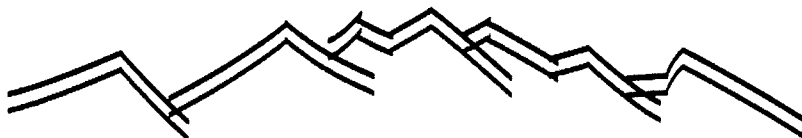


New Mexico Short-Term Rental Property Audit

Presented to:

***New Mexico Hospitality
Association
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SOUTHWEST PLANNING & MARKETING

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Executive Summary

Southwest Planning & Marketing (SWPM) was contracted by the New Mexico Hospitality Association (NMHA) to conduct an audit of short-term rentals in the state of New Mexico. The purpose of the audit was to identify the number of active short-term rental properties and identify the potential Gross Receipts Tax and Lodgers' Tax that could be generated from these properties. SWPM conducted a website search, removing duplicate properties, and formatting databases to determine available short-term rentals in New Mexico.

Note: The findings are based on a website audit. SWPM estimates that the number of properties and rooms will vary by no more than +/-5%. In every instance, SWPM took a conservative approach in estimating taxation impacts.

- SWPM identified **4,076 total active short-term rentals in New Mexico.**
- **SWPM identified 3,587 active short-term rentals in New Mexico** that either have three (3) or more rooms, or owners that have multiple properties that total three (3) or more rooms.
- There are an estimated **9,296 active available short-term rental bedrooms** for rent in taxable areas of New Mexico as of January 2017.
- Properties that meet the requirement of three (3) rooms or more had a total of 8,142 active available bedrooms.
- Seventy-six percent (76%) of the properties were identified as multiple properties owned by one owner. Short-term rentals are now a business and not the occasional rental of a room in someone's house.

Average room rates, average number of bedrooms per property, average statewide Gross Receipts Tax, and average Lodgers' Tax were used to determine the potential revenue generated in New Mexico from short-term rentals.

- **SWPM utilized an average annual occupancy scenario for short-term rentals of 40%** (This equates to renting each room an average of 12 nights per month). **Under the current legislation**, using the 40% occupancy rate, \$4.9 million would be generated annually in Lodgers' Tax to communities and counties, and \$8.0 million would be generated annually in Gross Receipts Tax. This equates to annual total taxes of \$13.0 million.
- **Assuming all short-term rentals are taxed (including properties with less than three rooms)**, \$5.3 million would be generated annually in Lodgers' Tax to communities and counties and \$8.6 million would be generated annually in Gross Receipts Tax. This equates to annual total taxes of \$13.8 million.
- SWPM estimates that currently between 30%-50% of all short-term rentals are not paying Lodgers' Tax or Gross Receipts Tax.
- The impact to New Mexico if the taxes were collected under the current legislation would be between \$1.5 million and \$2.5 million in Lodgers' Tax and \$2.4 million and \$4.0 million in Gross Receipts Tax annually.
- If all short-term rentals were taxed (**including properties with less than three rooms**), this would equate to between \$1.6 million and \$2.6 million in Lodgers' Tax and \$2.6 million and \$4.3 million in Gross Receipts Tax annually

Overview

Southwest Planning & Marketing (SWPM) was contracted by the New Mexico Hospitality Association (NMHA) to conduct an audit of short-term rentals in the state of New Mexico.¹ Several communities in New Mexico have had an active short-term rental market for years. Historically, these properties proliferated in resorts such as Angel Fire, Red River, Ruidoso and Taos. With the advent of the internet and several online companies that assist ordinary property owners in renting rooms or properties, there has been an increase in short-term rentals. By law, all properties should be paying Gross Receipts Tax on earned income. However, current Lodgers' Tax legislation exempts properties that have less than three (3) rooms and that are owned by an owner who does not have multiple units that have three or more rooms combined.² The legislation, as written, is vague and does not define what constitutes a "room."³ Many of the websites do not provide actual addresses without booking a property or contacting the owner. Generally, property addresses are not provided on any website as a protection for vacant rentals. The potential renter is provided information pertaining to the community and general vicinity of the rental, nightly rate, and pictures of the property.

