



A copy of the Agenda can be obtained from the Office of the City Manager. Please be advised that all public meetings are video and audio recorded.

CITY OF BELEN REGULAR COUNCIL MEETING

100 South Main Street, Belen New Mexico 87002

City Of Belen Council Chambers

May 6, 2013

6:00 PM

AGENDA

- I. **Call to Order**-The Regular Meeting of the Belen City Council, State of New Mexico, and County of Valencia to be held on Monday, May 6, 2013 at 6:00 PM in the Council Chambers at City Hall located at 100 South Main Street in the City of Belen, New Mexico 87002.
- II. **ROLL CALL**
- III. **PLEDGE OF ALLEGIANCE**
- IV. **APPROVAL OF AGENDA**
- V. **APPROVAL OF MINUTES** April 15, 2013
- VI. **EXECUTIVE SESSION**
 - 1) **An executive session to discuss limited personnel matters and land acquisition**
- VII. **PUBLIC COMMENT-3 MINUTE PRESENTATIONS:** *Please listen for timer*
If more time is needed for presentation, please ask to be scheduled on the next agenda
- VIII. **PRESENTATIONS**
 - 1) Recognition of Centennial Memorabilia that was previously presented to the City of Belen: Rudy Jaramillo, Mayor
 - 2) Street Department Update: Herman Madrid, Street Supervisor
 - 3) Valencia Soil and Water Conservation District: Ted Hodoba
- IX. **DISCUSSIONS WITH ACTION REQUIRED**
 - 1) Approval or disapproval of the proposed Loan Agreement Resolution: Mario Juarez-Infante, Wilson & Co.
 - 2) Appointment of the MRCOG Bus Traffic Impact Committee: Rudy Jaramillo, Mayor
 - 3) Approval or disapproval of the amended JPA between the City of Belen and Valencia County: Steve Tomita, P & Z Director
 - 4) Water Rights Diversion Lease Agreement: Steve Tomita, P & Z Director

X. DISCUSSION

- 1) Lodger's Tax Committee Process & Procedures: Rudy Jaramillo, Mayor

XI. INFORMATIONAL ITEMS

- 1) City Manager's Report
- 2) Communication From City Council

XII. ADJOURNMENT

Respectfully Submitted,

/s/
Mary Lucy Baca,
City Manager, CMC

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact Leona Vigil, Deputy Clerk at 505-966-2740 at least one week prior to the meeting or as soon as possible.

CC: Mayor and City Council
Valencia County News Bulletin
KARS Radio

REGULAR CITY COUNCIL MEETING

April 15, 2013

6:00 P.M.

Mayor Rudy Jaramillo called the Regular Meeting of the Belen City Council to order at 6:00 P.M. Roll call taken by Leona Vigil, Deputy Clerk

PRESENT: Councilor David Carter
Mayor Pro-Tem Jerah Cordova
Mayor Rudy Jaramillo
Councilor Mary Aragon
Councilor Wayne Gallegos

CITY STAFF: Mary Lucy Baca, City Manager
Leona Vigil, Deputy Clerk
Chief Dan Robb, Police Dept.
Nathan Godfrey, Fire
Chris Griego, Police

REPORTER: Abigail Ortiz, VC News Bulletin

OTHERS: See attached sign-in sheet

PLEDGE OF ALLEGIANCE:

Mayor Rudy Jaramillo led the Pledge of Allegiance.

APPROVAL OF AGENDA:

Mayor Jaramillo asked for a motion to approve tonight's Agenda. Councilor Wayne Gallegos moved approval. Mayor Jaramillo asked if there was a second. Councilor Mary Aragon seconds the motion. Roll Call Vote:

Councilor Wayne Gallegos Yes
Councilor Mary Aragon Yes
Councilor Jerah Cordova Yes
Councilor David Carter Yes Motion carried

APPROVAL OF THE MINUTES DATED APRIL 1, 2013

Mayor Rudy Jaramillo asked for a motion to approve the minutes dated April 1, 2013. Councilor Mary Aragon moved to approve the minutes. Councilor Wayne Gallegos seconds the motion. Roll Call Vote:

Councilor Wayne Gallegos Yes
Councilor Mary Aragon Yes
Councilor Jerah Cordova Yes
Councilor David Carter Yes Motion carried

PUBLIC COMMENTS

Dan Robb, Police Chief: Chief Robb reminded the Council that at the last meeting he introduced two new police officers; however, one was unable to be in attendance. Therefore, tonight he brought Chris Griego to formally introduce him to the Council.

