

**RESOLUTION NO. 67-2020**

**A RESOLUTION OF THE CITY COUNCIL OF THE  
CITY OF PORTERVILLE SUBMITTING A MEASURE TO THE VOTERS AT THE  
GENERAL ELECTION OF NOVEMBER 3, 2020, TO ADOPT AN ORDINANCE TO  
AMEND AND RECODIFY CHAPTER 22, ARTICLE III OF THE CITY OF  
PORTERVILLE MUNICIPAL CODE TO INCREASE THE CITY'S TRANSIENT  
OCCUPANCY TAX (TOT) BY FOUR (4) PERCENTAGE POINTS**

**WHEREAS**, pursuant to Chapter 22, Article III, of the Porterville Municipal Code, the City currently levies a Transient Occupancy Tax; and

**WHEREAS**, the City Council desires to amend the Porterville Municipal Code to increase the transient occupancy tax (commonly called the "TOT" or "hotel tax") which is currently charged on persons who occupy hotel or motel rooms in the City for 30 days or less, by four (4) percentage points, from eight percent (8%) to twelve percent (12%), and to ensure equal treatment of traditional and online bookings; and

**WHEREAS**, a proposed Ordinance attached hereto and incorporated herein by reference as Attachment "A" ("the Ordinance") would implement the proposed revisions to the tax along with some formatting changes and minor updates; and

**WHEREAS**, by its Resolution No. 48-2020, adopted on June 16<sup>th</sup> 2020, the City Council called a General Municipal Election for November 3, 2020 ("Election"); and

**WHEREAS**, pursuant to Government Code Section 53724 and Election Code Section 9222, the City Council desires to submit the Ordinance to the voters of the City.

**NOW THEREFORE BE IT RESOLVED** by the City Council of the City of Porterville, as follows:

SECTION 1. Findings: The City Council finds and determines that each of the findings set forth above are true and correct.

SECTION 2. General Tax Election. The City Council proposes to impose the general tax set forth in the Ordinance and to present this proposal to the voters on November 3, 2020.

SECTION 3. Measure. Pursuant to Elections Code Section 9222, the City Council hereby submits the Ordinance to the voters at the Election and orders the following question to be submitted to the voters at the Election:

To provide funding that cannot be taken away by the State of California for general fund infrastructure and City services such as economic development, the promotion of tourism, and the Mighty 190 campaign, shall a City Ordinance be adopted to increase the hotel/motel tax by four percent, update language and confirm equal treatment of traditional and online bookings?	YES	
	NO	

This question requires the approval of a majority of those casting votes.

SECTION 4. Adoption of Measure. The measure to be submitted to the voters is attached to this Resolution as Attachment “A” and incorporated hereby by this reference.

SECTION 5. Notice of Election. Notice of the time and place of holding the election is hereby given, and the City Clerk is authorized, instructed and directed to give further or additional notice of election, in time, form and manner as required by law.

SECTION 6. Impartial Analysis. Pursuant to California Elections Code Section 9280, the City Council hereby directs the City Clerk to transmit a copy of the measure to the City Attorney. The City Attorney shall prepare an impartial analysis of the measure, not to exceed 500 words in length, showing the effect of the measure on the existing law and the operation of the measure, and transmit such impartial analysis to the City Clerk on or before August 7, 2020.

SECTION 7. Ballot Arguments. Pursuant to Elections Code Section 9286 et seq., August 7, 2020, at 5:00 p.m. shall be the deadline for submission of arguments in favor of, and arguments against, any local measures on the ballot. If more than one argument for and/or against is received, the priorities established by Elections Code Section 9287 shall control.

SECTION 8. Rebuttal Arguments. The provisions of Elections Code Section 9285 shall control the submission of any rebuttal arguments. The deadline for filing rebuttal arguments shall be August 17, 2020, at 5:00 p.m.

