

ORDINANCE NO. 526

AN ORDINANCE OF THE CITY OF NEWARK AMENDING  
CHAPTER 3.18 OF THE NEWARK MUNICIPAL CODE  
RELATING TO THE UTILITY USERS TAX

WHEREAS, the City of Newark (the “City”) is authorized to levy a Utility Users Tax (“UUT”); and

WHEREAS, Chapter 3.18 of the Newark Municipal Code establishes a UUT of three and one quarter percent (3.25%) within the City; and

WHEREAS, the UUT is paid by recipients of telecommunications, video, electric and gas utility services, collected by the utilities as part of regular billing, and remitted to the City; and

WHEREAS, the UUT will automatically expire on December 31, 2020; and

WHEREAS, the UUT raises approximately two million seven hundred fifty thousand dollars (\$2,750,000) annually of the City’s General Fund Budget; and

WHEREAS, the City wishes to maintain vital services for thousands of Newark citizens every year; and

WHEREAS, extending voter-approved locally controlled funding with no increase in tax rate will maintain public safety, pothole repair and street maintenance, crime prevention, parks and recreation programs and other city services with funding that cannot be taken by the State; and

WHEREAS, the public has indicated that maintaining 911 emergency response times and fire protection is a top priority; and

WHEREAS, continuing this local funding will help keep community police officers on the streets to maintain successful crime fighting efforts that keep Newark residents safe; and

WHEREAS, the City wishes to prevent severe cuts to critical resident services in these challenging times; and

WHEREAS, voter-approved, locally controlled funding has helped maintain the City’s emergency reserves and fiscal stability; and

WHEREAS, by law, all funds from an extension of existing, voter-approved local funding must continue to stay in Newark to maintain local services – no funds can be taken by Sacramento or the federal government; and

WHEREAS, all funds will continue to be subject to mandatory financial audits, and yearly reports to the community to ensure funds are spent as promised; and

WHEREAS, Newark voters first approved the UUT in November 2010 and extended the UUT in November 2014; and

WHEREAS, the People of the City of Newark desire to extend the term of the UUT, without a rate increase, for an addition nine (9) year period.

**NOW, THEREFORE**, the People of the City of Newark do ordain as follows:

**Section 1. Recitals.**

The above recitals are true and correct and made a part of this Ordinance.

**Section 2. Municipal Code Amendment.**

Section 3.18.240, "Termination of utility users tax" of the Newark Municipal Code is hereby amended to read as follows (deletions in ~~strike through~~; additions in *italics*):

3.18.240 - Termination of utility users tax.

The levy of taxes as provided in this chapter shall expire on *December 31, 2029* ~~December 31, 2020~~, unless reenacted by a separate ordinance approved by a vote of the People of the City of Newark conducted pursuant to law. The termination of the levy of taxes as provided herein shall not terminate the obligation to pay taxes levied on services used prior to such date. Taxes levied prior to *December 31, 2029* ~~December 31, 2020~~, shall remain a debt payable to the city. All provisions of this chapter except those relating to the levy of taxes shall continue in full force and effect after such date.

**Section 3. Severability.**

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the Ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Ordinance are severable. The People of the City of Newark hereby declare that they would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

**Section 4. Amendment or Repeal.**

Chapter 3.18 of title 3 of the Newark Municipal Code may be repealed or amended by the City Council without a vote of the People. However, as required by Article XIII C of the California Constitution, voter approval is required for any amendment provision that would increase the rate of any tax levied pursuant to this Ordinance. The People of the City of Newark affirm that the following actions shall not constitute an increase of the rate of a tax:

- A. The restoration of the rate of the tax to a rate that is no higher than that set by this Ordinance if the City Council has acted to reduce the rate of the tax;
- B. 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 Ordinance;
- C. The establishment of a class of person 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 Ordinance; and,
- D. The collection of the tax imposed by this Ordinance, even if the City had for some period of time failed to collect the tax.

**Section 5. Codification.** Upon adoption of this Ordinance pursuant to the voter approval referenced above, the City Clerk, in consultation with the City Attorney, is hereby authorized and directed to codify this Ordinance in the Newark Municipal Code.

**Section 6. Publication and Effective Date.**

Within fifteen (15) days from and after adoption, this Ordinance shall be published once in the Tri-City Voice, a newspaper of general circulation printed and published in Alameda County and circulated in the City of Newark, in accordance with California Government Code Section 36933. If this Ordinance is approved by a majority of the voters voting on the issue at the November 3, 2020 election, pursuant to Elections Code Section 9217, this Ordinance shall become effective ten (10) days after the Council declares the results of the election.

The foregoing ordinance was approved by the following vote of the People of the City of Newark at the November 3, 2020:

YESSES: 13419

NOES: 5277

The foregoing ordinance was adopted by the City Council of the City of Newark on December 10, 2020 by its Declaration of the vote at the November 3, 2020 election:

AYES: Council Members Bucci, Hannon, Collazo, Vice Mayor Freitas, Mayor Nagy

NOES: None


ABSENT: None

ABSTAIN: None

The Mayor is hereby authorized to attest to the adoption of the Ordinance by the voters of the City by signing where indicated below.

ATTEST:

  
s/SHEILA HARRINGTON  
City Clerk

  
s/ALAN L. NAGY  
Mayor

APPROVED AS TO FORM:

  
s/KRISTOPHER KOKOTAYLO  
Interim City Attorney