

**HERCULES CITY COUNCIL
RESOLUTION NO. 22-061**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HERCULES CALLING AND GIVING NOTICE OF THE HOLDING OF AN ELECTION ON NOVEMBER 8, 2022, FOR VOTER CONSIDERATION OF A BALLOT MEASURE TO AMEND TITLE 8, CHAPTER 8 OF THE HERCULES MUNICIPAL CODE TO EXTEND THE UTILITY USERS TAX AT THE CURRENT RATE UNTIL ENDED BY THE VOTERS OR REPEALED BY THE CITY COUNCIL; ORDERING THE SUBMITTAL OF THE ORDINANCE TO THE VOTERS AT THE ELECTION; REQUESTING THAT THE CONTRA COSTA COUNTY BOARD OF SUPERVISORS CONSENT TO THE CONSOLIDATION OF THIS ELECTION WITH THE STATEWIDE GENERAL ELECTION TO BE HELD ON THE SAME DATE; DIRECTING THE REGISTRAR OF VOTERS TO CONDUCT THE ELECTION; AND PROVIDING FOR SUBMITTAL OF BALLOT ARGUMENTS AND REBUTTALS AND AUTHORIZING THE FILING OF AN IMPARTIAL ANALYSIS

WHEREAS, in 2004, the City of Hercules established a Utility Users Tax (UUT); 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 terminate on January 1, 2025, unless re-enacted by a majority vote of Hercules voters; and

WHEREAS, In 2013 and 2015, Hercules voters enacted Measure A (70.96% passage rate) and Measure C (72.52% passage rate) to update and extend the UUT, ensuring the City's long-term fiscal sustainability and protecting core services residents rely on; and

WHEREAS, Hercules is a place where people desire to live and raise families and extending the existing, voter-approved UUT will maintain essential City services that make Hercules a safe, well-maintained place to live; and

WHEREAS, maintaining neighborhood police patrols and 9-1-1 response times at a time when other parts of the Bay Area are struggling with rising crime has been consistently identified as a top priority for Hercules residents; and

WHEREAS, if the UUT is not renewed, the City will lose approximately \$3.6 million annually, which is over 20% of the City's budget; and

WHEREAS, loss of the UUT would give the City no choice but to reduce basic city services just to balance its budget, jeopardizing police and neighborhood patrols, street maintenance, parks, senior services, youth programs, economic development, and other programs; and

WHEREAS, UUT funding has enabled the City of Hercules to maintain police services – otherwise, the City would be forced to seriously consider major cuts to the Hercules Police Department, impacting crime prevention and 911 response times; and

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

WHEREAS, extending voter-approved locally controlled funding at the current 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, 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 Hercules 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, the proposed UUT measure does not create a new tax or increase utility rates --it simply renews the existing UUT adopted twice by Hercules voters with NO increase in the current tax rate.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hercules that:

1. The foregoing recitals are true and correct and hereby incorporated by reference.
2. Pursuant to California Constitution Article XIII C, Section 2; Government Code section 53724; and Elections Code section 9222, the City Council of the City of Hercules hereby calls an election at which it shall submit to the qualified voters of the City of Hercules a measure that, if approved by a majority vote of the electorate, would extend the term of the UUT at the current rate, until ended by the voters or repealed by the City Council. The City Council hereby requests that the election be consolidated with the statewide election to be held on November 8, 2022. The City Council acknowledges that the consolidated election will be held and conducted in the manner prescribed in Election Code Section 10418.
3. The City Council does hereby submit for adoption by the qualified voters of the City of Hercules at the General Municipal Election of November 8, 2022, the following question:

CITY OF HERCULES NO TAX INCREASE/ FINANCIAL STABILITY MEASURE. Shall an ordinance to maintain Hercules’ financial stability and essential services, such as neighborhood police patrols; meeting local water quality health standards; retaining/ attracting local businesses, and ~~other~~ general community services, by renewing a voter-approved 8% utility users’ tax, generating approximately \$3,600,000 annually until

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ended by voters, with no tax increase, low-income exemptions, independent citizens' oversight, annual audits, and funding that cannot be taken by Sacramento, be adopted?

