City of Las Cruces®

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Council Action and Executive Summary

Item # 30 **Ordinance/Resolution#** 2742

For Meeting of December 1, 2014 (Ordinance First Reading Date)

For Meeting of December 1, 2014 (Adoption Date)

Please check box that applies to this item:

☐ QUASI JUDICIAL ☒ LEGISLATIVE ☐ ADMINISTRATIVE

TITLE: AN ORDINANCE REPEALING SECTIONS 16-67 AND 16-69 OF THE LAS CRUCES MUNICIPAL CODE, 1997, AS AMENDED, AND ENACTING NEW SECTIONS 16-67 AND 16-69 TO BRING THE CITY'S LODGER'S TAX ORDINANCE IN ALIGNMENT WITH THE STATE STATUTES RELATED TO LATE PAYMENT PENALTIES AND TO CLARIFY DUE DATE OF PAYMENT.

PURPOSE(S) OF ACTION:

To amend Lodger's Tax Ordinance.

COUNCIL DISTRICT: ALL		
Drafter/Staff Contact: Phil San Filippo	**Department/Section:** Community & Cultural Services / CVB	**Phone:** 575-541-2466
City Manager Signature:		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The Las Cruces Municipal Code (LCMC), in respect to Lodger's Tax collection and penalties, is not in alignment with the state statute for the same topics. The current ordinance requires that tax payments are due on the 25th of each month; however, there has been confusion in the past as to whether penalties are to be assessed when the payment due dates fall on weekends and holidays. The proposed ordinance clarifies within Section 16-67 that if the 25th were to fall on a weekend or holiday, the payment would then be due the following business day, without assessment of the penalty on that next business day.

The penalties for late payment or refusal to make payment were significantly less than what is allowed per state statute and was often misunderstood. The current Section 16-69 requires a penalty of ten percent (10%) or ten dollars ($10), whichever is greater. The proposed ordinance requires that vendors making late payments will be liable for the tax and the penalty equal to ten percent (10%) or one hundred dollars ($100), whichever is greater, which will coincide with what is authorized under the New Mexico state statutes. Over the last 2 years, only two lodging facilities have had to pay the lower tax amount of ten dollars ($10).

(Continue on additional sheets as required)

The Convention & Visitors Bureau (CVB) Advisory Board met in a special meeting on November 12, 2014 and recommended approval of the proposed ordinance.

SUPPORT INFORMATION:

1. Ordinance.
2. Exhibit "A", Proposed new LCMC 1997, Sections 16-67 and 16-69.
3. Attachment "A", Existing LCMC 1997, Sections 16-67 and 16-69 in legislative format.
4. Attachment "B", Draft minutes of the CVB Advisory Board special meeting of November 12, 2014.

SOURCE OF FUNDING:

Is this action already budgeted?			
	Yes	☐	See fund summary below
	No	☐	If No, then check one below:
N/A	*Budget Adjustment Attached*	☐	Expense reallocated from: _____
		☐	Proposed funding is from a new revenue source (i.e. grant; see details below)
		☐	Proposed funding is from fund balance in the _____ Fund.
Does this action create any revenue?			
	Yes	☐	Funds will be deposited into this fund: ____in the amount of $_____for FY__.
N/A	No	☐	There is no new revenue generated by this action.

BUDGET NARRATIVE

N/A

FUND EXPENDITURE SUMMARY:

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
N/A	N/A	N/A	N/A	N/A	N/A

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will replace Sections 16-67 and 16-69 of LCMC, 1997, as amended, to clarify the payment date and penalty amounts related to the Lodger's Tax for the City.
2. Vote "No"; this will not replace Sections 16-67 and 16-69 of LCMC, 1997, as amended, thus leaving the existing ordinance in place related to the Lodger's Tax for the City.
3. Vote to "Amend"; and Council would need to provide further direction to staff.
4. Vote to "Table"; and Council would need to provide further direction to staff.

(Continue on additional sheets as required)

REFERENCE INFORMATION:

N/A

(Continue on additional sheets as required)

COUNCIL BILL NO. 15-023
ORDINANCE NO. 2742

AN ORDINANCE REPEALING SECTIONS 16-67 AND 16-69 OF THE LAS CRUCES MUNICIPAL CODE, 1997, AS AMENDED, AND ENACTING NEW SECTIONS 16-67 AND 16-69 TO BRING THE CITY'S LODGER'S TAX ORDINANCE IN ALIGNMENT WITH THE STATE STATUTES RELATED TO LATE PAYMENT PENALTIES AND TO CLARIFY DUE DATE OF PAYMENT.

