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CITY OF SANTA FE, NEW MEXICO

BILL NO. 2021-__

INTRODUCED BY:

Mayor Alan Webber

AN ORDINANCE

**AMENDING SECTION 18-11.3 SFCC 1987 TO DEFINE “TAXABLE PREMISES”
CONSISTENTLY WITH STATE STATUTE AND TO ADD A DEFINITION FOR
“PERMANENT RESIDENT”; AMENDING SECTION 18-11.8 TO MAKE IT
CONSISTENT WITH STATE STATUTE; AMENDING SECTION 18-11.17 TO
DIFFERENTIATE BETWEEN THE OCCUPANCY TAX AND THE CONVENTION
CENTER FEE, AND TO DEDICATE THE OCCUPANCY TAX COLLECTED ON THE
THIRTY-FIRST DAY AND SUBSEQUENT DAYS TO THE AFFORDABLE HOUSING
TRUST FUND; AMENDING SECTION 26-3.6 TO ADD THE DEDICATION TO THE
EXISTING LIST OF DEDICATIONS TO THE AFFORDABLE HOUSING TRUST FUND;
AND MAKING SUCH OTHER CHANGES AS ARE NECESSARY.**

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:

**Section 1. Section 18-11.3 of SFCC 1987 (being Ord. No. 1992-27, § 4, as
amended) is amended to read:**

18-11.3 - Definitions.

1 ~~[As used in this section.]~~

2 ~~[Accounts receivable unit means the office, within the city of Santa Fe finance~~
3 ~~department, that is responsible for issuing business registrations.]~~

4 *Board* means the lodgers' occupancy tax advisory board established herein to make
5 recommendations for advertising, publicizing, and promoting tourist-related attractions,
6 facilities, and events to the governing body[;]; keep minutes of its proceedings; and submit its
7 recommendations, correspondence, and other pertinent documents to the governing body.

8 *Business licensing and registration office* means the office within the city of Santa Fe
9 that is responsible for issuing business registrations.

10 *City* means the city of Santa Fe.

11 *City cashier's office* means the office, within the city of Santa Fe finance department,
12 where all monies owed the city are collected and deposited. All lodgers' tax remittance will be
13 collected and deposited in the cashier's office.

14 *City clerk* means the city clerk of Santa Fe, New Mexico.

15 *City treasurer* means the finance department director.

16 *Convention center fee* means the two percent (2%) increment imposed by the city under
17 the Civic and Convention Center Funding Act, Sections 5-14-1 to 5-14-15 NMSA 1978.

18 *Gross taxable rent* means the total amount of rent paid for lodging, not including the
19 state gross receipts tax or local sales taxes.

20 *Increment* means a specified unit of the total percent of occupancy tax or convention
21 center fee imposed where the unit is derived by dividing the percent tax imposed into separate
22 parts of one percent (1%) or portions of one percent (1%).

23 *Lodgers' tax* ~~[shall be used to collectively refer to]~~ means the occupancy tax and
24 convention center fee, collectively.

25 *Lodging* means the transaction of furnishing rooms or other accommodations by a vendor

1 to a vendee who for a rent uses, possesses, or has the right to use or possess any room or rooms
2 or other units of accommodations in or at a taxable premises.

3 *Lodgings* means the rooms or other accommodations furnished by a vendor to a vendee
4 by a taxable service of lodgings.

5 *Occupancy tax* means tax on lodging authorized by the Lodgers' Tax Act, Sections 3-38-
6 13 to 3-38-24 NMSA 1978.

7 *Permanent Resident* means a person who resides, lies, and pays taxes in a particular
8 location that the person identifies as the person's "primary residence" for tax purposes.

9 *Person* means a corporation, firm, other body corporate, partnership, association or
10 individual, includes a property management company, includes an executor, administrator,
11 trustee, receiver or other representative appointed according to law and acting in a representative
12 capacity, but does not include the United States of America, the state of New Mexico, any
13 corporation, department, instrumentality or agency of the federal government or the state
14 government, or any political subdivision of the state.

15 *Rent* means the consideration received by a vendor in money, credits, property or other
16 consideration valued in money for lodgings subject to a lodgers' tax authorized in the Lodgers'
17 Tax Act and/or the Civic and Convention Center Funding Act.

18 *Taxable premises* means a hotel, [~~apartment, apartment hotel, apartment house,~~
19 ~~condominium, town home, casita, time share and fractional share lodge, lodging house, rooming~~
20 ~~house, motor hotel, bed and breakfast, guest house, guest ranch, ranch resort, guest resort, mobile~~
21 ~~home, motor court, auto court, auto camp, trailer court, trailer camp, trailer park, tourist camp,~~
22 ~~cabin, short term rental unit] motel, or other premises for lodging that is not the vendee's
23 household or primary residence.~~

24 *Tourist* means a person who travels for the purpose of business, pleasure or culture to the
25 city of Santa Fe.

