

CHAPTER 9

BUSINESS REGULATIONS

SECTION

- 9.1 Business Registration
- 9.2 Gross Receipts Tax
- 9.4 Licensing and Non-resident Merchants
- 9.4 Eating & Drinking Establishments
- 9.5 Hotels
- 9.6 Motels
- 9.7 Lodger's Tax
- 9.8 Local Economic Development Act

SECTION 9.1 BUSINESS REGISTRATION

- 9.1.1 Imposition of Business Registration Fee
- 9.1.32 Application to Do Business
- 9.1.43 Renewal
- 9.1.54 Application
- 9.1.65 Repeal

9.1.1 IMPOSITION OF BUSINESS REGISTRATION FEE:

There is imposed on each place of business conducted in this municipality a business registration fee of Thirty Five dollars (\$35.00). The fee is imposed pursuant to Section 3-38-3 NMSA 1978 as it now exists or is amended and shall be known as the "Business Registration Fee." The Business Registration Fee may not be prorated for businesses conducted for a portion of the year.

~~9.1.2 EXEMPTION:~~

~~————— No business registration shall be imposed on any business:~~

- ~~A. If a vendee has been a permanent resident of the taxable premises for a period of at least thirty (30) consecutive days or:~~
- ~~B. If a vendee 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:~~

- ~~C. If the rent paid by a vendee is less than two (\$2.00) dollars a day;~~
- ~~D. To lodging accommodations at institutions of the federal government, the state or any political subdivision thereof;~~
- ~~E. To lodging accommodations at institutions at religious, charitable, educational or philanthropic institutions, including without limitation, such accommodations at summer camps operated by such institutions;~~
- ~~F. To clinics, hospitals or other medical facilities;~~
- ~~G. To privately owned and operated convalescent homes or homes for the aged, infirm, indigent, or chronically ill; or~~
- ~~H. If the taxable premises does not have at least three rooms or three other units of accommodations for lodging.~~

9.1.3-2 APPLICATION TO DO BUSINESS:

Any person proposing to engage in business within the municipal limits of the Town of Carrizozo after July 1, 1981, shall apply for and pay a business registration fee for each outlet, branch or location within the municipal limits of the Town of Carrizozo prior to engaging in business, unless such person is required to obtain a business licenses fee under another ordinance.

9.1.4-3 RENEWAL:

Prior to March 16 of each year, any person with a place of business in the Town of Carrizozo and subject to this Ordinance shall apply for renew business registration with the municipal clerk

9.1.5 4 APPLICATION:

Any person filing an application for issuance or renewal of any business registration shall include in the application his current revenue division taxpayer identification number or evidence of application for a current revenue division taxpayer identification number.

9.1.6 5 REPEAL:

This Ordinance repeals all other Ordinances heretofore that imposed a business occupation tax.

**SECTION 9.2
GROSS RECEIPTS TAX**

- 9.2.1 Imposition of Tax**
- 9.2.2 General Provisions**
- 9.2.3 Specific Exemptions**
- 9.2.4 Dedication**

9.2.1 IMPOSITION OF TAX:

There is imposed on any person engaging in business in this municipality for the privilege of engaging in business in this municipality an excise tax equal to one-fourth of one percent (.25%) of the gross receipts reported or required to be reported by the person pursuant to the New Mexico Gross Receipts and Compensating Tax Act as it now exists or as it may be amended. The tax imposed under this ordinance is pursuant to the Municipal Local Option Gross Receipts Taxes Act as it now exists or as it may be amended and shall be known as the "municipal gross receipts tax."

9.2.2 GENERAL PROVISIONS:

This ordinance hereby adopts by reference all definitions, exemptions and deductions contained in the Gross Receipts and Compensating Tax Act as it now exists or as it may be amended.

9.2.3 SPECIFIC EXEMPTIONS:

No municipal gross receipts tax shall be imposed on the gross receipts arising from:

- A. the transmission of messages by wire or other means from one point within the municipality to another point outside the municipality;**
- B. transporting persons or property for hire by railroad, motor vehicle, air transportation or any other means from one point within the municipality to another point outside the municipality.**
- C. a business located outside the boundaries of a municipality on land owned by that municipality for which a state gross receipts tax distribution is made pursuant to Subsection C of Section 7-1-6.4 NMA 1978; or**
- D. direct broadcast satellite services.**

9.2.4 DEDICATION:

Revenue from the municipal gross receipts tax will be used for the purpose(s) listed below:

<u>TYPE</u>	<u>DEDICATION</u>	<u>RATE</u>
Municipal Gross Receipts – 1 st ¼%	Gen'l Fund	0.2500 %
Municipal Gross Receipts – 2 nd ¼%	Gen'l Fund	0.2500 %
Municipal Gross Receipts – 3 rd ¼%	Gen'l Fund	0.2500 %
Municipal Gross Receipts – 4 th ¼%	Gen'l Fund	0.2500 %
Municipal Gross Receipts – 5 th ¼%	Gen'l Fund	0.2500 %
Municipal Gross Receipts – 6 th ¼%	Water/Sewer	0.2500 %
Municipal Environmental GR – 1/16%	Environ Svcs	0.0625 %
Municipal Infrastructure GR – 1/16%	Streets	0.0625 %
County Gross Receipts Tax Rate		0.2500 %
<u>State Gross Receipts Tax Rate</u>		<u>5.1250 %</u>
TOTAL		7.0000 %

**SECTION 9.3
LICENSING & NON-RESIDENT MERCHANTS**

- 9.3.1 License Required**
- 9.3.2 Definition**
- 9.3.3 Application**
- 9.3.4 Investigation and Issuance**
- 9.3.5 License Fee**
- 9.3.6 Bond**
- 9.3.7 Display of License**
- 9.3.8 Duty of Police to Enforce**
- 9.3.9 Records**
- 9.3.10 Revocation of License**
- 9.3.11 Appeal**
- 9.3.12 Expiration of License**

9.3.1 LICENSE REQUIRED:

It shall be unlawful for any non-resident merchant to engage in business in the Town of Carrizozo without first obtaining a license therefor in compliance.

9.3.2 DEFINITION:

A non-resident merchant is defined as any person, not a resident of the municipality, who, for himself or for another person, occupies any building or structure of any other place for the sale of goods or merchandise or for exhibiting samples and taking orders for future delivery; or such non-resident merchant may be defined as any person who sells or takes orders for future delivery, on a wholesale basis, dealing directly with established merchants and businesses and not with the general public.

9.3.3 APPLICATION:

Applications shall be filed with the Clerk and must contain a sworn statement in writing on a form to be furnished including the following information:

- A. Name and description of the applicant;**
- B. Permanent home address and full local address of the applicant;**
- C. A brief description of the nature of the business and the goods to be sold;**

- D. If employed, the name and address of the employer, together with credentials establishing the exact relationship;**
- E. The length of time for which the right to do business is desired;**
- F. The place where the goods or property proposed to be sold or orders taken for the sale thereof, are manufactured or produced, where such foods or products are located at the time said application is filed and the proposed method of delivery;**
- G. A photograph of the applicant, taken within sixty (60) days immediately prior to the date of filing of the application, which picture shall be two inches by two inches (2" X 2") showing the head and shoulder of the applicant in a clear and distinguishing manner;**
- H. The fingerprints of the applicant and the names of at least two (2) reliable property owners of the Municipality who will certify to the applicant's good character and business responsibility, or in lieu, of the names of references, such other available evidence as to the good character and business responsibility of the applicant as will enable an investigator to evaluate properly such character and business responsibility;**
- I. A statement as to whether or not the applicant has been convicted of any crime or violation of any laws, the nature of the offense and the punishment or penalty assessed therefor; and**
- J. A statement by a reputable physician of the Municipality dated not more than ten (10) days prior to submission of the application, certifying the applicant to be free of contagious, infectious or communicable disease.**

At the time of filing the application a fee of two dollars and fifty cents (\$2.50) shall be paid to the Clerk to cover the cost of investigation of the facts therein stated.

9.3.4 INVESTIGATION AND ISSUANCE:

- A. Upon receipt of such application, the Chief of Police shall cause an investigation to be made of the applicant's business and moral character.**
- B. If as result of such investigation the applicant's character or business respectability is found to be unsatisfactory, the Chief of Police shall endorse on such application his disapproval and his reasons for the same, and return the application to the Clerk, who shall notify the applicant that his application is disapproved and that no license will be issued.**
- C. If as a result of such investigation, the character and business respectability of the applicant are found to be satisfactory, the Chief of Police shall endorse on the application his approval, execute a license addressed to the applicant for the carrying on of the said business applied for and return said license, along with the application to the Clerk, who shall upon payment o-f the prescribed license -fee deliver to the applicant his license. Such license shall**

contain the signature and seal of the issuing officer and shall show the name, address and photograph of said licensee, the class of license issued and the kind of goods to be sold thereunder, the amount of fee paid, the date of issuance and the length of time the same shall be operative. The Clerk shall keep a permanent record of all licenses issued.

9.3.5 LICENSE FEE:

The license fee which shall be charged by the Clerk for such license shall be two hundred (\$200.00) per year or for any portion of a year.

None of the license fees provided for by this Section shall be so applied as to occasion an undue burden upon interstate commerce, In any case where a license fee is believed to place an undue burden upon such commerce, such licensee may apply to the Governing Body for an adjustment of the fee so that it shall not be discriminatory, unreasonable or unfair as to such commerce.

