 through 3-36-7 NMSA
11 1978.

12 (A) Under process or order of the court, no person shall sell the property
13 of any vendor without first ascertaining from the Treasurer of the city the
14 amount of any occupancy tax due to the city. Any occupancy tax due the city
15 shall be paid from the proceeds of the sale before payment is made to the
16 judgment creditor or any other person with a claim on the sale proceeds.

17 (B) The Treasurer of the city shall furnish to any person applying for
18 such a certificate, a certificate showing the amount of all liens in the records
19 of the municipality against any vendor.

20 § 4-4-13 LODGERS' TAX ADVISORY BOARD.

21 (A) There is created the Lodgers' Tax Advisory Board, which shall
22 consist of seven members all of whom shall be residents of the city; two of
23 whom shall represent the lodging industry, two of whom are directly involved
24 in tourist-related industries and three members at large who shall represent
25 the public. The members of the Lodgers' Tax Advisory Board shall be
26 appointed by the Mayor with the advice and consent of the City Council.

27 (B) The term of each member of the Lodgers' Tax Advisory Board shall
28 be three years.

29 (C) Except as provided in this article, the qualifications appointment and
30 conduct of the members of the Lodgers' Tax Advisory Board and the
31 organizational structure of the Lodgers' Tax Advisory Board shall be
32 governed by § 2-6-1-1 et seq.

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1 (D) The Lodgers' Tax Advisory Board shall advise the Mayor and City
2 Council on the expenditure of funds authorized by Section 3-38-15 NMSA 1978
3 for advertising, publicizing and promoting tourist attractions and facilities in
4 the city. In addition, the Lodgers' Tax Advisory Board shall:

5 (1) Review past and current performance of any organization
6 contracting with the city to supply advertising, publicizing and promotion of
7 tourist attractions, conventions and tourist related activities;

8 (2) Advise the Mayor as to the performance of such contractors on
9 a quarterly basis, and make recommendations to the Mayor concerning
10 whether such contracts should be renewed or canceled.

11 **§4-4-14 MARKETPLACE PROVIDER RESPONSIBILITIES.**

12 (A) Marketplace providers shall be responsible for collecting all
13 applicable occupancy taxes and remitting the same to the City. The
14 marketplace provider shall be considered an agent of the vendor for purposes
15 of occupancy tax collections and remittance responsibilities as set forth in
16 this Ordinance;

17 (B) Marketplace providers shall disclose to the City on a monthly basis
18 each lodging listing located in the City, the names of the persons responsible
19 for each such listing, the address of each such listing, the length of stay for
20 each such listing and the price for each stay;

21 (C) Safe Harbor. A marketplace provider operating exclusively on the
22 internet, who operates in compliance with subsections (A) and (B) above, shall
23 be presumed to be in compliance with this Ordinance, except that the
24 marketplace provider remains responsible for compliance with the
25 administrative penalty provision in § 4-4-99 of this Ordinance.

26 **§ 4-4-99 PENALTY.**

27 A vendor shall be guilty of a misdemeanor and subject to the penalty
28 provisions set forth in § 4-1-99 of this code of ordinances for a violation of the
29 provisions of this article for a failure to pay the occupancy tax, to remit the
30 proceeds thereof to the city or to account properly for any lodging and the
31 occupancy tax proceeds pertaining thereto.

32 **SECTION 2. Section 4-8-1 et seq., ROA 1994, is amended to read:**

33 **§ 4-8-1 SHORT TITLE.**

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1 This article may be cited as the “City of Albuquerque Hospitality Fee
2 Ordinance.”

3 § 4-8-2 AUTHORITY AND PURPOSE.

4 The fee imposed under this article is imposed pursuant to the Hospitality Fee
5 Act, Section 3-38A-1 to 3-38A-12 NMSA 1978. The City of Albuquerque is
6 located in a class A county with a population of more than 250,000 according
7 to the 2000 federal decennial census. The Albuquerque City Council desires
8 to equip and furnish the convention center and contract to purchase
9 advertising that publicizes and promotes tourist-related attractions, facilities
10 and events in the municipality.

11 § 4-8-3 DEFINITIONS.

12 For the purpose of this article, the following definitions shall apply unless the
13 context clearly indicates or requires a different meaning.

14 GROSS TAXABLE RENT. The total amount of rent paid for lodging, not
15 including the state gross receipts tax, lodgers’ tax or local sales taxes.

16 LODGING. The transaction of furnishing rooms or sleeping
17 accommodations by a vendor to a vendee who for a rent, uses, possesses or
18 has the right to use or possess any room or rooms or other units of
19 accommodations in or at a taxable premises.

