

## ARTICLE 8: HOSPITALITY FEE

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#### § 4-8-1 SHORT TITLE.

This article may be cited as the "City of Albuquerque Hospitality Fee Ordinance."

(Ord. 19-2004)

#### § 4-8-2 AUTHORITY AND PURPOSE.

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

(Ord. 19-2004)

#### § 4-8-3 DEFINITIONS.

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

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

**LODGING.** The transaction of furnishing rooms or sleeping 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 sleeping accommodations furnished by a vendor to a vendee by a taxable service of lodging.

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

**PERSON.** A corporation, firm, other body corporate, partnership, association or individual, 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.

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

**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 this article.

**TAXABLE PREMISES.** A hotel, apartment, apartment hotel, apartment house, lodge, lodging house, rooming house, motor hotel, guest house, bed and breakfast, guest ranch, ranch resort, mobile home, motor court, auto court, auto camp, trailer court, trailer camp, trailer park, tourist camp, 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 ATTRACTIONS, FACILITIES AND EVENTS.** Facilities and attractions that are intended to be used by or visited by tourists.

**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.

(Ord. 19-2004)

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

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

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

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

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

(Ord. 19-2004)

**§ 4-8-5 EXEMPTIONS.**

The hospitality fee shall not apply:

(A) If a vendee:

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

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

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

(G) If the vendor does not offer at least three rooms within or attached to a taxable premises for lodging or at least three other premises for lodging or a combination of these within the taxing jurisdiction.

(Ord. 19-2004)

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

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

(Ord. 19-2004)

**§ 4-8-7 HOSPITALITY APPLICATION.**

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

(A) The name, mailing address, telephone number, fax number and other related necessary information to register taxable premises such as: Federal Tax Identification Number, New Mexico State Gross Receipts Tax Identification Number, New Mexico Public Regulation Commission (NMPRC) number on file, City of Albuquerque Business Registration number on file with the city.

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

(Ord. 19-2004)

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

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

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

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

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

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

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

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

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

(Ord. 19-2004)

**§ 4-8-9 RECORDS OF VENDOR.**

Each vendor shall maintain adequate records of facilities subject to the hospitality fee 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 adjusting entries. The records shall be maintained in Albuquerque and shall be open to inspection by the city during reasonable hours and shall be retained for three years.

(Ord. 19-2004)

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

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

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

(C) If payment is not made by the vendor within 15 days of the date of the notice that the hospitality fee is delinquent, the Mayor 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 of not exceeding 1% a month, the costs of collection and reasonable attorneys' fees incurred in connection therewith.

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

(E) A vendor who disputes the assessment of any hospitality fee or related penalties and interest may, within five working days of the date of the notice from the city that the tax is delinquent, appeal

the Mayor's decision to the City Hearing Officer as set forth in § 4-4-9, ROA 1994.

(Ord. 19-2004)

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

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

(A) Under process or order of the court, no person shall sell the property of any vendor without first ascertaining from the Treasurer of the city the amount of any hospitality fee due to the city. Any hospitality fee due 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 the sale proceeds.

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

(Ord. 19-2004)

**§ 4-8-12 FINANCIAL REPORTING.**

The city will:

(A) Furnish to any municipal advisory board dealing with the occupancy, lodging or accommodation taxes or fees information on that portion of a 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 [Sections 12-6-1 to 12-6-14 NMSA 1978] that relates to the expenditure of hospitality fee proceeds within ten days of the filing or receipt of that proposed budget, report or audit; and

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

(Ord. 19-2004)

**§ 4-8-99 PENALTY.**

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

(Ord. 19-2004)