YES NO

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Majority

4. The full text of the proposed measure to be submitted to the voters is attached as Exhibit A (the "Measure") hereto. The Measure specifies that the existing voter-approved UUT at the current 8 percent (8%) shall be extended until ended by the voters or repealed by the City Council. If a simple majority of the qualified voters voting on the Measure vote in favor therefore, the Measure shall be deemed adopted and shall be in full force and effect ten (10) days after the date the vote is declared by the City Council of the City of Hercules. The City Council hereby approves the Measure, attached as Exhibit A, the form thereof, and its submission to the voters of Hercules at the November 8, 2022 election. This measure shall be designated by letter by the Contra Costa County Registrar of Voters. The full text of the Measure proposed to be adopted by the voters shall be available upon request to the Office of the City Clerk and on the City's website.

5. The City Clerk is authorized, instructed, and directed to work with the Office of the Registrar of Voters as needed in order to properly and lawfully conduct the election. The ballots to be used in the election shall be in form and content as required by law. The Office of the Registrar of Voters is authorized to canvass the returns of the general municipal election. In all particulars not recited in this Resolution, the election shall be held and conducted as provided by law for holding municipal elections.

6. The Board of Supervisors of Contra Costa County is requested to instruct the Office of the Registrar of Voters to provide such services as may be necessary for the holding of the consolidated election. The election shall be held in all respects as if there were only one (1) election. The City recognizes that the County will incur additional costs because of this consolidation and agrees to reimburse the County for those costs. The City Manager is hereby authorized and directed to expend the necessary funds to pay for the City's cost of placing the Measure on the election ballot. This request is made pursuant to California Elections Code sections 10002 and 10403.

7. a) In accordance with Elections Code sections 9282 and 9283, arguments submitted for or against the Measure shall not exceed three hundred (300) words in length, and shall be printed upon the same sheet of paper and mailed to each voter with the sample ballot for the election and may be signed by not more than five (5) persons.

b) In accordance with Elections Code section 9282, the following headings, as appropriate, shall precede the arguments' wording, but shall not be counted in the three hundred (300) word maximum: "Argument Against Measure " or "Argument In Favor Of Measure " (the blank spaces being filled only with the letter or number, if any, designating the Measure).

c) In accordance with Elections Code section 9283, printed arguments submitted to voters in accordance with Section 9282 of the Elections Code shall be filed with the City Clerk, accompanied by the printed name(s) and signature(s) of the author(s) submitting it or, if submitted

on behalf of an organization, the name of the organization and the printed name and signature of at least one of its principal officers. Arguments are due in the office of the City Clerk prior to 5:00 p.m. on August 24, 2022.

d) The City Council hereby authorizes its members to file written arguments for the measure described above to this resolution. All written arguments filed by any person in favor or against the measure shall be accompanied by the names and signatures of the persons submitting the arguments as required by applicable law and any names, signatures and arguments may be filed until the time and date fixed by the City Clerk, after which no change may be submitted to the City Clerk unless permitted by law.

8. a) Pursuant to Elections Code section 9285, when the City Clerk has selected the arguments for and against the Measure that will be printed and distributed to the voters, the City Clerk shall send copies of the argument in favor of the Measure to the authors of the argument against, and copies of the argument against 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.

b) Rebuttal arguments shall not exceed two hundred fifty (250) words and may be signed by not more than five (5) persons. However, only the first five (5) persons to sign will be printed with the Ballot Measure. The persons that sign the rebuttal arguments may be different persons than the persons that signed the direct arguments.

c) The last day for submittal of rebuttal arguments for or against the Measure shall be by 5:00 p.m. on August 29, 2022.

9. In accordance with Elections Code section 9280, the City Attorney is directed to file with the City Clerk, by 5:00 p.m. on August 19, 2022, an impartial analysis of the Measure, not to exceed five hundred (500) words, showing the effect of the Measure on the existing law and the operation of the Measure.

10. The City Clerk is directed to file certified copies of this Resolution with the Board of Supervisors and the Registrar of Voters of Contra Costa County, together with the attached Measure. The City Clerk is hereby authorized and directed to take all steps necessary to place the Measure on the ballot and to cause a synopsis of the Measure attached as Exhibit A to be published once in a newspaper of general circulation in accordance with California Elections Code section 12111 and California Government Code section 6061. A copy of the Measure shall be made available to any voter upon request. The City Clerk is authorized and directed to give further additional notice of the Measure in the time, form, and manner required by law.