20 LODGINGS. The rooms or sleeping accommodations furnished by a
21 vendor to a vendee by a taxable service of lodging.

22 MARKETPLACE PROVIDER. A person who facilitates the rental of lodging
23 by:

24 (A) advertising the lodging by any means, whether physical or
25 electronic, including by internet website, online booking platform, catalog,
26 television or radio broadcast, and

27 (B) collecting payment from the vendee and transmitting that payment to
28 the vendor either directly or indirectly through agreements or arrangements
29 with the vendor, regardless of whether the marketplace provider receives
30 compensation or consideration in exchange for the marketplace provider’s
31 services.

32 MAYOR. The Mayor of the city or his designated representative.

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1 **PERSON.** A corporation, firm, other body corporate, partnership,
2 association or individual, includes an executor, administrator, trustee, receiver
3 or other representative appointed according to law and acting in a
4 representative capacity, but does not include the United States of America, the
5 State of New Mexico, any corporation, department, instrumentality or agency
6 of the federal government or the state government, or any political subdivision
7 of the state.

8 **PROPRIETOR.** A person who furnishes tourist lodging.

9 **RENT.** The consideration received by a vendor in money, credits, property
10 or other consideration valued in money for lodgings subject to an occupancy
11 tax authorized in this article.

12 **TAXABLE PREMISES.** A hotel, apartment, apartment hotel, apartment
13 house, lodge, lodging house, rooming house, motor hotel, guest house, bed
14 and breakfast, guest ranch, ranch resort, mobile home, motor court, auto
15 court, auto camp, trailer court, trailer camp, trailer park, tourist camp, cabin or
16 other premises used for lodging.

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

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

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

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

25 **§ 4-8-4 IMPOSITION OF FEE, USE OF PROCEEDS.**

26 **(A)** There is hereby imposed a hospitality fee of 1% of gross taxable rent
27 for lodging paid to vendors after the effective date of this article.

28 **(B)** Fifty percent of such hospitality fee shall be used for the purpose of
29 purchasing advertising to publicize and promote tourist-related attractions,
30 facilities and events.

31 **(C)** Fifty percent of such hospitality fee shall be used to equip and
32 furnish the City of Albuquerque Convention Center.

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1 (D) Every vendor who is furnishing any lodgings within a municipality or
2 county is exercising a taxable privilege.

3 § 4-8-5 EXEMPTIONS.

4 The hospitality fee shall not apply:

5 (A) If a vendee:

6 (1) Has been a permanent resident of the taxable premises for a period
7 of at least 30 consecutive days; or

8 (2) Enters into or has entered into a written agreement for lodgings at
9 the taxable premises for a period of at least 30 consecutive days;

10 (B) If the rent paid by a vendee is less than \$2 a day.

11 (C) To lodging accommodations at institutions of the federal
12 government, the state or any political subdivision thereof.

13 (D) To lodging accommodations at religious, charitable, educational or
14 philanthropic institutions, including without limitation such accommodations
15 at summer camps operated by such institutions.

16 (E) To clinics, hospitals or other medical facilities.

17 (F) To privately-owned and operated convalescent homes or homes for
18 the aged, infirm, indigent or chronically ill.

19 § 4-8-6 DETERMINATION OF EXEMPTION; APPEAL.

20 The Mayor shall make the determination of whether or not a vendor is exempt
21 from the hospitality fee. In the event the vendor is dissatisfied with any
22 decision of the Mayor with respect to this article, he may appeal the decision
23 to the City Hearing Officer. The burden of proof shall be upon the vendor to
24 sustain his claim to an exemption.

25 § 4-8-7 HOSPITALITY APPLICATION.

26 Any vendor that is required to remit the hospitality fee to the City of
27 Albuquerque shall register to pay with the Mayor upon a form to be provided
28 by the Mayor. The application shall include, but not be limited to, the following
29 information:

30 (A) The name, mailing address, telephone number, fax number and other
31 related necessary information to register taxable premises such as: Federal
32 Tax Identification Number, New Mexico State Gross Receipts Tax Identification

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1 Number, New Mexico Public Regulation Commission (NMPRC) number on file,
2 City of Albuquerque Business Registration number on file with the city.

3 (B) The name, mailing address, telephone number, facsimile number of
4 accounting firm or officer handling tax premises' financial records associated
5 with reporting hospitality fee reports and payments.

6 § 4-8-8 COLLECTION OF THE FEE; REPORTING CHANGE IN OWNERSHIP.