Such application may be made before, at or within six (6) months after payment of the prescribed license fee. The applicant shall by affidavit and supporting testimony, show his method of business and the gross volume or estimated gross volume of business and such other information as the Governing Body may deem necessary in order to determine the extent, if any, of such undue burden on such commerce.

The Governing Body shall then conduct an investigation, comparing applicant's business with other businesses of like nature and shall make findings of fact from which it shall determine whether the fee fixed by this Section is unfair, unreasonable or discriminatory as to applicant's business and shall fix as the license fee for the applicant an amount that is fair, reasonable and nondiscriminatory, or, if the fee has already been paid, shall order a refund of the amount over and above the fee so fixed. In fixing the fee to be charged, the Governing Body shall have the power to base the fee upon a percentage of gross sales, or any other method which will assure that the fee assessed shall be uniform with that assessed on businesses of like nature, so long as the amount assessed does not exceed the fees as prescribed in this Section.

Should the Governing Body determine the gross sales measure of the fee to be the fair basis, it may require the applicant to submit, either at the time of termination of applicant's business or at the end of each three (3) month period, a sworn statement of the gross sales and to pay the amount of fee therefor, provided that no additional fee during any one calendar year shall be required after the licensee shall have paid an amount equal to the required license.

9.3.6 BOND:

Every applicant shall file with the Clerk, a surety bond, running to the municipality in the amount of one thousand dollars (\$1000) with surety acceptable to and approved by the Governing Body, conditioned that. The said applicant shall fully comply with all the provisions of this Section. Action

of such bond may be brought in the name of the municipality to the use or benefit of the aggrieved person.

9.3.7 DISPLAY OF LICENSE:

Nonresident merchants are required to exhibit their licenses at the request of any citizen.

9.3.8 DUTY OF POLICE TO ENFORCE:

It shall be the duty of any police officer to enforce the provisions of this Section.

9.3.9 RECORDS:

The Chief of Police shall report, to the Clerk all convictions for violation of this Section and the Clerk shall maintain a record of each license issued and record the reports therein.

9.3.10 REVOCATION OF LICENSE:

Licenses issued under the provisions of this Section may be revoked by the Governing Body after notice and hearing for any of the following causes:

- A. Fraud, misrepresentation or false statement contained in the application of license;
- B. Fraud, misrepresentation or false statement made in the course of carrying on a business;
- C. Any violation of this Section.
- D. Conviction of any crime or act involving moral turpitude; or
- E. Conducting the business in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety or general welfare of the public.

Notice of the hearing for revocation of a license shall be given in writing, setting forth specifically the grounds of complaint and the time and place of hearing. Such notice shall be mailed, postage prepaid, to the licensee at their last known address at least five (5) days prior to the date set for the hearing.

9.3.11 APPEAL:

Any person aggrieved by the action of the Chief of Police or the Clerk in the denial of a permit as provided herein, or the action of the Governing Body in the assessing of the fee as provided shall have the right of appeal to the Governing Body. Such appeal shall be taken by filing with the Governing Body,

within fourteen (14) days after notice of the action complained of has been mailed to such person's last known address, a written statement fully setting forth the grounds for the appeal. The Governing Body shall set a time and place for a hearing on such appeal and notice of such hearing shall be given to the appellant in the same manner as for the notice of hearing on revocation. The decision and order of the Governing Body on such appeal shall be final and conclusive.

9.3.12 EXPIRATION OF LICENSE:

All licenses issued under the provisions of this Section shall expire on the last day of each calendar year.

**SECTION 9.4
EATING & DRINKING ESTABLISHMENTS**

9.4.1 ADOPTION OF U.S. PUBLIC HEALTH SERVICE ORDINANCE:

The inspection, grading, re-grading and placarding of eating and drinking establishments within the Municipality or its police jurisdiction, the issuing, suspension and revocation of permits for the operation of such establishments the sale of adulterated, misbranded or unwholesome food and drink, the enforcement of this section, shall be regulated in accordance with the terms of the unabridged form of the 2013 Edition of U.S. Public Health Service Ordinance Regulating Eating and Drinking Establishments, three (3) certified copies of which shall be on file in the office of the Clerk. Provided, however, that the Section 2 of said U.S. Public Health Service Ordinance, itinerant restaurants shall be required to secure a permit.

Provided further, that when any restaurant fails to qualify for any of the grades specified in the U.S. Public Health Service Ordinance the Health Officer or other designated official is authorized to suspend the permit or in lieu thereof to degrade the restaurant and permit its operation during a temporary period not exceeding thirty (30) days.

SECTION 9.5 HOTELS

- 9.5.1 Definition**
- 9.5.2 Fire Protection Equipment**
- 9.5.3 Maintenance of Equipment**
- 9.5.4 Inspection**
- 9.5.5 Hotel Register**

9.5.1 DEFINITION:

Every building maintained or advertised as a public lodging house or where more than six (6) rooms are provided for sleeping accommodations shall be known as a hotel.