In order to identify the properties, SWPM staff spent in excess of 120 hours researching short-term rentals. The scope of the audit included every community and county in New Mexico that currently assesses a Lodgers' Tax. The purpose of the audit was to identify the number of active short-term rental properties and identify the potential Gross Receipts Tax and Lodgers' Taxes that could be generated from these properties.

¹ See Appendix A for scope of work.

² See Appendix B for the legislation verbatim.

³ For the purposes of this report, a room is defined as a bedroom or bathroom.

Methodology

- 1) Conduct Website Search** - SWPM staff conducted a thorough website search. The information gathered included owner name, room rates, number of bedrooms and bathrooms, county and town/city/village.
- 2) Eliminate Duplicate Property Listings** - This was done by sorting the list by owner name and listing name.
- 3) Eliminate Non-Applicable Properties** - According to the Lodgers' Tax legislation, one must pay Lodgers' Tax if their property has three or more rooms or if they have multiple properties in which there are three or more rooms combined. SWPM staff provided two lists: 1) a total list of all properties and 2) a list of properties that did not meet these criteria. **NOTE:** Both bedrooms and bathrooms were used to determine the number of rooms.
- 4) Average Rental Price** - SWPM determined the average advertised rental price per community/county.
- 5) Determine Potential Gross Revenue** - SWPM utilized the average room rates to determine potential gross revenue throughout the state.
- 6) Determine Potential Gross Receipts Tax and Lodgers' Tax** - SWPM identified the specific Gross Receipts Tax and Lodgers' Tax rates of each community and county to determine the estimated tax revenue that could be collected.
- 7) Provide Various Tax Rate Scenarios** - Revenue and taxes collected are a function of occupancy of the short-term rentals. SWPM provided "percentage of occupancy" scenarios from 30% occupancy to 60% occupancy (just under the state-wide occupancy rates for hotels and lodging properties currently being assessed a Lodgers' Tax).
- 8) Estimate Percentage of Properties Not Currently Paying Taxes** - SWPM utilized information from previous audits of Santa Fe and Ruidoso to estimate potential lost tax revenue.

Findings

Note: The findings are based on a website audit. SWPM estimates that the number of properties and rooms will vary by no more than +-5%. In every instance, SWPM took a conservative approach in estimating taxation impacts.

The number of short-term rentals in the state

SWPM spent over 120 hours conducting a website search, removing duplicates, and formatting databases to determine available short-term rentals in New Mexico. Appendix C contains the full list of properties.

- Through an online website search, SWPM identified **4,076 total active short-term rentals in taxable parts of New Mexico** (the search included all communities and counties that assess a Lodgers' Tax). See Appendix D for a list of short-term rentals by community.
- **SWPM identified 3,587 active short-term rentals in New Mexico** that either have three (3) or more rooms or owners have multiple properties that total three (3) or more rooms.

Short-term rental ownership

SWPM reviewed the ownership of short-term rentals in New Mexico. Property ownership was collected for the 4,076 rentals identified in the audit. Seventy-six percent (76%) of the properties were identified as multiple properties owned by one owner. Short-term rentals are now a business and not the occasional rental of a room in someone's house.

Ownership	%	Count
Single Owner/Single Property	24.0%	980
Multiple Properties owned by one owner (2 or more)	76.0%	3,096
All Short Term Rentals	100.0%	4,076

Total potential tax revenue generated by short-term rentals

There are an estimated 9,296 active available short-term rental bedrooms for rent in taxable areas of New Mexico as of January 2017. Properties that meet the requirement of three (3) rooms or more had a total of 8,142 active available bedrooms. Average room rates, average number of bedrooms per property, average statewide Gross Receipts Tax, and average Lodgers' Tax were used to determine the potential revenue generated in New Mexico from short-term rentals. The following charts demonstrate the total revenue and tax potential assuming all rooms are occupied 100% of the time.