1 *Tourist-related events* means events that are planned for, promoted to and attended by
2 tourists.

3 *Tourist-related facilities and attractions* means facilities and attractions that are intended
4 to be used by or visited by tourists.

5 *Tourist-related transportation systems* means transportation systems that provide
6 transportation for tourists to and from tourist-related facilities, attractions and events.

7 *Vendee* means a natural person to whom lodgings are furnished in the exercise of the
8 taxable service of lodging.

9 *Vendor* means a person furnishing lodgings in the exercise of the taxable service of
10 lodging.

11 **Section 2. Section 18-11.6 of SFCC 1987 (being Ord. No. 1992-27, § 6, as**
12 **amended) is amended to read:**

13 **18-11.6 - Registration.**

14 A. No vendor shall engage in the business of providing lodging in the city of Santa
15 Fe who has first not obtained a business registration as provided in this subsection[?].

16 B. Applicants for a vendor's business registration shall submit an application to the
17 [~~accounts receivable unit~~] business licensing and registration office stating the following
18 information:

19 (1) The name of the vendor, including identification of any person, as
20 defined in this section, who owns or operates or both owns and operates a place of
21 lodging and the name or trade names under which the vendor proposes to do business
22 and the post office address thereof;

23 (2) A description of the facilities, including the physical address(es), the
24 number of rooms, and the usual schedule of rates;

25 (3) A description of other facilities provided by the vendor or others to users

1 of the lodgings, such as restaurant, bar, cleaning, laundry, courtesy car, stenographer,
2 tailor or others, and a statement identifying the license/registration issued, to whom
3 issued, the authority issuing, and the period for which issued. If applicable, the
4 description shall also include the identification number provided by the taxation and
5 revenue department of the state of New Mexico;

6 (4) The nature of the business practices of the vendor and to what extent, if
7 any, ~~his~~ the business is exempt from the lodgers' tax;

8 (5) State of New Mexico gross receipts tax number (C.R.S. ID #); and

9 (6) Other information reasonably necessary to effect a determination of
10 eligibility for such license[;].

11 C. The ~~accounts receivable unit~~ business licensing and registration office shall
12 review applications for registration within ten (10) days of receipt thereof, and grant the
13 registration in due course if the applicant is doing business subject to the lodgers' tax[;].

14 D. An applicant who is dissatisfied with the decision of the ~~accounts receivable~~
15 ~~unit~~ business licensing and registration office may appeal the decision to the city manager by
16 written notice to the city clerk of such appeal to be made within fifteen (15) days of the date of
17 the decision of the ~~accounts receivable unit~~ business licensing and registration office on the
18 application. The matter shall be referred to the city manager for hearing in the usual course of
19 business. The decision of the city manager shall be expressed in writing and be communicated in
20 the same manner as the decision of the ~~accounts receivable unit~~ business licensing and
21 registration office is transmitted. The action of the city manager shall be deemed final[;].

22 E. If the city manager finds for the applicant, the ~~accounts receivable unit~~ business
23 licensing and registration office shall issue the registration or other notice conforming to the
24 decision made by the city manager.

25 **Section 3. Section 18-11.8 of SFCC 1987 (being Ord. No. 1992-27, § 7, as**

1 **amended) is amended to read:**

2 **18-11.8 Exemptions.**

3 Neither ~~[F]~~ the occupancy tax nor the convention center fee shall ~~[not]~~ apply to any portion
4 of the gross taxable rent under the following circumstances:

5 A. If a vendee:

6 (1) Has been a permanent resident of the taxable premises for a period of at
7 least thirty (30) consecutive days ~~[as evidenced by a lease or other long term lodging~~
8 ~~documentation]~~; or

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

11 B. If the rent paid by the vendee is less than two dollars (\$2.00) a day;

12 C. To lodging accommodations at institutions of the federal government, the state, or
13 any political subdivision thereof;

14 D. To lodging accommodations at religious, charitable, educational, or philanthropic
15 institutions, including ~~[without limitation such]~~ accommodations at summer camps operated by
16 such institutions;

17 E. To clinics, hospitals, or other medical facilities; or

18 F. To privately-owned and operated convalescent homes, or homes for the aged,
19 infirm, indigent, or chronically ill[;].