SECTION 9. Consolidation Request. The City Council of the City of Porterville requests that the governing body of any other political subdivision, or any officers otherwise authorized by law, to partially or completely consolidate such elections and the City Council consents to such consolidation. The Council requests the Board of Supervisors of Tulare County to include on the ballots and sample ballots, all qualified measures submitted by the City Council be ratified by the qualified electors of the City of Porterville. The Council acknowledges that the election will be held and conducted according to procedures in the Elections Code, including Section 10418.

SECTION 10. Request for County Services. Pursuant to Section 10002 of the California Elections Code, the Council of the City of Porterville hereby requests the Board of Supervisors of Tulare County to permit the Registrar of Voters to render services to the City of Porterville relating to the conduct of Porterville’s General Municipal Election and Special Elections which

are called to be held on Tuesday, November 3, 2020. The services shall be of the type normally performed by the Registrar of Voters in assisting the clerks of municipalities in the conduct of elections including, but not limited to, checking registrations, mailing ballots, hiring election officers and arranging for polling places, receiving absentee voter ballot applications, mailing and receiving absent voter ballots and opening and counting same, providing and distributing election supplies and furnishing voting machines.

SECTION 11. Transmittal of Resolution. The City Clerk is hereby directed to submit forthwith a certified copy of this resolution to the Tulare County Board of Supervisors and to the Registrar of Voters.


**PASSED, APPROVED AND ADOPTED** this 21<sup>st</sup> day of July, 2020.



Martha A. Flores, Mayor

ATTEST:

John D. Lollis, City Clerk

By:   
Fernando Gabriel-Moraga, Deputy City Clerk

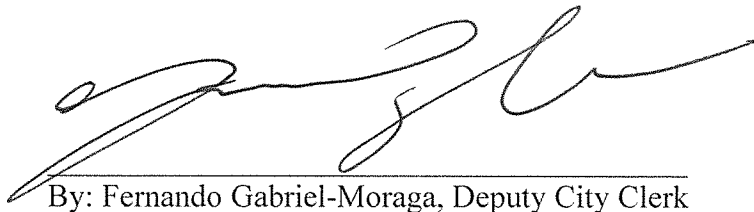
STATE OF CALIFORNIA    )  
CITY OF PORTERVILLE    )       SS  
COUNTY OF TULARE     )

I, JOHN D. LOLLIS, the duly appointed City Clerk of the City of Porterville do hereby certify and declare that the foregoing is a full, true and correct copy of the resolution passed and adopted by the Council of the City of Porterville at a meeting of the Porterville City Council duly called and held on the 21<sup>st</sup> day of July, 2020.

Said resolution was duly passed, approved, and adopted by the following vote:

Council:	PEÑALOZA	REYES	FLORES	STOWE	GURROLA
AYES:	X	X	X	X	X
NOES:					
ABSTAIN:					
ABSENT:					

JOHN D. LOLLIS, City Clerk



By: Fernando Gabriel-Moraga, Deputy City Clerk

ORDINANCE NO. 1876

AN ORDINANCE OF THE CITY COUNCIL OF THE  
CITY OF PORTERVILLE RESTATING, AMENDING AND RECODIFYING  
CHAPTER 22, ARTICLE III OF THE  
MUNICIPAL CODE OF THE CITY OF PORTERVILLE  
RELATED TO TRANSIENT OCCUPANCY TAX

THE PEOPLE of the City of Porterville do ordain as follows:

Section 1. PURPOSE. The provisions of this ordinance are necessary for the safety of the public and for the preservation of city services for the residents of the City of Porterville ("City"). By adopting Resolution No.67-2020, the City Council authorized placing this ordinance before the voters of the City of Porterville at an election to be held on November 3, 2020.

Section 2. CODE ADOPTION. Chapter 22, Article III, is hereby amended, restated and recodified as follows:

**22-10: TITLE**

This article shall be known as the *UNIFORM TRANSIENT OCCUPANCY TAX LAW OF THE CITY OF PORTERVILLE*.

**22-11: DEFINITIONS:**

Except where the context otherwise requires, the definitions given in this section govern the construction of this article:

**HOTEL:** Any structure, or any portion of any structure, which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes, and includes any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, mobile home or house trailer at a fixed location, or other similar structure or portion thereof.