All Properties		Properties with >= three (3) rooms	
Number of properties	4,076	Number of properties	3,587
Average number of bedrooms	2.3	Average number of bedrooms	2.5
Total number of bedrooms	9,296	Total number of bedrooms	8,824
Available room nights	3,393,040	Available room nights	3,220,767
Average statewide rate per room	81	Average statewide rate per room	80
Total revenue	\$274,157,632	Total revenue	\$257,113,854
Lodgers' Tax (statewide avg. 4.8%)	\$13,159,566	Lodgers' Tax (statewide avg. 4.8%)	\$12,341,465
GRT (statewide avg. 7.9%)	\$21,658,453	GRT (statewide avg. 7.9%)	\$20,209,149
TOTAL TAX GENERATED	\$34,818,019	TOTAL TAX GENERATED	\$32,550,614

Potential revenue based on occupancy levels

Statewide annual occupancy for traditional lodging properties is generally around 60%⁴. Occupancy varies by season and geographic location in the state. SWPM utilized an average annual conservative occupancy scenario for short-term rentals of 40%. **Occupancy estimates provided by Smith Travel Research (STR)**. Using the 40% occupancy rate, \$4.9 million would be generated annually in Lodgers' Tax to communities and counties and \$8.0 million would be generated annually in Gross Receipts Tax. This equates to annual total taxes of \$13.0 million.

The following chart provides revenue and taxes generated based on six occupancy levels for properties that currently meet the "three rooms or more" requirement.

Properties with >= three (3) rooms					
Room Nights (Total Available 3,220,767)	Room Nights	Annual Revenue Generated	Annual Revenue Generated from Lodgers' Tax	Annual Revenue Generated from Gross Receipts Tax	Total Annual Tax Revenue Generated
100% Occupancy	3,220,767	\$ 257,113,854	\$ 12,341,465	\$ 20,054,881	\$ 32,396,346
Average Occupancy (10%)	322,077	\$ 25,711,385	\$ 1,234,146	\$ 2,005,488	\$ 3,239,635
Average Occupancy (20%)	644,153	\$ 51,422,771	\$ 2,468,293	\$ 4,010,976	\$ 6,479,269
Average Occupancy (30%)	966,230	\$ 77,134,156	\$ 3,702,439	\$ 6,016,464	\$ 9,718,904
Average Occupancy (40%)	1,288,307	\$ 102,845,541	\$ 4,936,586	\$ 8,021,952	\$ 12,958,538
Average Occupancy (50%)	1,610,384	\$ 128,556,927	\$ 6,170,732	\$ 10,027,440	\$ 16,198,173
Average Occupancy (60%)	1,932,460	\$ 154,268,312	\$ 7,404,879	\$ 12,032,928	\$ 19,437,807

⁴ The Rocky Mountain Lodging Report cited a 62.3% statewide occupancy rate through September 2016.

The following scenario uses a 40% occupancy rate and if all short-term rentals, **regardless of the number of rooms**, were taxed. Assuming all short-term rentals are taxed, \$5.3 million would be generated annually in Lodgers' Tax to communities and counties and \$8.6 million would be generated annually in Gross Receipts Tax. This equates to annual total taxes of \$13.8 million.

The following chart provides revenue and taxes generated based on six occupancy levels for all properties including properties with less than three (3) rooms.

All Properties					
Room Nights (Total Available 3,393,040)	Room Nights	Annual Revenue Generated	Annual Revenue Generated from Lodgers' Tax	Annual Revenue Generated from Gross Receipts Tax	Total Annual Tax Revenue Generated
100% Occupancy	3,393,040	\$ 274,157,632	\$ 13,159,566	\$ 21,384,295	\$ 34,543,862
Average Occupancy (10%)	339,304	\$ 27,415,763	\$ 1,315,957	\$ 2,138,430	\$ 3,454,386
Average Occupancy (20%)	678,608	\$ 54,831,526	\$ 2,631,913	\$ 4,276,859	\$ 6,908,772
Average Occupancy (30%)	1,017,912	\$ 82,247,290	\$ 3,947,870	\$ 6,415,289	\$ 10,363,158
Average Occupancy (40%)	1,357,216	\$ 109,663,053	\$ 5,263,827	\$ 8,553,718	\$ 13,817,545
Average Occupancy (50%)	1,696,520	\$ 137,078,816	\$ 6,579,783	\$ 10,692,148	\$ 17,271,931
Average Occupancy (60%)	2,035,824	\$ 164,494,579	\$ 7,895,740	\$ 12,830,577	\$ 20,726,317

Tax Impact with estimated Gross Receipts Tax payments by a percentage of current short-term properties