9.5.2 FIRE PROTECTION EQUIPMENT:

The Fire Chief, or other officer designated by the Governing Body, shall survey each hotel and specify suitable fire detecting devices or extinguishing appliances which shall be provided.

Such devices or appliances may consist of automatic sprinkler or water spray systems, standpipe and hose, fixed or portable fire extinguishers or other suitable fire extinguishing systems.

9.5.3 MAINTENANCE OF EQUIPMENT:

Fire protective or extinguishing systems or appliances which have been installed in compliance with any permit or order, or according to any provisions of this Code, shall be maintained in operative condition at all times and it shall be unlawful for any owner or occupant to reduce the effectiveness of the protection so required

9.5.4 INSPECTION:

It shall be the duty of the Fire Chief, or the County Health Officer, or other officers so designated by the Governing Body, to make periodic and regular inspections of every hotel and to make regular reports to the Governing Body of such hotel or hotels concerning regulations imposed by this Code.

9.5.5 HOTEL REGISTER:

A register shall be maintained at every hotel and each guest shall be required to register their name and home address. The date of arrival and departure shall be clearly indicated and the register shall be maintained for a period of at least one (1) year following registration. The register shall be open for inspection to any authorized person.

SECTION 9.6 MOTELS

- 9.6.1 Building Permit Required**
- 9.6.2 Service Station Restriction**
- 9.6.3 Parking Space on Premises**
- 9.6.4 Minimum Requirements**
- 9.6.5 Existing Standards**
- 9.6.6 Application to Include Plan**
- 9.6.7 Guests Required to Register**

9.6.1 BUILDING PERMIT REQUIRED:

Before construction of a motel is started, an application for a permit for such construction shall be submitted to the Clerk. The Clerk shall present such application to the Governing Body for its approval. Only after approval of the Governing Body shall a permit for construction of a motel be issued.

9.6.2 FIRE PROTECTION EQUIPMENT:

The Fire Chief, or other officer designated by the Governing Body, shall survey each motel and specify suitable fire detecting devices or extinguishing appliances which shall be provided.

Such devices or appliances may consist of automatic sprinkler or water spray systems, standpipe and hose, fixed or portable fire extinguishers or other suitable fire extinguishing systems.

9.6.3 MAINTENANCE OF EQUIPMENT:

Fire protective or extinguishing systems or appliances which have been installed in compliance with any permit or order, or according to any provisions of this Code, shall be maintained in operative condition at all times and it shall be unlawful for any owner or occupant to reduce the effectiveness of the protection so required

9.6.4 INSPECTION:

It shall be the duty of the Fire Chief and the Health Officer, or other officers so designated by the Governing Body, to make periodic and regular inspections of every hotel and to make regular reports to the Governing Body of such hotel or hotels concerning regulations imposed by this Code.

9.6.5 SERVICE STATION RESTRICTIONS:

Automobile service stations shall be located no closer than fifty feet (50') to any motel.

9.6.6 PARKING SPACE ON PREMISES:

Each unit of a motel or tourist court shall be provided with an assigned parking space entirely on the premises.

9.6.7 MINIMUM REQUIREMENTS:

The minimum space for each unit shall be twelve feet by twenty feet (12' X 20') and shall contain one (1) full bath, toilet facilities, dressing compartment and sleeping room.

9.6.8 EXISTING STANDARDS:

The plumbing, heating and ventilation components shall meet all local and State fire, plumbing and building code requirements.

9.6.9 APPLICATION TO INCLUDE PLAN:

Each application for a motel or tourist court shall be submitted with a complete plan, including the plot plan and adjacent buildings, parking arrangement and driveways, unit sizes, plumbing and heating layout, accessory uses, materials to be used, front and rear elevations and architectural design.

9.6.10 GUESTS REQUIRED TO REGISTER:

Every operator of a motel shall maintain a register in which each guest shall register his name, home address and license number of the vehicle in which he is traveling. The date of his arrival and departure shall also be recorded. Such register shall be available to any authorized person inspecting the motel and shall be preserved for a period of not less than one (1) year.

