

RESOLUTION NO. 22-46

by _____ DEPUTY

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF Kerman APPROVING AN ORDINANCE FOR SUBMITTAL TO THE VOTERS OF THE CITY ESTABLISHING A TRANSIENT OCCUPANCY TAX; CALLING AND GIVING NOTICE OF A SPECIAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 8, 2022; REQUESTING THE FRESNO COUNTY CLERK/ELECTIONS OFFICIAL TO CONDUCT THAT ELECTION; REQUESTING THE CONSOLIDATION OF THAT ELECTION WITH THE STATEWIDE GENERAL ELECTION AND CITY SPECIAL MUNICIPAL ELECTION HELD ON THAT DATE; AND AUTHORIZING CITY CLERK TO CARRY OUT ALL THE NECESSARY PROCEDURES

WHEREAS, cities and counties in California may impose a "Transient Occupancy Tax" on persons staying 30 days or less in hotels, motels, and similar lodgings (collectively "hotels"); and

WHEREAS, this type of tax is not a property tax or a tax on Kerman residents who are not hotel guests; and

WHEREAS, only hotel guests pay the tax and hotels have a duty to collect the tax and remit the monies to the City; and

WHEREAS, additional locally-controlled funding is necessary to maintain current levels of City services; and

WHEREAS, all money raised by this proposed tax will be used for and by the City of Kerman; and

WHEREAS, the City Council proposes the adoption of an ordinance to establish a Transient Occupancy Tax as a general tax; and

WHEREAS, a survey has been taken of local Central California cities and counties who currently have a TOT and the recommended amount for Kerman is 10% of the cost of the room; and

WHEREAS, the City Council desires to submit to the voters at the November 8, 2022, Consolidated Election (Statewide Election and Special Municipal Election) such proposed ordinance establishing a Transient and Occupancy Tax; and

WHEREAS, the City Council is authorized and directed by statute to submit the proposed ordinance to the voters.

NOW THEREFORE, the City Council of the City of Kerman, California does resolve, declare, determine, and order as follows:

Section 1. Recitals. The foregoing recitals are true and correct and are incorporated by reference.

Section 2. Call for Election. Pursuant to Elections Code Section 9222, the City Council hereby calls a special election for Tuesday, November 8, 2022, (the "Election") at which time it will submit to the voters of the City the Transient Occupancy Tax Ordinance ("Ordinance") a measure that if approved would establish an 10% tax on hotel guests in the City of Kerman.

Section 3. Ballot Language. The question to be submitted to the voters with respect to the ballot measure shall be printed on the election ballot with the title and in the form set forth as follows:

MEASURE __. Kerman Hotel Tax (Transient Occupancy Tax) Shall the measure establishing a ten percent (10%) tax and paid by short-term hotel/motel/inn guests only (not by City residents) for maintaining essential City services such as keeping neighborhoods, parks, streets, public areas safe/clean; addressing homelessness, public safety, and other general city services, and generating approximately \$40,000.00 annually until ended by voters, with public disclosure and all funds for Kerman only be adopted?	YES
	NO

Section 4. Synopsis of Measure. The following constitutes the synopsis of the measure to be voted on for purposes of meeting the publication requirements of Elections Code Section 12111:

MEASURE TO BE VOTED ON

Notice is hereby given that the following measure is to be voted on at the special municipal election to be held in the City of Kerman Tuesday, November 8, 2022.

ORDINANCE TO ADD CHAPTER 5.50 TO TITLE 5 OF THE CITY OF KERMAM MUNICIPAL CODE ESTABLISHING A TRANSIENT OCCUPANCY TAX

The proposed ordinance would establish a Transient Occupancy Tax ("Hotel Tax") to be paid by short-term hotel/motel/inn guest only. It would not be paid by City residents. The purpose of the tax is to maintain essential City services such as keeping neighborhoods, parks, streets, public areas safe and clean; to address homelessness, public safety, and other general City services. It is anticipated the tax will generate \$40,000.00 annually. The tax would continue until ended by City of Kerman voters.

Section 5. Proposed Ordinance. The text of the ordinance to be submitted to the voters is attached as Exhibit 'A' and incorporated herein by reference. The City Council has approved the proposed Transient Occupancy Tax Ordinance in the form thereof.