The City Council is informed that:

WHEREAS, the Las Cruces Municipal Code, 1997, as amended (LCMC), Section 16-67 does not clearly define when payments are to be paid if the Lodger's Tax payment due date of the 25th of the month happens to occur on a weekend and/or City-recognized holiday; and

WHEREAS, the New Mexico State Statute, Sections 3-38-14 et. seq., 1978, as amended (NMSA), provides that municipalities may impose a penalty for failure to remit Lodger's Tax payment on time of ten percent (10%) of the Lodger's Tax due or one hundred dollars ($100), whichever is greater; and

WHEREAS, the LCMC, Section 16-69 currently states that the penalty for failure to remit Lodger's Tax payment on time is ten percent (10%) of the Lodger's Tax due or ten dollars ($10); and

WHEREAS, it is the desire of the City of Las Cruces to have the municipal code be consistent to the requirements of the NMSA.

NOW THEREFORE, Be it ordained by the governing body of the City of Las Cruces:

(I)

THAT Sections 16-67 and 16-69 of the Las Cruces Municipal Code, 1997, as amended (LCMC) is hereby repealed in their entirety.

(II)

THAT Las Cruces Municipal Code, 1997, Section 16-67 and 16-69, as shown in Exhibit "A" attached hereto and made part of this ordinance, is hereby enacted.

(III)

THAT City staff is hereby authorized to do all deeds as necessary in the accomplishment of the herein above.

DONE AND APPROVED this __ day of _____ 20___.

APPROVED:

_____
Mayor

ATTEST:

_____
City Clerk

(SEAL)

VOTE:
Mayor Miyagishima: _____
Councillor Silva: _____
Councillor Smith: _____
Councillor Pedroza: _____
Councillor Small: _____
Councillor Sorg: _____
Councillor Levatino: _____

Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:

_____
City Attorney

16-67. Collection and recording.

(a) Every vendor providing lodgings shall collect the tax thereon on behalf of the city and shall act as a trustee therefor.

(b) The tax shall be collected from vendees in accordance with this article and shall be charged separately from the rent fixed by the vendor for the lodgings.

(c) Each vendor licensed under this article shall be liable to the city for the tax provided in this article on the rent paid for lodging.

(d) Each vendor shall make a report by the 25th day of each month on forms provided by the city treasurer of the receipts for lodging paid to him in the preceding calendar month and shall remit therewith payment of the amounts 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. If the 25th day of the month falls on a weekend and/or city-recognized holiday, the tax shall be due upon the first business day to follow.

16-69. Failure to pay tax; failure to make return; computation, penalty, notice.

(e) If any vendor makes a return as required by this article without paying the tax then due or if any vendor shall fail to make payment on the tax when due, he shall be liable for the tax and a penalty equal to ten percent (10%) or one hundred dollars ($100), whichever is greater, in addition to the tax and interest on such amounts of one percent (1%) per month, without notice from the city with regard thereto. Promptly thereafter, the city shall give the delinquent vendor written notice of such estimated tax penalty and interest, which notice shall be served by mail.

(f) If any vendor neglects or refuses to make a return and pay the tax as required by this article, the city treasurer may make an estimate based upon any information in his possession or that may come into his possession of the amount of the rent of the delinquent vendor for the period in respect to which he has failed to make return, and upon the basis of the estimated amount shall compute and assess the tax payable by the delinquent vendor, adding to the sum thus arrived at a penalty equal to ten percent (10%) or one hundred dollars ($100), whichever is greater. Promptly thereafter, the city shall give the delinquent vendor written notice of such estimated tax, penalty and interest, which notice shall be served by mail.

(g) If payments are not made by the vendor within 15 days of written notice, the city manager 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 of not exceeding one percent (1%) per month, the costs of collection and reasonable attorney's fees incurred in connection therewith.

New Text – shown in bold and underlined;
~~Deleted Text~~ – shown in strikethrough

Sec. 16-67. - Collection; reporting.