**SECTION 9.7
LODGER'S TAX**

- 9.7.1 Lodger's Tax Ordinance**
- 9.7.2 Purpose**
- 9.7.3 Definitions**
- 9.7.4 Imposition of Tax**
- 9.7.5 Licensing**
- 9.7.6 Exemptions**
- 9.7.7 Collection of the Tax & Reporting Procedures**
- 9.7.8 Duties of the Vendor**
- 9.7.9 Enforcement**
- 9.7.10 Failure To Make Return; Computation, Civil Penalty And Notice,
Collection Of Delinquencies; Occupancy Tax Is A Lien.**
- 9.7.11 Criminal Penalties**
- 9.7.12 Refunds And Credits**
- 9.7.13 Vendor Audits**
- 9.7.14 Financial Reporting**
- 9.7.15 Confidentiality Of Return And Audit**
- 9.7.16 Administration Of Lodger's Tax Monies Collected**
- 9.7.17 Eligible Uses Of Lodger's**
- 9.7.18 Severability**
- 9.7.19 Repealer**

9.7.1 LODGERS TAX ORDINANCE:

This Ordinance shall be known as and cited as the "Lodgers' Tax Ordinance."

9.7.2 PURPOSE:

The purpose of this ordinance 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 17 of this Ordinance.

9.7.3 DEFINITIONS:

As used in the Lodgers' Tax Ordinance.

- A. "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;
- B. "city clerk" means the Town Clerk of Carrizozo, New Mexico:
- C. " gross taxable rent" means the total amount of rent paid for lodging, not including the state gross receipts tax or local sales taxes;
- D. "lodgings" 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;
- E. "lodgings" means the rooms or other accommodations furnished by a vendor to a vendee by a taxable service of lodgings;
- F. "occupancy tax" means the tax on lodging authorized by the Lodgers' Tax Act;
- G. "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, and corporation, department, instrumentality or agency of the federal government or the state government, or and political subdivision of the state;
- H. "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;
- I. "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;
- J. "tourist" means a person who travels for the purpose of business, pleasure or culture to a municipality or county imposing an occupancy tax;

- K. "tourist-related events" means events that are planned for, promoted to and attended by tourists;**
- L. "tourist-related transportation systems" means facilities and attractions that are intended to be used by or visited by tourists;**
- M. "tourist-related transportation systems" means transportation systems that provide transportation for tourists to and from tourist-related facilities, attractions and events;**
- N. "vendee" means a natural person to whom lodgings are furnished in the exercise of the taxable service of lodging; and**
- O. "vendor" means a person furnishing lodgings in the exercise of the taxable service of lodging.**

9.7.4 IMPOSITION OF TAX:

There is hereby imposed an occupancy tax of 3% percent of gross taxable rent for lodging within the municipality paid to vendors.

9.7.5 LICENSING

- A. No vendor shall engage in the business of providing lodging in the municipality of the Town of Carrizozo 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 Town Clerk stating:
 - a. The name of the vendor, including identification of any person, as defined in this ordinance, who owns or operates, or both owns and operates a place of lodging and the name or trade names which the vendor proposes to do business and the post office address thereof;**
 - b. A description of the facilities, including the number of rooms and the usual schedule of rates therefor;**
 - c. 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;****

- d. The nature of the business of the vendor and to what extent, if any, his business is exempt for the Lodgers' Tax;
 - e. Other information reasonable necessary to effect a determination of eligibility for such license.
- C. The Town Clerk shall review applications for license within ten (10) 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 Town Clerk may appeal the decision to the Governing Body by written notice to the Town Clerk of such appeal to be made within fifteen (15) days of the date of the decision of the Town 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 Town Clerk is transmitted. The action of the Governing Body shall be deemed final.
- E. If the Governing Body finds for the applicant, the Town Clerk shall issue the appropriate license or other notice conforming to the decision made by the Governing Body.

9.7.6 EXEMPTIONS:

The occupancy tax shall not apply:

- A. if a vendee:
 - a. has been a permanent resident of the taxable premises for a period of at least thirty consecutive days; or
 - b. enters into or has entered into a written agreement for lodgings at the taxable premises for a period of at least thirty 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;

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.~~

9.7.7 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 ordinance shall be liable to the Municipality of Carrizozo 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 (25th) day of each month, on forms provided by the Town 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.

9.7.8 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 Carrizozo, New Mexico, and shall be open to the inspection of the Municipality during reasonable hours and shall be retained for three (3) years.

9.6.9 ENFORCEMENT

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

a. the attorney general or the district attorney in the county of jurisdiction;

b. the attorney for the Town of Carrizozo; or

c. 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 Lodger's 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.**

9.7.10 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 10 percent of the amount not remitted or one hundred dollars(\$100). The Town 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 (1) percent a month. If the City attempts collection through an attorney or the City Attorney for any purpose with regard to this Ordinance, the vendor shall be liable to the Municipality for all costs, fees paid to the attorney or city attorney, and all other expenses incurred 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 Section 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 Town 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.**

9.7.11 CRIMINAL PENALTIES

Any person who violates the provisions of the Lodgers' Tax Ordinance 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 15 of this Ordinance shall be guilty of a misdemeanor and upon

conviction shall be fined in the amount not to exceed five hundred dollars (\$500) or by imprisonment not to exceed ninety (90) days, or both.