Many properties, particularly in major mountain destinations in New Mexico, are currently paying Gross Receipts Tax. Some of these rentals are also currently paying Lodgers' Tax. However, there is very limited policing of the tax regulation by communities. Audits conducted by SWPM in Ruidoso and Santa Fe estimates indicate that upwards of 30% of properties are not likely paying Gross Receipts Tax or Lodgers' Tax

For the purposes of this report, SWPM assumed based on experience that currently between 30%-50% of all short-term rentals are not paying Lodgers' Tax or Gross Receipts Tax. Under this scenario, the impact to New Mexico if the taxes were collected **under the current legislation** would be between \$1.5 million and \$2.5 million in Lodgers' Tax and \$2.4 million and \$4.0 million in Gross Receipts Tax annually. If **all short-term rentals** were taxed, this would equate to between \$1.6 million and \$2.6 million in Lodgers' Tax and \$2.6 million and \$4.3 million in Gross Receipts Tax annually. The following tables provide various scenarios at a 40% occupancy rate for short-term rentals.

Properties with >= three (3) rooms (assuming a percentage of the tax is currently being collected with an occupancy of 40%)			
Collection Percentages	Annual Revenue Generated from Lodgers' Tax	Annual Revenue Generated from Gross Receipts Tax	Total Annual Tax Revenue Generated
30%	\$ 1,480,976	\$ 2,406,586	\$3,887,561
40%	\$ 1,974,634	\$ 3,208,781	\$5,183,415
50%	\$ 2,468,293	\$ 4,010,976	\$6,479,269

All Properties (assuming a percentage of the tax is currently being collected with an occupancy of 40%)			
Collection Percentages	Annual Revenue Generated from Lodgers' Tax	Annual Revenue Generated from Gross Receipts Tax	Total Annual Tax Revenue Generated
30%	\$ 1,579,148	\$ 2,566,115	\$4,145,263
40%	\$ 2,105,531	\$ 3,421,487	\$5,527,018
50%	\$ 2,631,913	\$ 4,276,859	\$6,908,772

Appendix A - Scope of work

Southwest Planning & Marketing will conduct an analysis of the impact of short-term rentals in New Mexico on gross receipts and Lodgers' Tax collection as follows:

- Estimate the number of short-term rentals in the state
- Estimate the total revenue in Lodgers' Tax and Gross Receipts Tax it could generate.
- Estimate the potential lost revenue under the current legislation and without the three rooms or less exemption.

The final report will provide an estimate of the number of properties, the number of room nights and the taxation implications if these properties were subject to Lodgers' Tax.

Southwest Planning & Marketing will:

- Gather the data through secondary and primary sources.
- Develop an excel model to determine the fiscal impacts of assessing a tax on properties that offer three rooms or less of commercial accommodations in the state of New Mexico.
- Prepare a final report with a one-page executive summary, methodology and findings components.
- Provide an associate to be available to testify at the legislature.

Appendix B - Lodgers' Tax Regulation

Chapter 3.20 LODGERS' TAX

3.20.010 Title, purpose and authority.

A. Title. This chapter may be cited as the "Lodgers' Tax chapter."

B. Purpose. The purpose of this chapter is to impose a tax which will be borne by persons using commercial lodging accommodations within the town of Mesilla and which will provide revenues for the purpose of advertising, publicizing and promoting tourist-related attractions, facilities and events, and acquiring, establishing and operating tourist-related facilities, attractions or transportation systems, as authorized in MTC 3.20.040.

C. Authority. This chapter is adopted pursuant to the provisions set forth in the New Mexico State Statutes 1978, Sections 3-38-13 through 3-38-23, as amended. The provisions of this chapter are adopted in acceptance of and in accordance with said statutes. [Ord. 2001-02 § 2; prior code § 7-9-1]

3.20.020 Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

A. "Board of trustees" means the governing body of the town of Mesilla;

B. "Gross taxable rent" means the total amount of rent paid for lodging, not including the state Gross Receipts Tax or local sales taxes;

C. "Lodging" means the transaction of furnishing rooms or other accommodations by a vendor to a vendee who for 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;