There was nobody else with Public Comment, and Mayor Jaramillo closed this portion of the Meeting.

PRESENTATIONS

STREET & PARK DEPARTMENT UPDATE: HERMAN MADRID, SUPERVISOR

Mayor Jaramillo called on Herman to come forward with his presentation. However, Herman Madrid was not present at the meeting.

DISCUSSIONS WITH ACTION REQUIRED

APPROVAL OR DISAPPROVAL OF THE PROPOSED AMENDMENTS TO ORDINANCE NO. 2008-05 RELATING TO THE CITY’S ECONOMIC DEVELOPMENT PLAN: Mary Lucy Baca, City Manager, CMC

Mary Lucy advised the Council that Steve has added Retail to the “qualifying entity” because it was approved at the Legislation. He did note in the Ordinance that the Retail doesn’t go into effect until July the 1st. Mayor Jaramillo asked if there were any questions. There were no more questions at this point.

Mayor Jaramillo asked for a motion to approve or disapprove the proposed amendments to Ordinance No. 2008-05. Councilor Wayne Gallegos motioned to approve the amendments. Councilor Mary Aragon seconds the motion. Roll Call Vote.

Councilor Wayne Gallegos	Yes	
Councilor Mary Aragon	Yes	
Councilor Jerah Cordova	Yes	
Councilor David Carter	Yes	Motion Carries

APPROVAL OR DISAPPROVAL OF THE PROPOSED ORDINANCE RELATING TO THE REGISTRATION OF VACANT OR FORECLOSED STRUCTURES: Rudy Jaramillo, Mayor

Mayor Jaramillo reminded everyone that this issue has already been discussed at a Council Meeting and a Public Hearing for the public has already been held.

Mayor Jaramillo asked for a motion to approve or disapprove the proposed Vacant or Foreclosed Structure Ordinance. Councilor Wayne Gallegos made a motion to approve the proposed ordinance. Councilor David Carter seconds the motion. Roll Call Vote.

Councilor Wayne Gallegos	Yes	
Councilor Mary Aragon	Yes	
Councilor Jerah Cordova	Yes	
Councilor David Carter	Yes	Motion Carries

APPROVAL OR DISAPPROVAL OF THE FINANCIAL CD DISBURSEMENT: MARY LUCY BACA, CITY MANAGER

Mary Lucy is seeking formal approval to use 250,000 from the CD for different matches and needs for the City, and to place the other 250,000 into another CD. Councilor Cordova asked if there was enough money to complete the ponding project. Lucy answered the City needs approximately 75,000 in which will come out of the 250,000 for matches. Councilor Carter mentioned that there is a two week grace period after the end of the six months to roll the CD over. Councilor Carter would like to push that limit on the date for the next two roll overs. He is concerned about approving the roll over at this time knowing that the Budget is not finalized. He would like to push the limit on the roll over date so that the date is later for next year’s budget.

Councilor Gallegos stated that he is comfortable with the recommendation and motioned to approve the CD disbursement. Mayor Jaramillo asked if there was a second. Councilor Mary Aragon seconds the motion. Roll Call Vote.

Councilor Wayne Gallegos	Yes	
Councilor Mary Aragon	Yes	
Councilor Jerah Cordova	Yes	
Councilor David Carter	Yes	Motion Carries