9.7.12 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 Town Clerk, no later than ninety (90) days from the date of payment was made, an written claim for refund. Every claim for refund shall state the nature of the person's complaint and the affirmative relief requested. The Town 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) or more may be made only with the approval of the Governing Body.

9.7.13 VENDOR AUDITS

- A. For municipalities collecting less than \$250,000.00 per year in Occupancy Tax. The Governing Body shall conduct random audits 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 Town 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.**

9.7.14 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 (10) 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.**

~~9.7.15 CONFIDENTIALITY OF RETURN AND AUDIT~~

~~It is unlawful for any employee of the Municipality of Carrizozo to reveal to any individual other than another employee of the Municipality of Carrizozo 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 Carrizozo is a party, and 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.~~

9.7.16 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 lodgings subject to the occupancy tax within the municipality, two members who are owners of 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 17 of this ordinance for advertising, publicizing and promoting tourist attractions and facilities in the municipality and surrounding area.

Composition of Lodgers' Tax Advisory Board, Terms.

1. The Committee shall consist of Five (5) members, who shall be appointed by the Mayor. Two shall serve for a term of two year, and the remainder of the members shall serve for one-year terms.

9.7.17 ELIGIBLE USES OF LODGER'S TAX PROCEEDS

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 county;
- 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 3-28-24 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.

9.7.18 SEVERABILITY

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this ordinance.

9.7.19 REPEALER

All ordinances and parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

**SECTION 9.8
LOCAL ECONOMIC DEVELOPMENT ACT**

- 9.8.1 Economic Development Plan**
- 9.8.2 Authority**
- 9.8.3 Purpose**
- 9.8.4 Definitions as used in the Economic Development Plan**
- 9.8.5 Economic Development Plan**
- 9.8.6 Carrizozo Works, Inc.**
- 9.8.7 Application Requirements**
- 9.8.8 Applicable Review Criteria**
- 9.8.9 Public Safeguards**
- 9.8.10 Project Participation Agreement**
- 9.8.11 Project Monies**
- 9.8.12 Termination**
- 9.8.13 Joint Regional Projects**

9.8.1 Economic Development Plan

Short Title.

This Ordinance may be cited as the “Economic Development Plan Ordinance.

9.8.2 Authority

The Economic Development Plan Ordinance is enacted pursuant to the statutory authority conferred upon municipalities to allow public support of economic development (NM Stat. Ann. Section 5-10-1 through Section 5—10-13-1978). This Ordinance is adopted as part of the town’s economic development plan.

9.8.3 Purpose

- A. The purpose of the Economic Development Plan/Ordinance is to allow public support of economic projects to foster, promote and enhance local economic development efforts while continuing to project against the unauthorized use of public money and other public resources. Further, the purpose of the ordinance is to allow the town to enter into one or more joint powers agreements with other local governments to plan and support regional economic development projects.**

B. Local Economic Development Act

Local governments are allowed to provide direct or indirect assistance to qualifying business for furthering or implementing economic development plan and projects, furthermore local and regional governments have the authority to contribute assets to development projects; however, the imposition of a tax must be approved by the voters in referendum.

C. Eligible Uses

Municipalities may impose municipal infrastructure gross receipts tax and dedicate the revenue for economic development projects. A total of 0.25% tax (in four increment of 0.0625%) may be imposed.

9.8.4 Definitions as used in the Economic Development Plan Ordinance

- A. Economic Development Project means the provision of direct or indirect land, buildings or other infrastructure; public works improvements essential to the location assistance to a qualifying business and include the purchase, lease, grant, or construction, reconstruction, improvement or other acquisition or conveyance of expansion of a qualifying business; and payments for professional services contracts necessary for local or regional governments to implement a plan or project.**
- B. Qualifying entity means an existing or proposed corporation, limited liability company, partnership, joint venture, syndicate, association or other person that is one or combination of two or more of the following:**
- 1. An industry for manufacturing, processing, or assembling of any agricultural or manufactured products;**
 - 2. A commercial enterprise for storing, warehousing, distributing, or selling products of agriculture, mining or industry, but other than provided in Paragraph (D) of this subsection, not including any enterprise for sale of goods or commodities at retail or for the distribution to the public of electricity, gas, water, or telephone or other services commonly classified as public utilities;**
 - 3. A business in which all or part of the activities of the business involves the supplying of services to the general public or to government agencies or to a specific industry or customer, but, other than provided in Paragraph (D) of this subsection,**

not including business primarily engaged in the sale of goods or commodities at retail;

4. A telecommunications sales enterprise that makes the majority of its sales to persons outside of New Mexico.
- C. **Project Participation Agreement** means an agreement between a qualifying entity and the Town whereby the Town provides assistance to an economic development project in exchange for the benefits received as set forth in this section.
- D. **Governing Body** means the Town Council of Carrizozo.