**OCCUPANCY:** The use or possession, or the right to the use or possession of any room or rooms or portion thereof, in any hotel for dwelling, lodging or sleeping purposes.

**OPERATOR:** The person who is proprietor of the hotel, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other capacity. Where the operator performs his or her functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator for the purposes of this article and shall have the same duties and liabilities as his principal. Compliance with the provisions of this article by either the principal or the managing agent shall, however, be considered to be compliance by both.

PERSON: Any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.

RENT: The total consideration paid by a transient, for the occupancy of space in a hotel, whether or not received by the operator, including, without limitation, transaction service fees and any unrefunded advance reservation or other rental deposit. For purposes of this definition, rent shall be valued in money, whether it is received in money, goods, labor or otherwise, including all receipts, cash, credits and property and services of any kind or nature, without any deduction therefrom whatsoever.

RENTAL AGENT: Any person other than an operator who collects rent from a transient for the transient's occupancy of a hotel.

TAX ADMINISTRATOR: The administrative services director or designee of the city of Porterville.

TRANSIENT: Any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Any such person so occupying space in a hotel shall be deemed to be a transient until the period of thirty (30) days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy. In determining whether a person is a transient, uninterrupted periods of time extending both prior and subsequent to the effective date of this article may be considered.

## **22-12: TAX IMPOSED**

For the privilege of occupancy in any hotel, each transient is subject to and shall pay a tax in the amount of twelve percent (12%) of the rent paid by the transient. Said tax constitutes a debt owed by the transient to the city, which is extinguished only by payment to the operator or to the city or to a rental agent pursuant to Section 22-26. The transient shall pay the tax to the operator at the time the rent is paid. If the rent is paid in installments, a proportionate share of the tax shall be paid with each installment. Any unpaid tax shall be due upon the transient's ceasing to occupy space in the hotel. If for any reason the tax due is not paid to the operator, such tax shall be paid directly to the tax administrator.

## **22-13: EXEMPTIONS**

A. No tax shall be imposed upon:

1. Any person as to whom, or any occupancy as to which, it is beyond the power of the city to impose the tax herein provided;
2. Any officer or employee of a foreign government who is exempt by reason of express provision of federal law or international treaty;

3. Any federal or state of California officer or employee on official business who shall pay rent by warrant of check drawn on the treasury of the United States of the state of California or provides written evidence of such official business on a form approved in advance by the tax administrator. Copies of the documentation for each exemption claims must be submitted to the supervisor of revenue collections with each return made pursuant to Section 22-16.

B. No exemption shall be granted under this section except upon a claim therefor made at the time rent is collected and under penalty of perjury upon a form prescribed by the tax administrator. Additionally, a copy of such warrant or check and a copy of such claim form shall be submitted with each return made pursuant to Section 22-16.

#### **22-14: OPERATOR'S DUTIES**

Each operator shall collect the tax imposed by this article to the same extent and at the same time as the rent is collected from every transient. The amount of tax shall be separately stated from the amount of the rent charged, and each transient shall receive a receipt for payment from the operator. No operator of a hotel shall advertise or state in any manner, whether directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the operator, or that it will not be added to the rent, or that, if added, any part will be refunded except in the manner hereinafter provided.

#### **22-15: REGISTRATION**

Within thirty (30) days after commencing business, each new or unregistered operator of any hotel renting occupancy to transients shall register said hotel with the tax administrator and obtain from him a "transient occupancy registration certificate" to be at all times posted in a conspicuous place on the premises. Said registration shall be on a form provided by the tax administrator and shall require such information as the tax administrator deems necessary or convenient to the collection of the tax imposed by this article. The tax administrator may require updating of the registration or application information from time to time as he or she deems necessary or advisable. Registration under this section shall lapse with the certificate occupancy upon which it was issued.

The privilege of registration after the date of imposition of the tax provided in this article shall not relieve any person from the obligation of collection and payment of the tax on and after the date of imposition thereof, regardless of registration.