D. "Lodgings" means the rooms or other accommodations furnished by vendor to a vendee by a taxable service of lodgings;

E. "Occupancy tax" means the tax on lodging authorized by this chapter;

F. "Person" means a corporation, firm, other body corporate, partnership, association or individual. "Person" includes an executor, administrator, trustee, receiver or other representative appointed according to law and acting in a representative capacity. "Person" 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;

G. "Rent" means 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 chapter;

H. "Taxable premises" means a hotel, apartment, apartment hotel, apartment house, lodge, lodging house, rooming house, motor hotel, 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 or other premises used for lodging;

- I. "Town" means the town of Mesilla, New Mexico;
- J. "Town clerk-treasurer" means the town clerk-treasurer or his/her designated representative;
- K. "Tourist" means a person who travels for the purpose of business, pleasure or culture to a municipality or county imposing an occupancy tax;
- L. "Tourist-related events" mean events that are planned for, promoted to and attended by tourists;
- M. "Tourist-related facilities and attractions" means facilities and attractions that are intended to be used by or visited by tourists;
- N. "Tourist-related transportation systems" mean transportation systems that provide transportation for tourists to and from tourist-related facilities, attractions and events;
- O. "Vendee" means a natural person to whom lodgings are furnished in the exercise of the taxable service of lodging;
- P. "Vendor" means a person furnishing lodgings in the exercise of the taxable service of lodging. [Ord. 2001-02 § 2; prior code § 7-9-2]

3.20.030 Limitations on the use of proceeds.

- A. The occupancy tax shall not exceed five percent of the gross taxable rent.
- B. Every vendor who is furnishing any lodgings within the town is exercising a taxable privilege.
- C. Not less than one-half of the proceeds derived from the tax shall be used for advertising, publicizing and promoting tourist-related attractions, facilities and events.
- D. The proceeds from the occupancy tax in excess of the amount required to be used for advertising, publicizing and promoting tourist-related attractions, facilities and events may be used for any purpose authorized in MTC 3.20.040.
- E. The proceeds from the occupancy tax that are required to be used to advertise, publicize and promote tourist-related attractions, facilities and events shall be used within two years of the close of the fiscal year in which they were collected and shall not be accumulated beyond that date or used for any other purpose. [Ord. 2001-02 § 2; prior code § 7-9-3]

3.20.040 Eligible uses of tax proceeds.

Subject to the limitations contained in MTC 3.20.030, the town may use the proceeds from the Lodgers' Tax to defray the costs of:

- A. Collecting and otherwise administering the tax, including the performance of audits required by MTC 3.20.100, pursuant to guidelines issued by the Department of Finance and Administration;
- B. Establishing, operating, purchasing, constructing or 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, attractions or transportation systems of the municipality or of the county in which the municipality is located;
- C. The principal of and interest on any prior redemption premiums due in connection with and any other charges pertaining to revenue bonds authorized by Section 3-38-23 or 3-38-24 NMSA 1978;
- D. Advertising, publicizing and promoting tourist-related attractions, facilities and events of the town and tourist facilities or attractions within Dona Ana County;

- E. Providing police and fire protection and sanitation service for tourist-related events, facilities and attractions located in the town or Dona Ana County; or
- F. Any combination of the foregoing purposes or transactions stated in this section, but for no other town or county purpose. [Ord. 2001-02 § 2; prior code § 7-9-4]

3.20.050 Contracting for services.

- A. The board of trustees may contract for the management of programs and activities funded with revenue from the occupancy tax. The board of trustees shall require periodic reports to the board, at least quarterly, listing the expenditures for those periods. Within 10 days of receiving the reports, the board shall furnish copies of them to the advisory board. Funds provided to the contracting person or governmental agency shall be maintained in a separate account established for that purpose and shall not be commingled with any other money.
- B. A person or governmental agency with whom the town contracts under this section to conduct an activity authorized by MTC 3.20.040 shall maintain complete and accurate financial records of each expenditure of the tax revenue made and upon request of the board shall make such records available for inspection.
- C. The occupancy tax revenue spent for a purpose authorized by this chapter may be spent for day-to-day operations, supplies, salaries, office rental, travel expenses and other administrative costs only if those administrative costs are incurred directly for that purpose.
- D. A person or governmental agency with whom the board of trustees contracts under this section may subcontract with the approval of the board of trustees. A subcontractor shall be subject to the same terms and conditions as the contractor regarding separate financial accounts, periodic reports and inspection of records. [Ord. 2001-02 § 2; prior code § 7-9-5]

