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

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

City means the city of Santa Fe.

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

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

City treasurer means the finance department director.

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

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

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

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

Lodging means the transaction of furnishing rooms or other 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 means the rooms or other accommodations furnished by a vendor to a vendee
by a taxable service of lodgings.


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

*Person* means a corporation, firm, other body corporate, partnership, association or individual, includes a property management company, 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.

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

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

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

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

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

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

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

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

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

18-11.8 Exemptions.

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

A. If a vendee:

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

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

B. If the rent paid by the vendee is less than two dollars ($2.00) 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; or

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

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

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

18-11.17 Use of lodger's tax monies.

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

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

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

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

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

[(+)

[a. Collecting and administering the tax; 

[b. Audits; 

[c. Establishing, operating, purchasing, constructing, otherwise acquiring, reconstructing, extending, improving, equipping, furnishing or acquiring real property or any interest in real property for the site or grounds for tourist-related facilities or attractions or transportation systems of the municipality or the county in which the municipality is located; 

[d. Advertising, publicizing and promoting tourist-related attractions, facilities and events of the municipality or county and tourist facilities or attractions within the area; 

[e. Providing police and fire protection and sanitation service for tourist-related events, facilities and attractions located in the respective municipality or county; 

[f. Principal and interest of revenue bonds issued as authorized by Section 3-38-23 or 3-38-24 NMSA 1978; or 

[g. Any combination of the foregoing purposes or transactions stated in this section, but for no other municipal or county purpose.

[5] Proceeds of the fifth one percent (1%) increment of the tax shall be used by the city for establishing, operating, purchasing, constructing, otherwise acquiring, reconstructing, extending, improving, equipping, furnishing or acquiring real property or any interest in real property for the site or grounds for a new convention center, major reconstruction or addition to the current convention center, or adjoining parking facilities. These funds may be used for construction of other tourism related facilities.
as limited by state law. Authorized uses may also be the payment of principal and
interest in connection with and any other charges pertaining to revenue bonds issued
for any of the above purposes. At the end of each four (4) years from the date of the
enactment of this fifth one percent (1%) increment, the occupancy tax advisory board
(OTAB) shall review and assess this section, determine the status of the authorized uses
as stated in this paragraph [F]B, and make a recommendation to the governing body if
the tax shall continue to be accrued for these purposes or if the tax and accumulated
proceeds shall be applied to any other use as authorized in other subsections of this
section for lodgers' tax. The governing body shall make the final determination through
an amended ordinance if the use is to be changed. If no action is taken, the ordinance
for the fifth one percent (1%) increment shall continue as stated.

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

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

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

2. Payments of principal, interest or prior redemption premiums due in
connection with and any other charges pertaining to revenue bonds authorized by the
Civic and Convention Center Fund Act Sections 5-14-1 to 5-14-15 NMSA 1978
including payments into sinking fund or reserve fund required by the revenue bond
ordinance;
3. Costs of collecting and otherwise administering the tax, provided that administration costs shall not be paid if there are current payments due pursuant to paragraph F(2) of this subsection and that no more than ten percent (10%) of the revenue collected in any fiscal year shall be used to pay administration costs;

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

5. Payments into a capital reserve fund established for the future payment for capital maintenance and improvements and equipment replacement costs of the civic and convention center and adjoining parking garage provided that:
   a. No payments shall be made pursuant to this paragraph if there are current payments due pursuant to paragraph F(2) of this subsection; and
   b. At least once every five (5) years, the governing body shall compare the amount of money in the fund with the expected future expenditures from the fund and decide if the convention center fees may be reduced pursuant to paragraph H of this section.

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

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

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