INFORMATIONAL ITEMS

City Manager’s Report: Mary Lucy Baca went over the City Manager’s and Public Works Report. A copy of these reports are attached hereto and made an integral part of these minutes by reference. The City’s Water Department received their new Vactor Truck; they received training on it on Friday. A few temps. have been hired to curb the weed problem. Several employees are getting together to plan a “Family fun Day”; it will be held on June 8th. There will be food, games, and entertainment at the event. The City’s Liability Insurance is going up approximately 10 percent; Lucy explained that it is due to paying for the outside economy, flooding, fires. Martin, a representative from our Insurance Carrier, suggested the City meet with BNSF to discuss the \$20,000 the City pays for an easement agreement that is in place; Councilor Gallegos volunteered to meet with them. On the 23rd at 9:00 AM the Water Trust Board will be considering the City’s loan. John Best was in an traffic accident, but is ok. Councilor Cordova asked for an update on the sewer line behind Reinken; Lucy advised that Steve and the Attorney are going to meeting with the property owner. If the owner insists that the sewer lines be torn out of his property, we will have to do that. The City will have to move the lines, but the owner will have to pay the fines to tap in to the new lines. Councilor Carter asked to have a copy of the smoke test results that was completed for Infinity and Jaramillo Schools. Mayor Jaramillo reminded Mary Lucy that Martha Jean and Greer Rd. needs millings as soon as the City has some available. Lucy received an agreement from the County in reference to the Senior Center; she has sent it to the City’s Attorney for recommendation. Councilor Gallegos asked everyone to keep in mind the use of the Senior Center is in an agreement with Los Lunas.

Councilor Wayne Gallegos: On the 3rd, he met with the Dept of Transportation to review several projects; lights, crossings, sidewalks. There has been mention that DOT wants to replace the bridge that comes into town on North Main. Lucy asked that individuals report buckling sidewalks to her so that she can report them to DOT. He attended the Family Fun Day meeting, and the event is scheduled to be held on June 8th. He attended the Budget Workshop; GRT’s are still up. On the 11th he met with DOT, Code Enforcement, and a Member from District 3 in which they discussed Driveway Permits for businesses.

Mayor Rudy Jaramillo: He attended the Municipal Legislative Update Meeting; they discussed bills that were going to affect municipalities. He attended the first half of the Budget Workshop. Five individuals threw the first pitch for the Little League Opening Day, he was one of them. The Eagle Park Fields are looking really good. He attended a meeting with Jim Wood from Rancho Cielo; they are moving forward with the interchange. He attended a meeting with Economic Development; they stressed concerns of disbanding the GBED Board; however, that is not the intent.

Councilor Mary Aragon: She attended the Budget Workshop and stated that Roseann did a great job. The RSVP Luncheon will be on the 19th at 11:00 AM. She thanked all the City workers and mentioned that she appreciates them all.

Councilor Jerah Cordova: He attended the Budget Hearings, and he mentioned that there were some good suggestions. He attended The Hispano Chamber of Commerce Meeting; they are looking at amending their name to possibly Hispano Chamber of Valencia County. The Hispano Chamber approved around \$20,000 in

scholarships. MainStreet will hold its Clean-Up Day on Saturday beginning at 9:00 AM on Becker Street between 5th and 6th Street. They are looking into tearing down the Cinder Block Building behind the Domestic Shelter.

Councilor David Carter: He attended the City Recreation Meeting on the 3rd; soccer is winding down while baseball and softball are starting up. Little League Opening Day and the Parade were successful. Mayor Jaramillo threw the First Pitch at the Ceremonies. The Schools will participate in an Active Shooter Training Workshop. He attended the Budget Workshop. He announced that Spring Break is in effect this week and asked everyone to proceed with caution. He asked if anyone knew when Moonrakers was anticipating on opening; it is unknown at this time.

EXECUTIVE SESSION

AN EXECUTIVE SESSION TO DISCUSS LIMITED PERSONNEL MATTERS, PENDING OR THREATENED LITIGATION, AND LAND ACQUISITION.

Mayor Rudy Jaramillo asked for a motion to be excused from an Open Meeting to attend an Executive Session to discuss limited personnel matters, pending or threatened litigation, and land acquisition. Councilor Jerah Cordova moved to go into Executive Session to discuss limited personnel matters, pending litigation and land acquisition. Mayor Jaramillo asked if there was a second. Councilor Wayne Gallegos seconds the motion.
Roll Call Vote:

Councilor Wayne Gallegos	Yes	
Councilor Mary Aragon	Yes	
Councilor Jerah Cordova	Yes	
Councilor David Carter	Yes	Motion carried

Mayor Rudy Jaramillo asked for a motion to return to an Open Meeting. Councilor Mary Aragon motioned to leave the executive session and enter into the open meeting. Mayor Jaramillo asked if there was a second. Councilor Wayne Gallegos seconds the motion. Roll Call Vote:

Councilor Wayne Gallegos	Yes	
Councilor Mary Aragon	Yes	
Councilor Jerah Cordova	Yes	
Councilor David Carter	Yes	Motion carried

