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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 AMEND THE DEFINITION OF TAXABLE PREMISES TO MAKE IT CONSISTENT WITH STATE STATUTE AND TO ADD A DEFINITION FOR PERMANENT RESIDENT; AMENDING SECTION 18-11.8 TO MAKE THE SECTION CONSISTENT WITH STATE STATUTE; AND TO AMEND SECTION 18-11.17 TO CLARIFY THE DIFFERENCE BETWEEN THE OCCUPANCY TAX AND THE CONVENTION CENTER FEE, AND TO DEDICATE THE OCCUPANCY TAX COLLECTED ON THE THIRTY-FIRST AND SUBSEQUENT DAYS TO THE AFFORDABLE HOUSING TRUST FUND.

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.

As used in this section.

1 *Accounts receivable unit* means the office, within the city of Santa Fe finance
2 department, that is responsible for issuing business registrations.

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

7 *City* means the city of Santa Fe.

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

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

12 *City treasurer* means the finance department director.

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

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

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

20 *Lodgers' tax* shall be used to collectively refer to the occupancy tax and convention
21 center fee.

22 *Lodging* means the transaction of furnishing rooms or other accommodations by a vendor
23 to a vendee who for a rent uses, possesses or has the right to use or possess any room or rooms
24 or other units of accommodations in or at a taxable premises.

25 *Lodgings* means the rooms or other accommodations furnished by a vendor to a vendee

1 by a taxable service of lodgings.

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

4 *Permanent Resident* means that the occupant is using the property as his/her primary
5 residence with the intent to remain in and pay taxes in New Mexico.

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

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

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

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

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

25 *Tourist-related facilities and attractions* means facilities and attractions that are intended

1 to be used by or visited by tourists.

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

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

6 *Vendor* means a person furnishing lodgings in the exercise of the taxable service of
7 lodging.

8 **Section 2. Section 18-11.8 of SFCC 1987 (being Ord. No. 1992-27, § 7, as**
9 **amended) is amended to read:**

10 **18-11.8 Exemptions.**

11 The occupancy tax or the convention center fee shall not apply to any portion of the gross
12 taxable rent:

13 A. If a vendee:

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

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

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

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

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

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

25 F. To privately-owned and operated convalescent homes, or homes for the aged,

1 infirm, indigent or chronically ill[~~§~~].

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

5 **Section 3. Section 18-11.17 of SFCC 1987 (being Ord. No. 1992-27, § 16, as**
6 **amended) is amended to read:**

7 **18-11.17 Use of lodger's tax monies.**

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

10 [~~A.~~]1. Not less than one-half ($\frac{1}{2}$) of the proceeds derived from the first three
11 percent (3%) increments and not less than one-fourth ($\frac{1}{4}$) of the proceeds of the tax in
12 excess of three percent (3%) increments shall be used for the purpose of advertising,
13 publicizing and promoting tourist-related attractions, facilities and events;

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

20 [~~C.~~]3. After July 1, 1996, funds collected for use under paragraph A, herein,
21 and at least one-fourth ($\frac{1}{4}$) of funds collected for use under paragraph B, herein, must
22 be spent within two (2) years of the close of the fiscal year collected.

23 [~~D.~~]4. The proceeds in excess of the amount required by paragraph A, herein,
24 or allocated by the city, pursuant to paragraph B, herein, to be used for advertising,

1 publicizing and promoting tourist-related attractions, facilities and events may be used
2 for:

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

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

5 [~~(3)~~]c. Establishing, operating, purchasing, constructing, otherwise
6 acquiring, reconstructing, extending, improving, equipping, furnishing or
7 acquiring real property or any interest in real property for the site or grounds
8 for tourist-related facilities or attractions or transportation systems of the
9 municipality or the county in which the municipality is located;

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

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

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

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

20 [~~E.~~]5. Proceeds of the fifth one percent (1%) increment of the tax shall be used
21 by the city for establishing, operating, purchasing, constructing, otherwise acquiring,
22 reconstructing, extending, improving, equipping, furnishing or acquiring real property
23 or any interest in real property for the site or grounds for a new convention center, major
24 reconstruction or addition to the current convention center, or adjoining parking
25 facilities. These funds may be used for construction of other tourism related facilities

1 as limited by state law. Authorized uses may also be the payment of principal and
2 interest in connection with and any other charges pertaining to revenue bonds issued
3 for any of the above purposes. At the end of each four (4) years from the date of the
4 enactment of this fifth one percent (1%) increment, the occupancy tax advisory board
5 (OTAB) shall review and assess this section, determine the status of the authorized uses
6 as stated in this paragraph [F]B, and make a recommendation to the governing body if
7 the tax shall continue to be accrued for these purposes or if the tax and accumulated
8 proceeds shall be applied to any other use as authorized in other subsections of this
9 section for lodgers' tax. The governing body shall make the final determination through
10 an amended ordinance if the use is to be changed. If no action is taken, the ordinance
11 for the fifth one percent (1%) increment shall continue as stated.

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

15 [F.]B. The [P]proceeds of the [sixth one percent (1%) and the seventh one percent
16 (1%) increments of the tax (also referred to as a] convention center fee[)] may be used by the
17 city for the following:

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

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

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

5 4. Operation costs of the civic and convention center and adjoining
6 parking garage provided that no such costs shall be paid if there are current payments
7 due pursuant to paragraph F(2) of this subsection; and

8 5. Payments into a capital reserve fund established for the future payment
9 for capital maintenance and improvements and equipment replacement costs of the civic
10 and convention center and adjoining parking garage provided that:

11 a. No payments shall be made pursuant to this paragraph if there
12 are current payments due pursuant to paragraph F(2) of this subsection; and

13 b. At least once every five (5) years, the governing body shall
14 compare the amount of money in the fund with the expected future expenditures
15 from the fund and decide if the convention center fees may be reduced pursuant
16 to paragraph H of this section.

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

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

24 (1) All required payments have been made pursuant to paragraph [F]B of
25 this subsection and the required levels of and estimated payments from any reserve

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fund, sinking fund or capital reserve fund can be sustained at a decreased rate;

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

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

APPROVED AS TO FORM:

ERIN K. McSHERRY, CITY ATTORNEY