Said certificate shall certify as to the authority of registrant to collect tax from transients, and duplicates thereof for each additional place of business of such registrants shall also be issued. Such certificates shall be nonassignable and nontransferable and shall be surrendered immediately to the tax administrator upon the cessation of business at the location named or upon sale or transfer of the hotel. Said certificates shall contain the following information:

A. The name of the operator.

B. The address of the hotel.

C. The date upon which the certificate was issued.

D. The following statement:

*This transient occupancy registration certificate signifies that the person named on the face hereof has fulfilled the requirements of Chapter 22, Article III of the Porterville Municipal Code by registering with the tax administrator for the purpose of collecting from transients the transient occupancy tax and remitting said tax to the tax administrator. This certificate does not authorize any person to conduct any unlawful business or to conduct any lawful business in an unlawful manner, nor to operate a hotel without strictly complying with all local applicable laws, including, but not limited to, those requiring a permit from any board commission, department or office of this city. This certificate does not constitute a permit.*

E. That said certificate is nonassignable and nontransferable.

F. Such additional information as may be required by the tax administrator.

## **22-16: REPORTING AND REMITTING**

Each operator shall, on or before the last day of the month following the close of each calendar quarter, or at the close of any shorter reporting period which may be established by the tax administrator, make a return to the tax administrator, on forms provided by him or her, of the total rents charged to transients and the total rents paid by transients and the amount of tax collected for transient occupancies. If no tax was due or collected during the previous reporting period, the operator shall file a return so stating under penalty of perjury. At the time the return is filed, the full amount of the tax collected shall be remitted to the tax administrator. The tax administrator may establish shorter reporting periods for any certificate holder if he or she deems it necessary in order to ensure collection of the tax, and he or she may require further information in the return. Returns and payments are due immediately upon cessation of business for any reason. All taxes collected by operators pursuant to this article shall be held in trust for the account of the city until payment thereof is made to the tax administrator.

## **22-17: REMITTANCE BY MAIL**

If a remittance to cover a payment required by this article to be made to the tax administrator on or before a specified date is sent through the United States mail, properly addressed with postage prepaid, it shall be deemed to have been received by the tax administrator on the date shown by the post office cancellation mark stamped upon the envelope containing the remittance or on the date it was mailed if proof satisfactory to the tax administrator establishes that the mailing occurred on an earlier date. Nothing in this section shall be construed as constituting payment of any remittance required, unless such remittance is actually received by the tax administrator.

## **22-18: PENALTIES**

A. Original Delinquency: Any operator who fails to remit any tax imposed by this article within



the time required shall pay a penalty of ten percent (10%) of the amount of the tax in addition to the amount of the tax.

B. Continued Delinquency: Any operator who fails to remit any delinquent remittance on or before a period of thirty (30) days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of ten percent (10%) of the amount of the tax in addition to the amount of the tax and the ten percent (10%) penalty first imposed.

C. Fraud or Misrepresentation: If the tax administrator, in his or her judgment, determines that the nonpayment of any remittance due under this article is due to intentional conduct, misrepresentation, or fraud, a penalty of twenty five percent (25%) of the amount of the tax shall be added thereto in addition to the penalties stated in subsections (A) and (B) of this section.

D. Additional Penalty: In addition to the penalties imposed under subsections (A) and (B) of this section, any operator who fails to remit any tax imposed by this article shall pay interest at the rate of one-half of one percent (0.5%) per month or fraction thereof on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.

E. Penalties Merged with Tax: Every penalty imposed and such additional interest/penalties as accrue under the provisions of this section shall become a part of the tax herein required to be paid.

## **22-19: FAILURE TO COLLECT AND REPORT TAX; DETERMINATION OF TAX BY TAX ADMINISTRATOR**

If any operator fails or refuses to collect said tax and to make, within the time provided in this article, any report and remittance of said tax or any portion thereof required by this article, the tax administrator shall proceed in such manner as he or she may deem best to obtain facts and information on which to base his estimate of the tax due. As soon as the tax administrator shall procure such facts and information as he or she is able to obtain upon which to base the assessment of any tax imposed by this article and payable by any operator who has failed or refused to collect the same and to make such report and remittance, he or she shall proceed to determine and assess against such operator the tax, interest and penalties provided for by this article. In case such determination is made, the tax administrator shall give a notice of the amount so assessed by sending it personally or by depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at his last known place of address.