Section 5. Majority Vote Required. The vote requirement for the measure to pass is a majority (50% plus 1) of the votes cast.

Section 6. Notice of Measure. In accordance with Elections Code Section 12111 and Government Code 6016 of the Government Code, the City Clerk is hereby directed to cause notice of the measure to be published. The City Clerk may request that the Fresno County Clerk/Elections Department prepare and publish the required notice.

Section 7. Request to Consolidate and Conduct Election and Canvass Returns. The City Council requests the Election be consolidated with any and all elections also called to be held on November 8, 2022, ballot insofar as said elections are to be held in the same territory or in territory that is in part the same as the territory of the City of Kerman and requests the Board of Supervisors of the County of Fresno to order such consolidation under Elections Code Section 10401 and 10403. The City Council requests the Fresno County Clerk/Elections Official conduct the election and canvass the returns, and the City consents to reimburse that office for all costs incurred for said services. The ballots to be used at the election shall be in form and content as required by law. In all particulars not recited in this Resolution, the Election shall be held and conducted in accordance with laws regulating municipal and statewide elections.

Section 8. Submission of Ballot Arguments and Impartial Analysis.

- A. The Fresno County Clerk/Elections Office is directed to set the deadlines, in accordance with statute, for the submission of ballot arguments (Elections Code §§ 9282, 9286) and rebuttals (§ 9285).
- B. Direct arguments shall not exceed three hundred (300) words and shall be signed by not more than five (5) persons.
- C. Rebuttal arguments shall not exceed two hundred fifty (250) words and shall be signed by not more than five (5) persons; those persons may be different persons than the persons who signed the direct arguments.
- D. The City Attorney is directed to prepare the Impartial Analysis in accordance with statute (Elections Code § 9280).
- E. Arguments for and against said measure may be filed in accordance with applicable provision of the law. The Council does not authorize the Council as a body or any individual member of the Council to file a written argument or any rebuttal argument for or against the measure. The City Clerk shall consider other arguments and rebuttal arguments filed by bona fide associations or individual residents who are eligible to vote in accordance with Elections Code Sections 9282, 9285, and 9287.
- F. Pursuant to California Elections Code Section 9285, when the Fresno County Clerk/Elections Office has selected the arguments for and against the measure, which will be printed and distributed to the voters, they shall send copies of the argument in favor of the measure to the authors of the argument against it, and copies of the argument against it to the authors of the argument in favor. Rebuttal arguments shall be printed in the same manner as the direct arguments. Each rebuttal argument shall immediately follow the direct argument that it seeks to rebut.
- G. The provisions of Elections Code Section 9285(a) are hereby adopted.

Section 9. Services of City Clerk. The City Clerk is directed to file a certified copy of this resolution with the Fresno County Clerk/Elections Department. A copy of the proposed Ordinance shall be made available to any voter on request. The City Clerk may make clerical corrections to this resolution and may also with approval of the City Attorney make technical corrections that are non-material as requested by the Fresno County Clerk/Elections Office.

Section 10. Effective Date. This resolution shall be effective upon adoption.

The foregoing resolution was introduced at a regular meeting held on the 22nd day of June 2022 and passed at said meeting by the following vote:

AYES: Nehring, Coleman, Herrera, Nijjer, Yep
NOES: None
ABSENT: None
ABSTAIN: None

The foregoing resolution is hereby approved.

Gary Yep
Mayor

ATTEST:

Marci Reyes
City Clerk

Attachments:

A. Exhibit A – An Ordinance of the City of Kerman to add Chapter 5.50 To Title 5 of the City of Kerman Municipal Code Establishing a Transient Occupancy Tax

Exhibit 'A'

ORDINANCE NO. 22-___

**AN ORDINANCE OF THE CITY OF KERMAN
TO ADD CHAPTER 5.50 TO TITLE 5 OF THE CITY OF KERMAN MUNICIPAL CODE
ESTABLISHING A TRANSIENT OCCUPANCY TAX**

THE PEOPLE OF THE CITY OF KERMAN DO ORDAIN as follows:

SECTION 1. Chapter 5.50 is hereby added to Title 5 of the City of Kerman Municipal Code to read as follows:

Chapter 5.50 Transient Occupancy Tax

Section 5.50.010	Title and Authority.
Section 5.50.020	Purpose
Section 5.50.030	Definitions
Section 5.50.040	Tax Imposed
Section 5.50.050	Exemptions
Section 5.50.060	Operator's Duties
Section 5.50.070	Registration
Section 5.50.080	Reporting, Remitting
Section 5.50.090	Penalties and Interest
Section 5.50.100	Failure to Collect and Report Tax. Determination of Tax by Finance Director
Section 5.50.110	Liability of Successor for Failure to Withhold – Notice of Amount Due
Section 5.50.120	Duty of Successor of Operator
Section 5.50.130	Appeal
Section 5.50.140	Records
Section 5.50.150	Refunds
Section 5.50.160	Actions to Collect
Section 5.50.170	Violation – Penalty
Section 5.50.180	Severability and Amendment

Section 5.50.010. Title and Authority. This chapter shall be known as the “Transient Occupancy Tax Ordinance and is adopted pursuant to the authority contained in Revenue and Taxation Code Sections 7280 *et seq.* If there is any conflict between this chapter and state law, state law shall prevail.

Section 5.50.020. Purpose. The purpose of the Transient Occupancy Tax Ordinance is to levy a tax on the privilege of occupying a room or rooms in a hotel, inn, tourist home or house, motel or other lodging for less than thirty (30) days except as provided in this chapter.

Section 5.50.030. Definitions. Except where the context otherwise requires, the Definitions given in this Section govern the construction of this chapter:

A. *Director of Finance* means the Director of Finance for the City of Kerman or his or her designee.

B. *Person* means 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.

C. *Guest of Owner* means a person who does either of the following:

i. Occupies real property accompanied by the owner of either of the following: a time-share estate in real property or a camping site in a campground pursuant to a right or license under a membership camping contract.

ii. Exercises that owner's right of occupancy without payment of any compensation to owner.

D. *Hotel* means a room or rooms, or other living space, in a hotel, inn, tourist home or house, motel, or other lodging. The term "other lodging" includes space at a recreational vehicle park or other recreational vehicle site but does not include the following:

- i. Any facilities operated by a state or local government entity.
- ii. Any lodging excluded by Subsection B of Section 5.50.030.

E. *Occupancy* means 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.

F. *Operator* means the person who is the proprietor of the hotel, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee or any other capacity. Where the operator performs functions through an employee, the managing agent shall also be deemed an operator for the purposes of this chapter and shall have the same duties and liabilities as the principal. Compliance with this chapter by either the principal or the managing agent, however, shall be considered compliance by both.

G. *Rent* means the consideration charged, whether or not received, for the occupancy of space in a hotel, valued in money, whether to be 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.

H. *Transient* means 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 days or less, counting portions of calendar days as full days. In determining whether a person is a transient, uninterrupted periods of time extending both prior and subsequent to the effective date of this chapter may be considered.

5.50.040. Tax Imposed. For the privilege of occupancy in a hotel in the City of Kerman, unless the occupancy is for a period of more than thirty (30) days, each transient is subject to and shall pay a tax in the amount of eight percent (8%) of the rent charged by the operator. 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. The transient shall pay the tax to the operator of the hotel 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. The unpaid tax shall be due upon the transient ceasing to occupy space in the hotel. If for any reason the tax due is not paid to the operator of the hotel, the Finance Director may require that such tax shall be paid directly to the City Finance Department.

5.50.050. Exemptions. No tax shall be imposed upon: a) 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; b) any officer or employee of the federal or state government when on official business; or c) any officer or employee of a foreign government who is exempt by reason of express provision of federal law or international treaty.

No exemption shall be granted except upon a claim therefore made at the time rent is collected and under penalty of perjury upon a form prescribed by the Finance Director. The transient shall be required to provide the necessary proof of exemption. Governments and governmental agencies are generally not exempt from taxation. A copy of eligible exemption claims shall be submitted monthly at the same time as the required tax return reporting.

5.50.060 Operator's Duties. Each operator shall collect the tax imposed by this chapter 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 of 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.

5.50.070. Registration. Within thirty (30) days after commencing business, each Operator of any hotel as defined in this chapter renting occupancy to transients shall register said hotel with the Finance Director and obtain a "transient occupancy" registration certificate" to be at all times posted in a conspicuous place on the premises.