7 (A) Every vendor providing lodgings within this city shall collect the
8 hospitality fee thereon on behalf of the city and shall act as a trustee therefor.

9 (B) The hospitality fee shall be collected from vendees in accordance
10 with this section and shall be charged separately from the rent fixed by the
11 vendor for the lodgings.

12 (C) After the effective date of this article, each vendor shall be liable to
13 the city for the hospitality fee provided herein on the rent paid for lodging.

14 (D) (1) Each vendor shall make a report by the 25th day of each
15 month on forms provided by the Mayor of the receipts for lodging paid to him
16 in the preceding calendar month and shall remit therewith payment of the total
17 amount of the hospitality fee due to the city. The report shall include
18 sufficient information to enable the city to audit the report and shall be verified
19 on oath by the vendor. Any hospitality fee not paid and posted to the city's
20 Lodgers Subsidiary Ledger Vendors' Account by the 25th of the month as
21 provided herein shall be considered delinquent.

22 (2) If the 25th day of the month falls on a weekend or holiday, the
23 return shall be due on the next business day.

24 (E) The Mayor shall select for annual random audits one or more
25 vendors to verify the amount of gross rent subject to the hospitality fee and to
26 ensure that the full amount of hospitality fee on that rent is collected. Copies
27 of audits completed shall be filed with the State of New Mexico local
28 government division of the Department of Finance and Administration.

29 (F) Failure to notify the Mayor within 30 working days of a change of
30 ownership on a taxable premises shall subject vendor to a \$500 penalty.

31 (G) A nonrefundable hearing fee of \$50 shall accompany each appeal to
32 the City Hearing Officer filed pursuant to §§ 4-4-6 or 4-4-9, ROA 1994.

33 § 4-8-9 RECORDS OF VENDOR.

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1 Each vendor shall maintain adequate records of facilities subject to the
2 hospitality fee and of proceeds received for the use thereof. The records to be
3 maintained shall include but are not limited to: federal income tax returns,
4 State of New Mexico form CRS-1, financial statements, general and subsidiary
5 ledgers, sales journals, charts of accounts, daily summaries and reports,
6 monthly summaries, registration cards, bank statements, and year-end
7 adjusting entries. The records shall be maintained in Albuquerque and shall
8 be open to inspection by the city during reasonable hours and shall be
9 retained for three years.

10 § 4-8-10 FAILURE TO PAY FEE OR MAKE RETURN; PENALTY;
11 COLLECTION OF DELINQUENCIES; CONTINUOUS SURETY BOND; APPEAL.

12 (A) In addition to other penalties that may be applicable under this
13 article, if any vendor makes a return as required by this article without paying
14 the hospitality fee then due, he shall be liable for the fee and a penalty equal to
15 10% thereof or \$100, whichever is greater. Promptly after receipt of such
16 return, the city shall give the delinquent vendor written notice of the fee and
17 penalty.

18 (B) If any vendor neglects or refuses to make a return and pay the
19 hospitality fee as required by this article, the Mayor shall make an estimate
20 based upon an examination of the vendor's books and records, or upon any
21 information in its possession or that may come into its possession, of the
22 amount of the rent of the delinquent vendor for the period in respect to which
23 he has failed to make a return, and upon the basis of said estimated amount
24 shall compute and assess the fee payable by the delinquent vendor, adding to
25 this amount a penalty equal to 10% thereof or \$100, whichever is greater.
26 Promptly thereafter the city shall give the delinquent vendor written notice of
27 the estimated fee and penalty.

28 (C) If payment is not made by the vendor within 15 days of the date of
29 the notice that the hospitality fee is delinquent, the Mayor may bring an action
30 in law or equity in the district court for the collection of any amounts due,
31 including without limitation penalties thereon, interest on the unpaid principal
32 at a rate of not exceeding 1% a month, the costs of collection and reasonable
33 attorneys' fees incurred in connection therewith.

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1 (D) A Continuous Surety Bond naming the city as beneficiary in the
2 amount of \$3,000 plus \$60 per room or individual sleeping accommodation
3 available for use by the public shall be posted and filed with the City Clerk
4 upon vendor's failure to remit hospitality fee for two consecutive months. If
5 payment or posting Continuous Surety Bond is not made by the vendor within
6 15 days of the date of notice that the hospitality fee is delinquent, the Mayor
7 may bring an action in law or equity in the district court for the collection of
8 any amount due, including without limitation penalties thereon, interest on the
9 unpaid principal at a rate not exceeding 1% a month, the costs of collection
10 and reasonable attorney's fees incurred in connection therewith. The
11 Continuous Surety Bond shall remain in force for three years from the date of
12 issuance and may be extended or augmented to cover succeeding delinquent
13 hospitality fee payments due the City of Albuquerque.