Mayor Rudy Jaramillo asked for a motion that no action was taken and that discussions were limited to limited personnel matters, pending or threatened litigation, and land acquisition and no action was taken. Councilor Jerah Cordova motioned that no action was taken and that the executive session was limited to personnel matters, pending and threatening litigation, and land acquisition. Councilor Mary Aragon seconds the motion. Roll Call Vote:

Councilor Wayne Gallegos	Yes	
Councilor Mary Aragon	Yes	
Councilor Jerah Cordova	Yes	
Councilor David Carter	Yes	Motion carried

ADJOURNMENT:

Mayor Rudy Jaramillo asked for a motion to adjourn tonight's meeting. Councilor Mary Aragon motioned to adjourn the meeting. Councilor David Carter seconds the motion.

Councilor Jerah Cordova
Councilor David Carter
Councilor Mary Aragon
Councilor Wayne Gallegos

Yes
Yes
Yes
Yes

Motion Carries

ATTEST:

Rudy Jaramillo, Mayor

Mary Lucy Baca, City Manager, CMC

DRAFT

**CITY OF BELEN
STATE OF NEW MEXICO**

RESOLUTION No. 2013-10

**A RESOLUTION AUTHORIZING THE ASSIGNMENT OF OFFICIAL
REPRESENTATIVES AND SIGNATORY AUTHORITIES**

Whereas, the City Council of The City of Belen of Valencia County of the State of New Mexico shall enter into a Loan Agreement with the State of New Mexico Environment Department, and

Whereas, the Agreement is identified as CWSRF Project Number CWSRF 020.

NOW THEREFORE, BE IT RESOLVED by the named applicant that:

Mary Lucy Baca, City Manager, or her successor is authorized to sign the agreement for this project, and

Mary Lucy Baca, City Manager, or her successor is the OFFICIAL BORROWER REPRESENTATIVE who is authorized to submit any documents pertaining to the project and act as the single point of contact, and

Mary Lucy Baca, City Manager, or her successor is the SIGNATORY AUTHORITY who is authorized to sign reimbursement requests and other documents requiring a signature for submittal to the New Mexico Environment Department.

PASSED, APPROVED, AND ADOPTED THIS 6TH DAY OF MAY, 2013.

Rudy Jaramillo, Mayor

(SEAL)

ATTEST:

Mary Lucy Baca
City Manager, CMC

Project Name Camino De Llano Ponds

Project No. Project Number

Borrower Representative(s)	
Name	_____
Title	_____
Signature	_____
Address	_____

E-mail	_____
Phone	_____

Name	_____
Title	_____
Signature	_____
Address	_____

E-mail	_____
Phone	_____

Name	_____
Title	_____
Signature	_____
Address	_____

E-mail	_____
Phone	_____

Name	_____
Title	_____
Signature	_____
Address	_____

E-mail	_____
Phone	_____

Borrower Signatory Authority(ies)	
Name	_____
Title	_____
Signature	_____
Address	_____

E-mail	_____
Phone	_____

Name	_____
Title	_____
Signature	_____
Address	_____

E-mail	_____
Phone	_____

Name	_____
Title	_____
Signature	_____
Address	_____

E-mail	_____
Phone	_____

Name	_____
Title	_____
Signature	_____
Address	_____

E-mail	_____
Phone	_____

Sections:

[3.16.010 - Title.](#)

[3.16.020 - Purpose.](#)

[3.16.030 - Definitions.](#)

[3.16.040 - Imposition of tax.](#)

[3.16.050 - Licensing.](#)

[3.16.060 - Exemptions.](#)

[3.16.070 - Collection of the tax and reporting procedures.](#)

[3.16.080 - Duties of the vendor.](#)

[3.16.090 - Enforcement.](#)

[3.16.100 - Failure to make return—Computation, civil penalty and notice—Collection of delinquencies—Occupancy tax is a lien.](#)

[3.16.110 - Criminal penalties.](#)

[3.16.120 - Refunds and credits.](#)

[3.16.130 - Vendor audits.](#)

[3.16.140 - Financial reporting.](#)

[3.16.150 - Confidentiality of return and audit.](#)

[3.16.160 - Administration of lodgers' tax monies collected.](#)

[3.16.170 - Eligible uses of lodger's tax proceeds.](#)

3.16.010 - Title. 