11. The jurisdictional boundaries of the City of Hercules have not changed since the last general municipal election.

12. The approval of this Resolution is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 et seq., "CEQA," and 14 Cal. Code Reg. §§ 15000 et seq., "CEQA Guidelines"), based on the general rule set forth in CEQA Guidelines section 15061(b)(3)

that CEQA applies only to projects which have the potential for causing a significant effect on the environment. This resolution places a measure on the ballot that, if approved, extends the term of the UUT at the current rate, until ended by the voters; thus, it can be said with certainty that there is no possibility that the Measure will have a significant effect on the environment.

13. This Resolution shall become effective immediately upon its passage and adoption. It is hereby certified that the foregoing Resolution No. 2022-061, was duly introduced and duly adopted by the City Council of the City of Hercules at a special meeting held on the 26th day of July 2022, by the following roll call vote:

AYES: COUNCIL MEMBERS: T. Grimsley, C. Kelley, D. Romero, Vice Mayor A. Walker-Griffin, Mayor D. Bailey


NOES: None.

ABSENT: None.

ABSTAIN: None.

DocuSigned by:
Dion Bailey
 APPROVED: _____
DS 42C378245A...

DION BAILEY, Mayor



ATTESTED: _____
 LAUREN BERGES, City Clerk

Exhibit A

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF HERCULES AMENDING TITLE 8, CHAPTER 8 OF THE HERCULES MUNICIPAL CODE TO EXTEND THE UTILITY USERS TAX AT THE CURRENT RATE OF 8% UNTIL ENDED BY THE VOTERS OR REPEALED BY THE CITY COUNCIL

THE PEOPLE OF THE CITY OF HERCULES DO ORDAIN AS FOLLOWS:

SECTION 1. Amendments to Municipal Code (deletions in strikethrough; additions in italics).

Sections 8-8.318, 8-8.401, 8-8.406, 8-8.407, 8-8.408, and 8-8.409 of the Hercules Municipal Code are hereby amended to read as follows:

Sec. 8-8.318 ~~Sunset~~ *Termination of Tax.*

~~This Chapter shall automatically sunset, and its provisions shall become ineffective, on January 1, 2025. (Ord. 475 § 1 (part), 2013; Ord. 395 § 1 (part), 2004. Formerly 8-8.320) The levy of taxes as provided in this Chapter shall remain in full force and effect until ended by the voters or repealed by the City Council.~~

Sec. 8-8.401 Purpose.

(a) The purpose of this Article is to continue the increase of two percent (2%) to the existing six percent (6%) utility users tax rate approved by the voters at the June 4, 2013, special election, for a total utility users tax rate of eight percent (8%), which eight percent (8%) rate shall be applicable from the effective date of this Article to all categories of utility services identified in this Chapter, including but not limited to telephone, electricity, gas, water, cable and video, until *ended by the voters or repealed by the City Council.* ~~such time as the Finance Commission determines that the City has met its goal of achieving long term fiscal stability with adequate reserves, and the City Council approves by a two-thirds (2/3) vote to terminate the two percent (2%) increase pursuant to Section 8-8.409, after which the rate shall revert to six percent (6%), with said six percent (6%) rate to sunset on the date indicated in Section 8-8.318.~~

(b) The continuation of the 2013 voter approved tax increase is pursuant to voter approval at the November 3, 2015, special election. (Ord. 489 § 1 (part), 2015; Ord. 481 § 2 (part), 2014; Ord. 475 § 1 (part), 2013)

Sec. 8-8.406 Duties.