(a) Every vendor providing lodgings shall collect the tax thereon on behalf of the city and shall act as a trustee therefor.

(b) The tax shall be collected from vendees in accordance with this article and shall be charged separately from the rent fixed by the vendor for the lodgings.

(c) Each vendor licensed under this article shall be liable to the city for the tax provided in this article on the rent paid for lodging.

(d) Each vendor shall make a report by the 25th day of each month on forms provided by the city ~~manager~~**treasurer** of the receipts for lodging paid to him in the preceding calendar month and shall remit therewith payment of the amounts 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. **If the 25th day of the month falls on a weekend and/or City-recognized holiday, the tax shall be due upon the first business day to follow.**

Sec. 16-69. - Failure to pay tax; failure to make return; computation, penalty, notice.

(a) If any vendor makes a return as required by this article without paying the tax then due **or if any vendor shall fail to make payment on the tax when due**, he shall be liable for the tax and a penalty equal to ten percent **(10%)** ~~thereof, but no less than $10.00,~~ **or one hundred dollars ($100),** in addition to the tax **and interest on such amounts of one percent (1%) per month**, without notice from the city with regard thereto. Promptly thereafter, the city shall give the delinquent vendor written notice of such estimated tax penalty and interest, which notice shall be served ~~personally or~~ by certified mail.

(b) If any vendor neglects or refuses to make a return and pay the tax as required by this article, the city ~~manager~~**treasurer** may make an estimate based upon any information in his possession or that may come into his possession of the amount of the rent of the delinquent vendor for the period in respect to which he has failed to make return, and upon the basis of the estimated amount shall compute and assess the tax payable by the delinquent vendor, adding to the sum thus arrived at a penalty equal to ten percent **(10%)** ~~thereof, but no less than $10.00~~ **or one hundred dollars ($100)**. Promptly thereafter the city 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 a vendor shall fail to make payment of the tax when due, he shall be liable for the tax and a penalty equal to ten percent thereof but not less than $10.00, in addition to the tax and interest on such amounts of one percent per month.~~

(~~d~~**c**) If payments are not made by the vendor within 15 days of written notice, the city manager 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 of not exceeding one percent per month, the costs of collection and reasonable attorney's fees incurred in connection therewith.

Advisory Board Special Meeting

Wednesday, November 12, 2014

9:00AM

Members Present: Mark Santiago – NM Farm & Ranch Heritage Museum
Mike Beckett – COAS Bookstore
Monika Denten – Ramada Palms
Vince Vaccaro - Lorenzo's Restaurant
Victor Delgado – Holiday Inn Express & Suites

Others Present: Philip J. San Filippo, Jennifer Bales & Jill Rockhill **(CVB)**

I. CALL TO ORDER – Chairman Santiago – The meeting was called to order at 9:03 am.

II. PRESENTATIONS – Phil San Filippo

A. Lodgers Tax Ordinance

Mr. San Filippo brought to the attention of the Board that the Las Cruces Municipal Code, in respect to Lodger's Tax collection and penalties, is not in alignment with the State Statute for the same topics. He stated that the current Section 16-69, penalties for late payments, requires a penalty of ten percent (10%) or ten dollars ($10), whichever is greater. The proposed ordinance requires that vendors making late payments will be liable for the tax and the penalty equal to ten percent (10%) or one hundred dollars ($100), whichever is greater, which will coincide with what is authorized under the New Mexico State Statutes. Mr. San Filippo informed the board that over the last 2 years, only two lodging facilities have had to pay the lower tax amount of ten

dollars ($10). Mr. San Filippo stated that the other section affected, Section 16-67, currently states that tax payments are due on the 25th of each month. The proposed ordinance clarifies that if the 25th were to fall on a weekend or holiday, the payment would then be due the following business day, without assessment of the penalty on that next business day.

Chairman Santiago inquired as to whether the board would like to request a motion to approve the proposed changes to the Las Cruces Municipal Code in respects to the Lodger's Tax Ordinance, Sections 16-67 and 16-69. Ms. Denten made the motion to approve the proposed changes and this motion was seconded by Mr. Delgado. Motion passed 5-0.

III. ADJOURNMENT

Chairman Santiago made a motion to adjourn the meeting. The motion was seconded by all. Meeting adjourned at 9:25am.