This chapter shall be known as and cited as the "lodgers' tax ordinance."

(Ord. 1997-6 § 1)

3.16.020 - Purpose. 

The purpose of this chapter is to impose a tax which will be borne by persons using commercial lodging accommodations which tax 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 [Section 3.16.170](#) of this chapter.

(Ord. 1997-6 § 2)

3.16.030 - Definitions. 

As used in this chapter:

"Board" means the advisory board established herein to make recommendations to the governing body, keep minutes of its proceedings and submit its recommendations, correspondence and other pertinent documents to the governing body.

"City clerk" means the city clerk of Belen, New Mexico.

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

"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.

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

"Occupancy tax" means the tax on lodging authorized by the Lodgers' Tax Act.

"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, 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 an occupancy tax authorized in the Lodgers' Tax Act.

"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 for lodging.

"Tourist" means a person who travels for the purpose of business, pleasure or culture to a municipality or county imposing an occupancy tax.

"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.

(Ord. 1997-6 § 3)

3.16.040 - Imposition of tax.

There is imposed an occupancy tax of four percent of gross taxable rent for lodging within the municipality paid to vendors.

3.16.050 - Licensing.

A.

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

B.

Applicants for a vendor's license shall submit an application to the city clerk 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 thereof;

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 vendor or others to users of the lodgings such as restaurant, bar, cleaning, laundry, courtesy car or others, and a statement identifying the license issued, to whom issued, the authority issuing, and the period for which issued. If applicable, also the identification number provided by the Bureau of Revenue of the state of New Mexico;

4.

The nature of the business or the vendor and to what extent, if any, his business is exempt from the lodgers' tax;

5.

Other information reasonably necessary to effect a determination of eligibility for such license.

C.

The city clerk shall review applications for license within ten days of receipt thereof, and grant the license in due course if the applicant is doing business subject to the lodgers' tax.

D.

An applicant who is dissatisfied with the decision of the city clerk may appeal the decision to the governing body by written notice to the city clerk of such appeal to be made within fifteen (15) days of the date of the decision of the city clerk on the application. The matter shall be referred to the governing body for hearing at a regular or special meeting in the usual course of business. The decision of the governing body made thereof shall be expressed in writing and be communicated in the same manner as the decision of the city clerk is transmitted. The action of the governing body shall be deemed final.

E.

If the governing body finds for the applicant, the city clerk shall issue the appropriate license or other notice conforming to the decision made by the governing body.

3.16.060 - 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 thirty (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 thirty (30) consecutive days;

B.

If the rent paid by the vendee is less than two dollars 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. 1997-6 § 6)

3.16.070 - Collection of the tax and reporting procedures.

A.

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

B.

The tax shall be collected from vendees and shall be charged separately from the rent fixed by the vendor for the lodgings.

C.

Each vendor licensed under this chapter shall be liable to the municipality of Belen for the tax provided herein on the rent paid for lodging at his respective place of business.

D.

Each vendor shall make a report by the twenty-fifth day of each month, on forms provided by the city clerk, of the receipts for lodging in the preceding calendar month, and shall submit the proceeds of

the lodgers' tax to the municipality and include sufficient information to enable the municipality to audit the reports and shall be verified on oath by the vendor.

(Ord. 1997-6 § 7)

3.16.080 - Duties of the vendor.

Vendor shall maintain adequate records of facilities subject to the tax and of proceeds received for the use thereof. Such records shall be maintained in Belen, New Mexico, and shall be open to the inspection of the municipality during reasonable hours and shall be retained for three years.

(Ord. 1997-6 § 8)

3.16.090 - 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. 1997-6 § 9)

3.16.100 - Failure to make return—Computation, civil penalty and notice—Collection of delinquencies—Occupancy tax is a lien.

A.

Every vendor is liable for the payment of the proceeds of any occupancy tax that the vendor failed to remit to the municipality, whether due to his failure to collect the tax or otherwise. He shall be liable for the tax plus a civil penalty equal to the greater of ten percent of the amount not remitted or one hundred dollars (\$100.00). The city clerk shall give the delinquent vendor written notice of the delinquency, which notice shall be mailed to the vendor's local address.

B.