9.8.5 Economic Development Plan

- A. The Mayor after approval of the governing body may assist Economic Development Projects in any legally permissible manner including but not limited to provisions of land, building and infrastructure provided that all the requirements of this ordinance are met. The town may provide land, buildings or infrastructure it already owns, or it may build, purchase or lease the facilities needed for an economic development project. The town at its discretion may bear the full cost or contribute a portion of the costs including the waiver of applicable fees. The town, at its discretion, may also contribute to the payment of costs for professional service contracts such as Industry feasibility studies and planning and design services needed to implement a project.
- B. The governing body may consider offering all forms of assistance allowed under this ordinance and any other legally permissible forms of assistance; however, this does not establish any obligation on the town's part to offer any specific type or level of assistance.

9.8.6 Carrizozo Works, Inc.

- A. The governing body assigns the Carrizozo Works, Inc. Board of Directors the following responsibilities with regard to the economic development plan for the Town of Carrizozo.
1. Reviewing and making recommendations to the governing body on applications for assistance for economic development projects and
 2. Reviewing and making recommendations to the governing body on applications for industrial revenue bonds (IRB'S).

- B. Carrizozo Works, Inc shall at all times provide for a Board of Directors position for the Town of Carrizozo, the Mayor shall appoint a member of the Board of Directors with the advice and consent of the Town Council.**

9.8.7 Application Requirements

- A. Any qualifying entity meeting the definition set forth in subsection 9.8.4 (B) may propose an economic development project to the town. Meeting the definition of a qualifying entity does not create any obligation on the part of the Town of Carrizozo.**
- B. Applications from qualifying entities shall be submitted to the Town of Carrizozo on forms provided by the Town.**
- C. Applications shall contain the following information for business applicants.**
 - 1. Identification Information:**
 - a. Complete name and address of entity**
 - b. Incorporation papers with by-laws**
 - c. List of Board of Directors and executive director, with addresses and resumes of all directors and officers**
 - d. resumes of all directors and officers**
 - 2. Evidence of financial solvency (personal statement of principals):**
 - a. Financial statement (income statement and balance sheets) for the past three years**
 - b. Federal tax number, New Mexico State Taxation and Revenue number and county business license**
 - c. Projected income statement for at least three years.**
 - 3. Evidence of organizational capacity:**
 - a. Brief history of the entity**
 - b. Organizational chart of the entity**
 - c. Business plans for the entity and proposed project (shall include pro-forma cash flow analysis)**
 - 4. The project participation agreement and any other pertinent information will be forwarded to the governing body for final consideration at a public meeting.**

9.8.8 Applicable Review Criteria

- A. Applications for economic development projects requesting economic assistance from the town, which meet the policies and objective of the town's economic development plan, shall receive priority. Examples include, but are not limited to:**
- 1. Manufacturing firms (including intellectual property such as computer software):**
 - 2. Projects, which enhance the exporting capacity of companies and/or provide goods and services, which currently have to be imported into Carrizozo**
 - 3. Private companies seeking to build, expand or relocate facilities**
 - 4. Private companies which provide facilities or services which enhance the ability of Carrizozo businesses to operate**
 - 5. Organizations, which assist business start-ups or bring small companies together to increase their competitive abilities. This must involve a tangible project, which will create jobs and promote an industry. Examples include, but are not limited to:**
 - a. Business incubators**
 - b. Art incubators or coalition (e.g. a performing arts coalition seeking construction rehearsal or performance facilities)**
 - c. Public markets for farmers, gardeners, crafts, etc.**
 - d. Organizations which foster economic development by promoting work force development efforts such as apprenticeships or other job training programs**
 - 6. Projects in industry clusters listed above are particularly encouraged, but others are eligible to apply as well. The intention is to retain flexibility in the use of incentives**
 - 7. Qualifying entities with existing contract ore projects with the town when this plan is adopted may propose a restructuring of their projects as an economic development project.**
- B. All applications for economic development projects requesting economic assistance from the town shall submit a cost benefit**

analysis. Preparing a cost benefit analysis shall be the responsibility of the applicant. The town retains the right to specify a format and methodology for the cost-benefit analysis. Carrizozo Works, Inc shall review and approve the methodology used. The source and rationale for any multiplier effects shall be identified. The cost-benefit analysis shall show that the town will recoup the value of its donation within a period of ten years. The analysis shall address the following:

- 1. The number and type of jobs to be created, both temporary construction jobs and permanent jobs (by New Mexico Department of Labor job category)**
- 2. Pay scale of jobs**
- 3. Determination of which jobs are expected to be filled locally and which will be filled by transfers from other facilities or recruited from outside the Carrizozo area**
- 4. Total payroll expected at start-up and after one year**
- 5. Anticipated impact on local tax base**
- 6. Anticipated impact on local school systems**