20 ~~[G. — If the vendor does not offer at least three (3) rooms within or attached to a taxable~~
21 ~~premises for lodging, or at least three (3) other premises providing lodging facilities regardless of~~
22 ~~the number of rooms available at each taxable premises or a combination of these within the city.]~~

23 **Section 4. Section 18-11.17 of SFCC 1987 (being Ord. No. 1992-27, § 16, as**
24 **amended) is amended to read:**

25 **18-11.17 Use of lodger[']s' tax monies.**

1 A. _____ The proceeds of the occupancy tax [~~and convention center fee~~] shall be used to
2 defray costs as follows:

3 ~~[A.]~~1. Not less than one-half (½) of the proceeds derived from the first three
4 percent (3%) increments and not less than one-fourth (¼) of the proceeds of the tax in
5 excess of three percent (3%) increments shall be used for the purpose of advertising,
6 publicizing and promoting tourist-related attractions, facilities and events;

7 ~~[B.]~~2. Proceeds of the fourth one percent (1%) increment of the tax not
8 otherwise allocated by subsection 18-11.17A SFCC 1987 shall be used by the city for
9 advertising, publicizing, promoting of tourist-related attractions, facilities and events,
10 specifically as they relate to nonprofit art activities, and nonprofit performing arts in
11 Santa Fe less administration costs. The funds shall be administered by the arts
12 commission as created in Section 6-1 SFCC 1987, or its successor.

13 ~~[C.]~~3. After July 1, 1996, funds collected for use under paragraph A, herein,
14 and at least one-fourth (¼) of funds collected for use under paragraph B, herein, must
15 be spent within two (2) years of the close of the fiscal year collected.

16 ~~[D.]~~4. The proceeds in excess of the amount required by paragraph A, herein,
17 or allocated by the city, pursuant to paragraph B, herein, to be used for advertising,
18 publicizing and promoting tourist-related attractions, facilities and events may be used
19 for:

20 ~~[(1)]~~a. Collecting and administering the tax;

21 ~~[(2)]~~b. Audits;

22 ~~[(3)]~~c. Establishing, operating, purchasing, constructing, otherwise
23 acquiring, reconstructing, extending, improving, equipping, furnishing or
24 acquiring real property or any interest in real property for the site or grounds
25 for tourist-related facilities or attractions or transportation systems of the

1 municipality or the county in which the municipality is located;

2 [~~(4)~~]d. Advertising, publicizing and promoting tourist-related
3 attractions, facilities and events of the municipality or county and tourist
4 facilities or attractions within the area;

5 [~~(5)~~]e. Providing police and fire protection and sanitation service for
6 tourist-related events, facilities and attractions located in the respective
7 municipality or county;

8 [~~(6)~~]f. Principal and interest of revenue bonds issued as authorized by
9 Section 3-38-23 or 3-38-24 NMSA 1978; or

10 [~~(7)~~]g. Any combination of the foregoing purposes or transactions
11 stated in this section, but for no other municipal or county purpose.

12 [~~E.~~]5. Proceeds of the fifth one percent (1%) increment of the tax shall be used
13 by the city for establishing, operating, purchasing, constructing, otherwise acquiring,
14 reconstructing, extending, improving, equipping, furnishing or acquiring real property
15 or any interest in real property for the site or grounds for a new convention center, major
16 reconstruction or addition to the current convention center, or adjoining parking
17 facilities. These funds may be used for construction of other tourism related facilities
18 as limited by state law. Authorized uses may also be the payment of principal and
19 interest in connection with and any other charges pertaining to revenue bonds issued for
20 any of the above purposes. At the end of each four (4) years from the date of the
21 enactment of this fifth one percent (1%) increment, the occupancy tax advisory board
22 (OTAB) shall review and assess this section, determine the status of the authorized uses
23 as stated in this subparagraph [~~F.~~]5, and make a recommendation to the governing body
24 if the tax shall continue to be accrued for these purposes or if the tax and accumulated
25 proceeds shall be applied to any other use as authorized in other subsections of this

1 section for lodgers' tax. The governing body shall make the final determination through
2 an amended ordinance if the use is to be changed. If no action is taken, the ordinance
3 for the fifth one percent (1%) increment shall continue as stated.

4 6. Proceeds from the occupancy tax that are collected based on the thirty-
5 first (31st) and subsequent days during which a vendee rents lodgings in taxable
6 premises shall be dedicated to the affordable housing trust fund.

7 ~~[F.]B.~~ The [P]roceeds of the [sixth one percent (1%) and the seventh one percent
8 ~~(1%) increments of the tax (also referred to as a] convention center fee[.]~~ may be used by the
9 city for the following:

10 1. The design, construction, equipping, furnishing, landscaping, and other
11 costs associated with the development of a civic and convention center and adjoining
12 parking garage located within the city;

13 2. Payments of principal, interest, or prior redemption premiums due in
14 connection with and any other charges pertaining to revenue bonds authorized by the
15 Civic and Convention Center Fund Act, Sections 5-14-1 to 5-14-15 NMSA 1978,
16 including payments into sinking fund or reserve fund required by the revenue bond
17 ordinance;

18 3. Costs of collecting and otherwise administering the tax, provided that
19 administration costs shall not be paid if there are current payments due pursuant to
20 paragraph ~~[F.]B~~(2) of this subsection and that no more than ten percent (10%) of the
21 revenue collected in any fiscal year shall be used to pay administration costs;