14 (E) A vendor who disputes the assessment of any hospitality fee or
15 related penalties and interest may, within five working days of the date of the
16 notice from the city that the tax is delinquent, appeal the Mayor's decision to
17 the City Hearing Officer as set forth in § 4-4-9, ROA 1994.

18 § 4-8-11 LIEN; PAYMENT; CERTIFICATE OF LIENS.

19 All delinquent hospitality fees and penalty shall constitute a lien in favor of the
20 city on the personal and real property of the vendor providing lodging. The
21 lien may be enforced as provided in Sections 3-36-1 through 3-36-7 NMSA
22 1978.

23 (A) Under process or order of the court, no person shall sell the property
24 of any vendor without first ascertaining from the Treasurer of the city the
25 amount of any hospitality fee due to the city. Any hospitality fee due the city
26 shall be paid from the proceeds of the sale before payment is made to the
27 judgment creditor or any other person with a claim on the sale proceeds.

28 (B) The Treasurer of the city shall furnish to any person applying for
29 such a certificate, a certificate showing the amount of all liens in the records
30 of the municipality against any vendor.

31 § 4-8-12 FINANCIAL REPORTING.

32 The city will:

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1 (A) Furnish to any municipal advisory board dealing with the occupancy,
2 lodging or accommodation taxes or fees information on that portion of a
3 proposed budget report or audit filed or received by the governing body
4 pursuant to either Chapter 6, Article 6 NMSA 1978 or the Audit Act Sections
5 12-6-1 to 12-6-14 NMSA 1978 that relates to the expenditure of hospitality fee
6 proceeds within ten days of the filing or receipt of that proposed budget,
7 report or audit; and

8 (B) Report quarterly to the Local Government Division of the New
9 Mexico Department of Finance and Administration on the expenditure of
10 hospitality fee proceeds pursuant to Section 3-38-15 and 3-38-21 NMSA 1978.

11 **§4-8-13 MARKETPLACE PROVIDER RESPONSIBILITIES.**

12 (A) Marketplace providers shall be responsible for collecting all
13 applicable hospitality fees and remitting the same to the City. The marketplace
14 provider shall be considered an agent of the vendor for purposes of
15 hospitality fee collections and remittance responsibilities as set forth in this
16 Ordinance;

17 (B) Marketplace providers shall disclose to the City on a monthly basis
18 each lodging listing located in the City, the names of the persons responsible
19 for each such listing, the address of each such listing, the length of stay for
20 each such listing and the price for each stay;

21 (C) Safe Harbor. A marketplace provider operating exclusively on the
22 internet, who operates in compliance with subsections (A) and (B) above, shall
23 be presumed to be in compliance with this Ordinance, except that the
24 marketplace provider remains responsible for compliance with the
25 administrative penalty provision in § 4-8-99 of this Ordinance.

26 **§ 4-8-99 PENALTY.**

27 A vendor shall be guilty of a misdemeanor and subject to the penalty
28 provisions set forth in § 1-1-99 of this code of ordinances for a violation of the
29 provisions of this article for a failure to pay the hospitality fee, to remit the
30 proceeds thereof to the city or to account properly for any lodging and the
31 hospitality fee proceeds pertaining thereto.

32 **SECTION 3. SEVERABILITY CLAUSE.** If any section, paragraph, sentence,
33 clause, word or phrase of this ordinance is for any reason held to be invalid or

1 unenforceable by any court of competent jurisdiction, such decision shall not
2 affect the validity of the remaining provisions of this ordinance. The Council
3 hereby declares that it would have passed this ordinance and each section,
4 paragraph, sentence, clause, word or phrase thereof irrespective of any
5 provision being declared unconstitutional or otherwise invalid.

6 SECTION 4. COMPILATION. This ordinance shall be incorporated in and
7 compiled as part of the Revised Ordinances Of Albuquerque, New Mexico,
8 1994.

9 SECTION 5. EFFECTIVE DATE. This ordinance, as amended, shall take
10 effect January 1, 2020.

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1 PASSED AND ADOPTED THIS 4th DAY OF September, 2019
2 BY A VOTE OF: 9 FOR 0 AGAINST.

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10 **Klarissa J. Peña, President**
11 **City Council**

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15 APPROVED THIS 24 DAY OF April, 2019

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18 **Bill No. O-19-71**

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21 **Timothy M. Keller, Mayor**
22 **City of Albuquerque**

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27 **ATTEST:**

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29 **Katy Duhigg, City Clerk**

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