3.20.060 Administration.

The board of trustees or their delegated representative shall administer the Lodgers' Tax moneys collected. The duties assigned to the town clerk-treasurer in this chapter may, from time to time, be reassigned to other departments or officials in whole or part as determined by the town clerk-treasurer. [Ord. 2001-02 § 2; prior code § 7-9-6]

3.20.070 Imposition of tax.

There is hereby imposed an occupancy tax of revenues of five percent of the gross taxable rent for lodging within the town of Mesilla paid to vendors from and after July 1, 1998. [Ord. 2001-02 § 2; prior code § 7-9-7]

3.20.080 Exemptions.

The occupancy tax 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 \$2.00 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;
- F. To privately owned and operated convalescent homes or homes for the aged, infirm, indigent or chronically ill; or
- G. If the taxable premises does not have at least three rooms or three other units of accommodation for lodging. [Ord. 2001-02 § 2; prior code § 7-9-8]

3.20.090 Licensing.

A. No vendor shall engage in the business of providing lodging in the town of Mesilla who has not first obtained a license as provided in this section.

B. Applicants for a vendor's license shall submit an application to the town clerk-treasurer stating:

1. The name of the vendor, including identification of any person, as defined in this chapter, who owns or operates or both owns and operates a place of lodging and the name or trade names under which the vendor proposes to do business and the post office address therefor;
2. A description of the facilities, including the number of rooms and the usual schedule of rates therefor;
3. A description of other facilities provided by the vendor or others to users of the lodgings such as a restaurant, bar, cleaning, laundry, courtesy car, stenographic, tailor or others, and a statement identifying the license issued, to whom issued, the authority issuing and the period for which issued, if applicable, and the identification number provided by the Department of Taxation and Revenue of the State of New Mexico;
4. The nature of the business practices of the vendor and to what extent, if any, the business is exempt from the Lodgers' Tax;
5. Other information reasonably necessary to effect a determination of eligibility for such license.

C. The town clerk-treasurer shall review applications for licenses within 10 days of receipt thereof and grant the license in due course if the clerk-treasurer finds the applicant is doing business subject to the occupancy tax.

If the town clerk-treasurer finds that the applicant is not qualified to do business subject to the occupancy tax, the clerk-treasurer shall, not more than 10 days after receipt of the application, advise the applicant of this decision and give the reasons therefor. The notice of such action shall be sent by certified mail addressed to the applicant at the address given on the application.

D. If the town clerk-treasurer finds the applicant not exempt under the terms of this chapter, the clerk-treasurer, shall, not more than 10 days after receipt of the application, advise the applicant of this decision and give the reasons therefor. The notice of such action shall be sent by certified mail addressed to the applicant at the address given on the application.

E. An applicant who is dissatisfied with the decision of the town clerk-treasurer may appeal the decision to the board of trustees by written notice to the town clerk-treasurer of such appeal

to be made within 15 days of the date of the decision made by the town clerk-treasurer regarding the application. The matter shall be referred to the board of trustees for hearing at their next regularly scheduled meeting in the usual course of business.

The decision of the board of trustees made thereof shall be expressed in writing and notice of such decision shall be sent by certified mail addressed to the applicant at the address given on the application not more than 10 days following the meeting at which the decision was made. The action of the board of trustees shall be final.

F. If the board of trustees finds for the applicant, the town clerk-treasurer shall issue the appropriate license or other notice conforming to the decision made by the board of trustees. [Ord. 2001-02 § 2; prior code § 7-9-9]

3.20.100 Collection of the tax – Reporting procedures.

A. Every vendor providing lodgings in the town of Mesilla shall collect the tax thereon on behalf of the town and shall act as a trustee therefor.

B. The tax shall be collected from vendees in accordance with this chapter and shall be charged separately from the rent fixed by the vendor for the lodgings.

C. On and after July 1, 1998, each vendor licensed under the provisions of this chapter shall be liable to the town for the tax provided herein on the rent paid for lodging at the vendor's respective place of business.