(a) The Commission is charged with the following responsibilities: (1) reviewing all appropriations of revenues received by the City from the sales and use taxes imposed pursuant to the provisions of this Chapter to determine whether such funds are to be used as provided for in this Chapter and the voter approved measure that adopted this Chapter; (2) reviewing the audit prepared by an independent auditor retained by the City to perform the City's Comprehensive Annual Financial Report to determine whether such funds have been spent as provided for in this Chapter and the voter approved measure; *and* (3) prepare and issue the Commission's own annual report setting forth their findings in regard to the foregoing; ~~and (4) determining when the City has met its goal of achieving long term financial stability with adequate financial reserves, and issuing a report to Council detailing such findings, pursuant to Section 8-8.409.~~

(b) In order to preserve the integrity and independence of the oversight process, Commission members will not play a formal role in contracting, project management, construction, or any other aspect of the funding. In addition, the Commission is not charged with decision-making on spending priorities, construction schedules, project details, funding source decisions (e.g., leveraged funds, developer fees, etc.), financing plans, tax rate assumptions, or selection of consultants, design, and construction firms. (Ord. 489 § 1 (part), 2015: Ord. 481 § 2 (part), 2014: Ord. 475 § 1 (part), 2013)

Sec. 8-8.407 Effective Date.

This Article relates to the continuation of ~~an temporary~~ increase of two percent (2%) to the City's existing utility users tax rate, and is a valid and binding City tax upon passage and approval by a majority of the electorate of the City of Hercules. This Article shall be considered adopted upon the date that the vote is declared by the legislative body and shall go into effect ten (10) days after that date. (Ord. 489 § 1 (part), 2015: Ord. 481 § 2 (part), 2014: Ord. 475 § 1 (part), 2013)

Sec. 8-8.408 Amendments.

The City Council of the City of Hercules may make amendments to this Chapter without approval of the voters of the City if the amendments do not affect the rate of tax imposed. ~~The City Council may amend the rate of tax imposed herein (increase or decrease) or extend the term of the tax, only upon two-thirds (2/3) vote of the Council and with approval of the voters of the City under applicable codes.~~ (Ord. 489 § 1 (part), 2015: Ord. 481 § 2 (part), 2014: Ord. 475 § 1 (part), 2013)

Sec. 8-8.409 Procedure for Termination of Two Percent (2%) Increase.

This Article providing for an increase of two percent (2%) to the existing utility users tax rate shall remain in effect until ~~ended by the voters or repealed by the City Council, January 1, 2025,~~ pursuant to Section ~~8-8.318,~~ or until such time as the Finance Commission, created pursuant to

~~Title 2, Chapter 2, Article 6, determines that the City has met its goal of achieving long term financial stability with adequate financial reserves. Upon finding by a two-thirds (2/3) vote of the City Council that the Finance Commission has adequately determined that the City has achieved long term financial stability with adequate financial reserves, the City Council shall enact legislation to reduce the UUT rate to six percent (6%), effective no later than one (1) year from date of passage. Notwithstanding this Section, the Council retains the independent authority to repeal the utility users tax pursuant to Section 8-8.317.~~

SECTION 2. Effective Date. This Ordinance, if approved by a majority of the voters of the City of Hercules at the General Municipal Election of November 8, 2022, shall become effective ten (10) days after the declaration of the results of that election by the City Council of the City of Hercules, pursuant to Elections Code section 9217.

SECTION 3. Publication. Within fifteen (15) days after the passage of this Ordinance, the City Clerk shall cause this Ordinance or a summary thereof to be published or to be posted in at least three (3) public places in the City of Hercules in accordance with the requirements of California Government Code section 36933.

SECTION 4. 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 Hercules Municipal Code.

SECTION 5. City Council Amendments. The City Council of the City of Hercules may amend this Ordinance in any manner that does not increase the amount of tax any person would pay under this Chapter.

SECTION 6. Severability. If any section, subsection, sentence, clause, or phrase of this Chapter is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Chapter. The City Council hereby declares that it would have passed the Ordinance codified in this Chapter, and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of this Chapter would be subsequently declared invalid or unconstitutional.

SECTION 7. Execution. The Mayor is hereby authorized to attest to the adoption of the Ordinance by the voters of the City by signing where indicated below.

It is hereby certified that the foregoing Ordinance No. ____ was APPROVED by the following vote of the People of the City of Hercules on November 8, 2022:

YES:

NO:

It is hereby further certified that the foregoing Ordinance No. ____ was adopted by Declaration of the November 8, 2022 election results by the City Council of the City of Hercules on _____, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

APPROVED:

Dion Bailey, Mayor

ATTESTED:

Lauren Berges, City Clerk