5.50.080. Reporting, Remitting. On or before the tenth (10th) day of each calendar month, each operator shall make a return to the City declaring the total rents charged and received and the amount of tax collected for transient occupancies for the month next proceeding the previous month. At the time the return is filed, the full amount of the tax collected shall be remitted to the City. The Finance Director may establish shorter reporting periods for any certificate holder if deemed necessary in order to insure collection of the tax which 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 chapter shall be held in trust for the account of the City until payment thereof is made.

5.50.090. Penalties and Interest.

A. Original delinquency. Any operator who fails to remit any tax imposed by this chapter 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. Any tax required to be paid by any transient under the provisions of this chapter shall be deemed a debt owed 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 owed by the operator to the City. Any person owing money to the City under the provisions of this chapter shall be liable to an action brought in the name of the City for the recovery of such amount.

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. If the Finance Director determines that the nonpayment of remittance due under this chapter is due to 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. Interest. In addition to the penalties imposed, any operator who fails to remit any tax imposed by this Article shall pay interest at the rate of one percent (1%) per month or fraction thereof on the amount of the tax from the date on which the remittance first became delinquent until paid.

E. Penalties, Interest merged with tax. Every penalty imposed and such interest as accrues under the provisions of this section shall become a part of the tax herein required to be paid.

5.50.100. Failure to Collect and Report Tax; Determination of Tax by Finance Director.

A. Assessment. If any operator shall fail or refuse to collect said tax and to make, within the time provided in this chapter, any report and remittance of said tax or any portion thereof required by this chapter, the Finance Director shall proceed in such manner deemed best to obtain facts and information on which to base the estimate of the tax due. As soon as the Finance Director shall procure such facts and information on which to base the assessment of any tax imposed by this chapter and payable by any operator who has failed or refused to collect the same and make such report and remittances, the Finance Director shall proceed to determine and assess against such operator the tax, interest and penalties provided by this chapter.

B. Notice of Assessment; hearing; determination of tax. The Finance Director shall give a notice of the amount so assessed by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the

operator so assessed at the last known address. Such operator may within ten (10) days after the serving of mailing of such notice make application in writing to the Finance Director for a hearing on the amount assessed. If application by the operator for the hearing is not made within the time prescribed, the tax, interest and penalties, if any, determined by the Finance Director shall be final and conclusive and immediately due and payable. If such application is made, the Finance Director 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 Finance Director 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 within fifteen (15) days unless an appeal is taken as provided in Section 5.50.130.

5.50.110. Liability of Successor for Failure to Withhold – Notice of Amount Due. If the successor to the business fails to withhold a portion of the purchase price for payment of the tax owing as of the close of escrow for the transfer of ownership of any hotel, said successor shall be liable to the City for the payment of the amount owing at the close of escrow. Within thirty (3) days after receiving written request from the successor for a tax clearance certificate stating that no tax or penalty is due, the Finance Director shall either issue the certificate or mail notice to the successor at its address as it appears on the records of the Finance Director of the estimated amount of the tax and penalty that must be paid as a condition of issuing the certificate.

5.50.120. Duty of successor of Operator. If an operator who is liable for any tax or penalties under this Chapter sells or otherwise disposes of his/her business, his/her successor shall notify the Finance Director of the date of the sale at least thirty (30) days before the date of sale, or if the decision to sell was made less than thirty (30) days prior to the actual sale, then immediately and shall withhold a sufficient portion of the purchase price to equal the amount of such tax or penalty until the selling operator produces a receipt from the collector showing that the tax or penalty has been paid or a tax clearance certificate from the Finance Director stating that no tax or penalty is due. If the seller does not present a receipt or tax clearance certificate within thirty (30) days after such successor commences to conduct business, the successor shall deposit the withheld amount with the Finance Director pending settlement of the account of the seller.

5.50.130. Appeal. Any operator aggrieved by any decision of the Finance Director 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 Finance Director within fifteen (15) days of the serving or mailing of the determination of tax due. The Council shall fix a time and place for hearing such appeal and the City Clerk shall give notice in writing to such operator at the last known place of address. The findings of the 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.