Such operator may within ten (10) days after the serving or mailing of such notice make application in writing to the tax administrator for a hearing on the amount assessed. If application by the operator for a hearing is not made within the time prescribed, the tax, interest, and penalties, if any, determined by the tax administrator shall become final and conclusive and immediately due and payable. If such application is made, the tax administrator shall give not less than five (5) days' written notice in the manner prescribed herein to the operator to show cause at a time and place fixed in said notice why said amount specified therein should not be fixed for such tax, interest and penalties. At such hearing, the operator may appear and offer evidence why such specified tax, interest, and penalties should not be so fixed. After such hearing the tax administrator shall determine the proper tax to be remitted and shall thereafter

give written notice to the person in the manner prescribed herein of such determination and the amount of such tax, interest, and penalties. The amount determined to be due shall be payable after fifteen (15) days unless an appeal is taken as provided in section 22-21 of this article.

## **22-20: DEFICIENCY DETERMINATIONS**

If the tax administrator is not satisfied with a return filed by an operator or the amount of the tax required to be paid to the city pursuant to a return, he or she may compute and determine the amount required to be paid upon the basis of the facts contained in the return or upon the basis of any information within his possession or that may come into his possession, one or more deficiency determination may be made of the amount due for any period. The tax administrator shall give to the operator written notice of his determination in the same manner as provided in section 22-19 of this article. The operator shall be entitled to apply for a hearing on the amount assessed to him pursuant to the procedure set forth in section 22-19 of this article and shall thereafter be entitled to appeal to the city council in accordance with the provisions of section 22-21 of this article. The penalties and interest provided by section 22-18 of this article shall be applicable to the amount of deficiency established pursuant to this section.

## **22-21: APPEAL**

Any operator aggrieved by any decision of the tax administrator with respect to the amount of such tax, interest and penalties, if any, may appeal to the city council by filing a notice of appeal with the city clerk within fifteen (15) days of the serving or mailing of the determination of tax due. The city council shall fix a time and place for hearing such appeal, and the city clerk shall give notice in writing to such operator at his last known place of address. The findings of the city council shall be final and conclusive and shall be served upon the appellant in the manner prescribed above for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice.

## **22-22: RECORDS**

It shall be the duty of every operator liable for the collection and payment to the city of any tax imposed by this article to keep and preserve, for a period of three (3) years, all records as may be necessary to determine the amount of such tax as he may have been liable for the collection of and payment to the city, which records the tax administrator shall have the right to inspect at all reasonable times.

## **22-23: REFUNDS**

- A. Claim Required. Prior to seeking judicial relief with respect to a dispute regarding the amount of any tax, penalty, or interest collected or received by the city under this article, an aggrieved taxpayer, fee payer, operator, transient or any other person must comply with the provisions of Section 1-19 of this code.
- B. Operators. An operator may claim as an overpayment any tax previously paid which was calculated on the basis of taxable consideration written off by the operator as a bad debt in accordance with generally accepted accounting principles and claimed as a deduction on a

federal income tax return in accordance with provisions of the Internal Revenue Code, and regulations issued pursuant thereto. The bad debt claim may be taken as an adjustment to future taxes due the city after the operator's procedure and forms for adjustment of bad debt have been reviewed and approved by the tax administrator.

- C. Transients. A transient may only request a refund of taxes under this article when the transients, having paid the tax to the operator, establishes that the transient has been unable to obtain a refund from the operator who collected the tax.

## **22-24: ACTIONS TO COLLECT**

Any tax required to be paid by any transient under the provisions of this article shall be deemed a debt owned by the transient to the city. Any such tax collected by an operator which has not been paid to the city shall be deemed a debt owned by the operator to the city. Any person owing money to the city under the provisions of this article shall be liable to an action brought in the name of the city of Porterville for the recovery of such amount.