D. Each vendor shall prepare a monthly report on forms provided by the town clerk-treasurer of the receipts for lodging paid to him in the preceding calendar month and shall submit the report and payment of the amounts due to the town by the twenty-fifth day of each month. The report shall include sufficient information to enable the town to audit the report and shall be verified on oath by the vendor. [Ord. 2001-02 § 2; prior code § 7-9-10]

3.20.110 Audit of vendors.

The board of trustees of the town shall have random audits conducted every third year to verify full payment of occupancy tax receipts.

A. The board of trustees shall determine the number of vendors within the municipality to audit.

B. The audit(s) may be performed by the town clerk-treasurer or by any other designee of the board of trustees. A copy of the completed audit(s) shall be filed annually with the Local Government Division of the Department of Finance and Administration. [Ord. 2007-05 § 1; Ord. 2001-02 § 2; prior code § 7-9-11]

3.20.120 Advisory board created – Duties.

A. The mayor shall appoint a five-member advisory board that consists of two members who are owners or operators of lodgings subject to the occupancy tax within the municipality, two members who are owners or operators of industries located within the municipality that primarily provide services or products to tourists and one member who is a resident of the municipality and represents the general public.

B. Members of the advisory board created under subsection (A) of this section shall serve at the pleasure of the board of trustees. The terms of appointment shall be for two years and shall be staggered.

C. The advisory board shall submit to the mayor and board of trustees recommendations for the expenditures of funds authorized by MTC 3.20.040(B) for advertising, publicizing and promoting tourist-related attractions, facilities and events in the town and surrounding area of Dona Ana County. [Ord. 2001-02 § 2; prior code § 7-9-12]

3.20.130 Financial reporting.

A. The board of trustees shall furnish to the advisory board that portion of any 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 that relates to the expenditure of occupancy tax funds within 10 days of the filing or receipt of such proposed budget, report or audit by the board of trustees.

B. The board of trustees shall report to the Local Government Division of the Department of Finance and Administration on a quarterly basis any expenditure of occupancy tax funds pursuant to Sections 3-38-15 and 3-38-21 NMSA 1978, and shall furnish a copy of this report to the advisory board when it is filed with the Division. [Ord. 2001-02 § 2; prior code § 7-9-13]

3.20.140 Enforcement.

A. An action to enforce the Lodgers' Tax Act may be brought by:

1. The attorney general or the district attorney in the county of jurisdiction; or
2. A vendor who is collecting the proceeds of an occupancy tax in the county of jurisdiction.

B. A district court may issue a writ of mandamus or order an injunction or other appropriate remedy to enforce the provisions of the Lodgers' Tax Act.

C. The court shall award costs and reasonable attorneys' fees to the prevailing party in a court action to enforce the provisions of the Lodgers' Tax Act. [Ord. 2001-02 § 2; prior code § 7-9-14]

3.20.150 Duty of vendor.

Vendors shall maintain adequate records of facilities subject to the occupancy tax and of proceeds received for the use thereof. Such records shall be maintained in the town of Mesilla and shall be open to the inspection of the municipality during reasonable hours and shall be retained for three years. [Ord. 2001-02 § 2; prior code § 7-9-15]

3.20.160 Failure to pay tax – Failure to make return – Computation, penalty, notice.

- A. Every vendor is liable for the payment of the proceeds of any occupancy tax that the vendor failed to remit to the town, whether due to his failure to collect the tax or otherwise.
- B. If any vendor makes a return as required by this chapter without paying the tax then due, the vendor shall be liable for the tax and a penalty equal to 10 percent of the amount not remitted but not less than \$100.00 without notice from the town with regard thereto. Promptly thereafter, the town clerk-treasurer shall give the delinquent vendor written notice of such estimated tax, penalty and interest, which notice shall be served personally or by certified mail.
- C. If any vendor neglects or refuses to make a return and pay the tax as required by this chapter, the town clerk-treasurer may make an estimate based upon any information in the clerk-treasurer's possession, or that may come into the clerk-treasurer's possession, of the amount of the rent of the delinquent vendor for the period with respect to which the vendor has failed to make a return, and upon the basis of the estimated amount the clerk-treasurer shall compute and assess the tax payable by the delinquent vendor, adding to the sum thus arrived at a penalty equal to 10 percent thereof, but not less than \$100.00. Promptly thereafter, the town clerk-treasurer shall give the delinquent vendor written notice of such estimated tax, penalty and interest, which notice shall be served personally or by certified mail.
- D. If a vendor shall fail to make payment of the tax when due, the vendor shall be liable for the tax and a penalty equal to 10 percent thereof but not less than \$100.00 in addition to the tax and interest on such amounts of one percent per month.
- E. If payments are not made by the vendor within 15 days of written notice, the town clerk-treasurer shall bring an action in law or equity in the magistrate or district court for the collection of any amounts due, including without limitation penalties thereon, interest on the unpaid principal at a rate not exceeding one percent per month and the costs of collection and reasonable attorney's fee incurred in connection therewith. [Ord. 2001-02 § 2; prior code § 7-9-16]