5.50.140. Records. It shall be the duty of every operator liable for the collection and payment to the City of any tax imposed by this chapter 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 the operator may have been liable for the collection of said payment to the City, which records the Collector shall have the right to inspect at all reasonable times.

5.50.150. Refunds.

A. Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once or has been erroneously or illegally collected or received by the City under this Chapter it may be refunded as provided in Subsections (b) and (c) of this Section provided a claim in writing therefore, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the City Clerk within three (3) years of the date of payment. The claim shall be on forms furnished by the City Clerk.

B. An operator may claim a refund or take as credit against taxes collected and remitted the amount overpaid, paid more than once, or erroneously or illegally collected or received when it is established in a manner prescribed by the Finance Director that the person from whom the tax has been collected was not a transient, provided, however, that neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the transient or credited to rent subsequently payable by the transient to the operator.

C. A transient may obtain a refund of taxes overpaid or paid more than once or erroneously or illegally collected or received by the City by filing a claim in the manner provided in Subsection A of this Section, but only when the tax was paid by the transient directly to the City or when the transient having paid the tax to the operator, established to the satisfaction of the Finance Director that the transient has been unable to obtain a refund from the operator who collected the tax.

D. No refund shall be paid under the provisions of this Section unless the claimant establishes his or her right thereto by written records showing entitlement.

5.50.160 Actions to Collect. Any tax required to be paid by any transient under the provisions of this Chapter shall be deemed a debt owed 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 owed by the operator to the City. Any person owing money to the City under the provisions of this chapter shall be liable to an action brought in the name of the City of Kerman for the recovery of such amount.

5.50.170 Violation – Penalty. Any person violating any of the provisions of this Chapter shall be guilty of a misdemeanor. Any operator or other person who fails or refuses to register as required herein, or to furnish any return required to be made, or who fails to refuse to furnish a supplemental return or other data required by the Finance Director, or who renders a false or fraudulent return or claim, is guilty of a misdemeanor. Any person required to make, render, sign or verify any report or claim who makes any false or fraudulent report or claim with intent to defeat or evade the determination of any amount due required by this chapter to be made, is guilty of a misdemeanor.

5.50.180. Severability and Amendment. If any section, sub-section, subdivision, paragraph, clause or phrase in this ordinance, or any part thereof, is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections or portions of this ordinance or any part thereof. The City Council hereby declares that it would have passed each section, sub-section, subdivision, paragraph, sentence, clause or phrase of this ordinance irrespective of the fact that any one or more sections, sub-sections, subdivisions, paragraphs, sentences, clauses or phrases may be declared invalid or unconstitutional.

The City Council shall have the power to amend any provision of this Chapter by vote of four fifths of its members, excepting that an amendment increasing the rate of the tax or expanding the class of those subject to the tax shall require the approval of a majority of the electorate.

SECTION 2. Compliance with the California Environmental Quality Act. The approval of this ordinance is exempt from the California Environmental Quality Act (Public Resources Code Sections 21000 *et seq.*, “CEQA,” and 14 Cal. Code Reg. Sections 15000 *et. seq.*, “CEQA Guidelines”). This ordinance imposes a special tax that can be used only for any legitimate governmental purpose as specified in the ordinance. It is not a commitment to any specific project that may result in a potentially significant physical impact on the environment.

SECTION 3. Majority Vote Approval. The tax imposed by this ordinance is a general tax. This tax shall be effective only if approved by 50% plus 1 of the City’s voters voting thereon at the November 8, 2022, City election.

SECTION 4. Effective Date. This ordinance shall be considered adopted upon the date that the City Council declares that a majority of the voters voting at the special election in November 8, 2022, has voted in favor of the measure adopting this ordinance and shall go into effect 10 days after said date pursuant to Section 9217 of the Elections Code, except that the tax imposed by this chapter shall become operative and be imposed on and after January 1, 2023.

SECTION 5. Certification and Publication. The City Clerk shall certify the final approval of this Ordinance by the voters.

[Certification to be Added Only Upon Approval of Voters: This Ordinance was approved and adopted by the People of the City of Kerman at the City’s November 8, 2022 statewide election.

This Ordinance was approved by Declaration of the vote by the City Council of the City of Kerman on _____.

Attest:

Marci Reyes
City Clerk