If payments are not received within fifteen (15) days of the mailing of the notice, the municipality may bring an action in law or equity in the 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 a month. If the city attempts collection through an attorney or the city attorney for any purpose with regard to this chapter, the vendor shall be liable to the municipality for all costs, fees paid to the attorney or city attorney, and all other expenses in connection therewith.

C.

The occupancy tax imposed by a municipality constitutes a lien in favor of the municipality upon the personal and real property of the vendor providing lodgings. 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.

D.

Under process or order of court, no person shall sell the property of a vendor without first ascertaining from the city clerk or treasurer the amount of any occupancy tax due the municipality. Any occupancy tax due the municipality 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 proceeds of the sale.

(Ord. 1997-6 § 10)

3.16.110 - Criminal penalties.

Any person who violates the provisions of this chapter for a failure to pay the tax to remit proceeds thereof to the municipality, to properly account for any lodging and tax proceeds pertaining thereto, or for violating the confidentiality provisions of [Section 3.16.150](#) of this chapter shall be guilty of a misdemeanor and upon conviction shall be fined in an amount not to exceed five hundred dollars (\$500.00) or by imprisonment not to exceed ninety (90) days, or both.

(Ord. 1997-6 § 11)

3.16.120 - Refunds and credits.

If any person believes he has made payment of any lodgers' tax in excess of that for which he was liable, he may claim a refund thereof by directing to the city clerk, no later than ninety (90) days from the date of payment was made, a written claim for refund. Every claim for refund shall state the nature of the person's complaint and the affirmative relief requested. The city clerk shall allow the claim in whole or in part or may deny it. Refunds of tax and interest erroneously paid and amounting to one hundred dollars (\$100.00) or more may be made only with the approval of the governing body.

(Ord. 1997-6 § 12)

3.16.130 - Vendor audits.

A.

Option A—For Municipalities that Collect More than Two Hundred Fifty Thousand Dollars (\$250,000.00) Per Year in Occupancy Tax. The governing body shall select for annual random audit(s) one or more vendors to verify the amount of gross rent subject to the occupancy tax and to ensure that the full amount of occupancy tax on the rent is collected from each vendor thus audited.

Option B—For Municipalities Collecting Less than Two Hundred Fifty Thousand Dollars (\$250,000.00) Per Year in Occupancy Tax. The governing body shall conduct random audit(s) to verify full payment of occupancy tax receipts.

B.

The governing body shall determine each year the number of vendors within the municipality to audit.

C.

The audit(s) may be performed by the city clerk or by any other designee of the governing body. A copy of the audit(s) shall be filed annually with the Local Government Division of the Department of Finance and Administration.

(Ord. 1997-6 § 13)

3.16.140 - Financial reporting.

A.

The governing body 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 expenditure of occupancy tax funds within ten days of the filing or receipt of such proposed budget, report or audit by the governing body.

B.

The governing body 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. 1997-6 § 14)

3.16.150 - Confidentiality of return and audit.

It is unlawful for any employee of the municipality of Belen to reveal to any individual other than another employee of the municipality of Belen any information contained in the return or audit of any taxpayer, including vendors subject to the Lodgers' Tax Act, except to a court of competent jurisdiction in response to an order thereof in an action relating to taxes to which the municipality of Belen is a party, and in which information sought is material to the inquiry; to the taxpayer himself or to his authorized representative; and in such manner, for statistical purposes, the information revealed is not identified as applicable to any individual taxpayer.

(Ord. 1997-6 § 15)

3.16.160 - Administration of lodgers' tax monies collected.

The governing body shall administer the lodgers' tax monies collected. The mayor shall appoint a five-member advisory board that consists of two members who are owners or operators of lodging 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. The board shall advise the governing body on expenditure of funds authorized under [Section 3.16.170](#) of this chapter for advertising, publicizing and promoting tourist attractions and facilities in the municipality and surrounding area.

(Ord. 1997-6 § 16)

3.16.170 - Eligible uses of lodger's tax proceeds.

A.

The municipality may use the proceeds from the tax to defray the costs of:

1.

Collecting and otherwise administering the tax, including the performance of audits required by the Lodgers' Tax Act pursuant to guidelines issued by the Department of Finance and Administration;

2.

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, attractions or transportation systems of the municipality, the county in which the municipality is located or the country;

3.

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 Section 3-38-24 NMSA 1978;

4.

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

5.

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

6.

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

(Ord. 1997-6 § 17)