- C. All applicants for economic development projects requesting economic assistance from the town shall require the same review required of industrial revenue bond applications. This review shall focus an environmental and community impacts of proposed projects. Special attention shall be given to job training and career advancement programs and policies. Projects shall demonstrate a strong commitment to providing career opportunities for Carrizozo area residents. Cultural impacts of projects shall also be considered.**
- D. Any qualifying entity seeking assistance shall prepare and make available a job training and career development plan for their employees.**
- E. All applicants for economic development projects requesting economic assistance from the town shall clearly demonstrate the benefits, which will accrue to the community as a result of the donation of public resources. The town has considerable flexibility in determining what is considered as adequate benefits. Benefits such as providing components or production capabilities, which enhance a targeted industry cluster, or addressing critical deficiencies in regional economy may be recognized. The benefits claimed of any proposal will receive careful scrutiny. However, it is the intent of this ordinance to be flexible in the evaluation of these benefits,**

and to recognize the qualitative as well as quantitative impact of a proposal.

- F. All applicants for economic development projects requesting assistance from the town shall clearly demonstrate how the qualifying entity is making a substantive contribution. The contribution shall be of value and may be paid in money, in-kind services, jobs, expanded tax base, property or other thing or service of value for the expansion or improvement of the economy. The town retains flexibility in defining the “substantive contributions”. The benefits identified in the previous paragraphs may be accepted as adequate contributions on their own, or as cash donations may be required. Assistance in providing affordable housing to its employees or the community at large may also qualify. Determination of what constitutes an acceptable contribution for a given project shall be at the discretion of the governing body.

9.8.9 Public Safeguards

- A. All economic development projects receiving assistance from the town shall be subject to an annual performance review conducted by the Carrizozo Works, Inc. This review shall evaluate whether the project is attaining the goals and objectives set forth in the project participation agreement. This review shall be presented to the governing body for their consideration. The governing body at a public hearing may terminate assistance to the economic development project by provisions set forth in the agreement, which terminates the agreement and specifies the disposition of all assets and obligations of the project.
- B. The town shall retain a security interest, which shall be specific in the project participation agreement. The type security given shall depend upon the nature of economic development project and assistance provide by the town. Types of security may include, but are not limited to:
1. Letter of credit in the town’s name
 2. Performance bond equal to the town’s contribution
 3. A mortgage or lien on the property or equipment
 4. Pro-rated reimbursement of donation of company reduces work force or leaves the community before the term agreed to; and
 5. Other security agreeable to both parties
- C. Should a qualifying entity move, sell, lease or transfer a majority interest in the economic development project before the expiration of

the project participation agreement, the town retains the right to deny any and all assignments, sales, leases, or transfers of any interests in the economic development project until adequate assurances are made that the transferee, assignee or lessee. At its discretion, the town may choose to deny said assignment, lease or transfer or may negotiate a new agreement with the new operator, or the town may reclaim the facility and enter into an agreement with the new qualifying entity.

- D. Any qualifying entity seeking assistance from public resources shall commit to operate in accordance with its project participation agreement for a minimum of ten years from the date the ordinance is adopted and the governing body passes the project participation agreement.

9.8.10 Project Participation Agreement

- A. The qualifying entity shall prepare with the town a project participation agreement. This agreement is the formal document, which states the contribution and obligation of all parties in the economic development project. The agreement must state the following items:
1. The economic development goals of the project
 2. The contribution of the town and the qualifying entity
 3. The specific measurable objectives upon which the performance review will be read
 4. A schedule for project development and goal attainment
 5. The security being offered for the town's investment
 6. The procedures by which a project may be terminated and the town's investment recovered
 7. The time period for which the county shall retain an interest in the project. Each project agreement shall have a "sunset" clause after which the town shall relinquish interest in and oversight of the project.

9.8.11 Project Monies

All project monies shall be kept in a separate account by the entity and the town, with such account clearly identified. These accounts shall be subject to an annual independent audit.

9.8.12 Termination

The Governing Body may terminate this ordinance and the town's economic development plan and any or all project participation

agreements undertaken under its authority. Termination shall be by ordinance at a public hearing or in accordance with the terms of the project participation agreement. If an ordinance or a project participation agreement is terminated, all contract provisions of the project participation agreement regarding termination shall be satisfied. Upon termination of the ordinance or any project participation agreement, any town monies remaining in the town project accounts shall be transferred to the town's general fund.

9.8.13 Joint Regional Projects

The town may engage in economic development projects involving one or more other government entities for projects, which encompass more than one municipality or county. In such instances, the relevant governing bodies shall adopt a joint power agreement. This agreement will establish the application criteria and the terms of all project participation agreements. Criteria established under a joint powers agreement shall be consistent with the provisions of this ordinance.