22 4. Operation costs of the civic and convention center and adjoining
23 parking garage, provided that no such costs shall be paid if there are current payments
24 due pursuant to paragraph ~~[F.]B~~(2) of this subsection; and

25 5. Payments into a capital reserve fund established for the future payment

1 for capital maintenance and improvements and equipment replacement costs of the civic
2 and convention center and adjoining parking garage provided that:

3 a. No payments shall be made pursuant to this paragraph if there
4 are current payments due pursuant to paragraph ~~[F]~~B(2) of this subsection; and

5 b. At least once every five (5) years, the governing body shall
6 compare the amount of money in the fund with the expected future expenditures
7 from the fund and decide if the convention center fees may be reduced pursuant
8 to paragraph ~~[H]~~D of this section.

9 ~~[G.]C.~~ The ~~[sixth one percent (1%) and the seventh one percent (1%) increments of~~
10 ~~the lodgers' tax (also referred to as a]~~ convention center fee~~)]~~ shall be imposed only for the
11 period necessary for payment of principal and interest on revenue bonds issued to accomplish
12 the purpose for which the revenue is dedicated, but the period shall not exceed thirty (30) years
13 from the date of the ordinance imposing the fee.

14 ~~[H.]D.~~ The governing body may decrease the rate of the convention center fee if the
15 following are met:

16 (1) All required payments have been made pursuant to paragraph ~~[F]~~B of
17 this subsection and the required levels of and estimated payments from any reserve
18 fund, sinking fund, or capital reserve fund can be sustained at a decreased rate;

19 (2) The decreased fee will not otherwise directly or indirectly impair
20 outstanding revenue bonds issued under Section 5-14-13 NMSA 1978; and

21 (3) The local government division of the department of finance and
22 administration of the state of New Mexico finds that the requirements of paragraphs
23 ~~[H]~~D(1) and (2) of this subsection have been satisfied and otherwise approves the fee
24 decrease.

25 **Section 5. Section 26-3.6 of SFCC 1987 (being Ord. No. 2007-23, § 9, as amended) is**

1 **amended to read:**

2 **26-3.6 Dedication.**

3 The following shall be dedicated to the affordable housing trust fund.

4 A. Tierra Contenta:

5 (1) All payments received from the sale of property in Tierra Contenta that
6 has been reserved for affordable housing as of the date of the passage of this ordinance;

7 (2) Thirty-five percent (35%) of all payments received from the sale of
8 property in Tierra Contenta received after the date of the passage of this section; and

9 (3) All interest earned from the above.

10 B. All proceeds of loans that have been recorded against various affordable housing
11 units through the capital improvements program funds—infrastructure loan funds.

12 C. Principal and interest payments made by the borrowers to the city for outstanding
13 AHTF loans.

14 D. Proceeds from shared equity loans which are realized when a housing
15 opportunity program home or Santa Fe homes program unit is sold on the open market.

16 E. All in-lieu-of contributions or fractional payments received from developers as
17 an option to meet the Santa Fe Homes requirements.

18 F. All in-lieu-of contributions received from developers of qualifying residential
19 projects within the Midtown LINC overlay district, as defined in Section 14-5.5(D) SFCC 1987,
20 [~~shall be applied~~] but only applied within the following locations:

21 (1) The Midtown LINC overlay district;

22 (2) Qualified [~~C~~]census tracts (as defined by the United States
23 [~~D~~]department of [~~H~~]housing and [~~U~~]urban [~~D~~]development) adjacent to the boundaries
24 of the Midtown LINC overlay district; or

25 (3) Existing residential developments adjacent to the boundaries of the

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1 Midtown LINC overlay district.

2 G. Proceeds from the occupancy tax that are collected based on the thirty-first
3 (31st) and subsequent days a vendee rents lodgings in taxable premises shall be dedicated to the
4 affordable housing trust fund pursuant to Subsection 18-11.17(A)(6) SFCC 1987.

5 [~~G~~] H. Other funds that may be identified from time to time [~~which~~] that are suitable
6 and appropriate for allocation to the AHTF. These may include on-going, dedicated funding
7 sources as well as one-time funding that is specifically approved by the governing body.

8 **Section 6. Editor’s Note: SFCC 1987 is hereby amended to strike all references**
9 **to “lodger’s tax” and “lodgers tax” and insert in lieu thereof “lodgers’ tax”.**

10 **Section 7. Effective Date.** This ordinance shall take effect on the first day of the
11 first month following adoption by the governing body.

12 APPROVED AS TO FORM:

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14 _____
15 ERIN K. McSHERRY, CITY ATTORNEY

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Legislation/2021/Bills/Lodgers’ Tax Amendments