3.20.170 Lien for occupancy tax, payment, certificate of liens.

- A. The occupancy tax imposed by the town constitutes a lien in favor of the town upon the personal and real property of the vendor providing lodgings in the town of Mesilla. The lien may be enforced as provided in Sections 3-36-1 through 3-36-7 NMSA 1978. Priority of the lien shall be determined from the date of filing.
- B. Under process or order of court, no person shall sell the property of any vendor without first ascertaining from the town clerk-treasurer the amount of any occupancy tax due the town. Any occupancy tax due the town 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.
- C. The town clerk-treasurer shall furnish to any person applying for such a certificate a certificate showing the amount of all liens in the records of the town against any vendor pursuant to Chapter 3, Article 38, NMSA 1978. [Ord. 2001-02 § 2; prior code § 7-9-17]

3.20.180 Penalty.

Any person who violates the provisions of this chapter by failure to pay the tax, to remit the proceeds thereof to the town, or to account properly for any lodging and tax proceeds

pertaining thereto, shall be charged with a petty misdemeanor and upon conviction shall be punished by a fine of not more than \$500.00 or imprisonment for not more than 90 days or by both such fine and imprisonment as provided for in MTC 1.05.080. [Ord. 2001-02 § 2; prior code § 7-9-18]

Appendix C - Listing of Short-term Rentals

Appendix D - Number of Short-term rentals per community

All Properties	
Community	Count
Alamogordo	12
Albuquerque	687
Angelfire	599
Artesia	1
Aztec	3
Belen NM	1
Bernalillo	28
Carlsbad	6
Carrizozo	3
Chama	17
Clayton	1
Cloudcroft	28
Clovis	5
Columbus	2
Corrales	52
Cuba	6
Deming	5
Eagle Nest	12
Elephant Butte	7
Espanola	33
Farmington	21
Fort Sumner	1
Gallup	8
Grants	1
Hobbs	4
Jemez Springs	20
Las Cruces	108
Las vegas	14
Logan	2
Lordsburg	1
Los Lunas	8
Magdalena	2
Mesilla	17
Moriarty	1
Mountainair	1
Raton	3
Red River	219
Reserve	1
Rio Rancho	33
Roswell	10
Ruidoso	1039
Santa Fe	510
Silver City	88
Socorro	8
T or C	20
Taos	331
Taos Ski Valley	96
Tucumcari	1
	4076

Properties >= 3 rooms	
Community	Count
Alamogordo	11
Albuquerque	535
Angelfire	577
Artesia	1
Aztec	3
Belen NM	1
Bernalillo	16
Carlsbad	3
Carrizozo	3
Chama	16
Clayton	1
Cloudcroft	25
Clovis	5
Corrales	33
Cuba	6
Deming	4
Eagle Nest	11
Elephant Butte	7
Espanola	25
Farmington	13
Gallup	4
Grants	1
Hobbs	4
Jemez Springs	16
Las Cruces	88
Las vegas	9
Logan	2
Lordsburg	1
Los Lunas	8
Magdalena	1
Mesilla	5
Moriarty	1
Mountainair	1
Raton	2
Red River	216
Reserve	1
Rio Rancho	23
Roswell	8
Ruidoso	1015
Santa Fe	444
Silver City	69
Socorro	6
T or C	13
Taos	266
Taos Ski Valley	86
Tucumcari	1
	20
	3587