## **22-25: VIOLATIONS; MISDEMEANOR**

Any operator or other person violating any of the provisions of this article or who fails or refuses to register as required herein, or to furnish any returns or other data required by the supervisor or revenue collections, or who renders a false or fraudulent return or claim, is guilty of a misdemeanor and is punishable as provided in this Code.

## **22-26: THIRD PARTY RENTAL TRANSACTIONS**

A. Any transient who pays rent to a rental agent instead of to an operator shall, at the time the rent is paid, pay the tax to the rental agent in the manner required by section 22-12. If for any reason the tax is not paid to the rental agent, it shall be paid to the operator before the transient has ceased occupancy in the hotel or paid directly to the supervisor of revenue collections pursuant to section 22-12. Any transient seeking a refund under section 22-23 of taxes paid to a rental agent must establish that the transient has been unable to obtain a refund from the rental agent who collected the tax.

B. Any rental agent who collects rent shall comply with all obligations of the operator set forth in sections 22-14 and 22-22 of this chapter. The rental agent shall remit all collected taxes to the operator before the deadline for the operator to remit the taxes to the supervisor of revenue collections under section 22-16, and the rental agent shall provide the operator with copies of all records required to be maintained by the operator pursuant to section 22-22 of this chapter, including records necessary for the operator to comply with its obligations under this chapter.

C. If the tax administrator determines that a rental agent has failed to collect, remit, or report any tax, the administrator may take any action against the rental agent that he or she may take against an operator under sections 22-18 and 22-19 of this article subject to the requirements of those sections. If the administrator assesses unremitted taxes and penalties against the rental agent, the rental agent shall be subject to the provisions of sections 22-19, 22-21, 22-23, and 22-24 of this chapter as if it were an operator. Nothing in this section shall prohibit the administrator from

assessing the full amount of any unremitted taxes and penalties solely against the operator in lieu of assessing some or all of those taxes and penalties against the rental agent.

## **22-27: AMENDMENT OR REPEAL**

A. As provided in California Elections Code Section 9217, this Chapter may be repealed or amended by Ordinance of the Porterville City Council without a vote of the People except that, as required by Article XIIC of the California Constitution, voter approval is required for any amendment that would increase the rate of any tax levied pursuant to this Chapter above the maximum rates established by this Chapter.

B. The people of the City of Porterville additionally affirm that the following actions shall not constitute an increase of the rate of a tax:

1. The restoration of the rate of the tax to a rate that is no higher than that set by this Chapter, if the City Council has acted to reduce the rate of the tax;
2. An action that interprets or clarifies the methodology of the tax, or any definition applicable to the tax, so long as interpretation or clarification ( even if contrary to some prior interpretation or clarification) is not inconsistent with the language of this Chapter; or
3. The collection of the tax imposed by this Chapter, even if the City had, for some period of time, failed to collect the tax; or
4. The establishment of a class of Persons that is exempt or excepted from the tax or the discontinuation of any such exemption or exception ( other than the discontinuation of an exemption or exception specifically set forth in this Chapter); or
5. The City Council's adoption of an Ordinance, as authorized by this Article, to raise the tax rate provided that the rate is not increased to a rate higher than the maximums established herein.

Section 3. EFFECTIVE DATE. Pursuant to Elections Code § 9217, this ordinance shall be deemed adopted on the date when the final vote is declared by the City Council and this ordinance shall go into effect ten (10) days after that date, contingent upon approval by a majority of the voters voting on the measure in the November 3, 2020 election.

THE FOREGOING ORDINANCE was approved by the City Council of the City of Porterville, State of California, on July 21<sup>st</sup>, 2020 at a regular meeting of said Council duly and regularly convened on said day by the following vote:

AYES:	FLORES, REYES, STOWE, PENELOZA, GURROLA
NOES:	NONE
ABSTAIN:	NONE
ABSENT:	NONE