



STAFF REPORT

City Council
Meeting Date: 5/7/2024
Staff Report Number: 24-071-CC

Regular Business: Resolution to reduce the Utility Users Tax

Recommendation

Staff recommends the City Council adopt a resolution (Attachment A) extending the reduction of the Utility Users Tax to 0% pursuant to §3.14.130 of the Menlo Park Municipal Code.

Policy Issues

Menlo Park Municipal Code §3.14.130 allows the City by resolution and upon a majority vote of the City Council, to temporarily reduce the Utility Users Tax percentage

Background

Ordinance No. 950 of the City Council of the City of Menlo Park, adopting a Utility Users Tax (Tax), became effective upon approval by a majority of voters at the General Election of Nov. 7, 2006. Ordinance No. 950 established Chapter 3.14 of the City of Menlo Park Municipal Code, known as the "Utility Users Tax Ordinance," which imposed a communication users tax at a rate of 2.5%, an electricity users tax at a rate of 3.5%, a gas tax at the rate of 3.5%, and a water users tax at the rate of 3.5%.

On May 23, 2023, the City Council adopted Resolution No. 6834 (Attachment B) reducing the Tax to 0%.

Analysis

On Dec. 28, 2021, Petitioners, in the case of *David Fogel et al. v. City of Menlo Park* (Case No. 21-CIV-06674) (Case) filed a Complaint for Declaratory and Injunctive Relief and Tax Refund in the San Mateo County Superior Court (Court). On April 26, 2023, the Court issued a Statement of Decision in the Case. The Court ruled that the Tax terminated Dec. 31, 2016, because the City had not made requisite findings to continue the Tax pursuant to the Utility Users Tax Ordinance. The City is not, at present, subject to a final judgment and/or injunction invalidating the Tax or ordering the City to cease collection of the Tax, after expiration or exhaustion of rights to appeal.

Following adoption of Resolution No. 6834, the City provided notice to all utility providers pursuant to Public Utilities Code 799(a)(5) and all utility providers have since ceased collecting the Tax.

With the last resolution adoption occurring May 2023, pursuant to Municipal Code §3.14.130, reduction of the Tax rate to 0% was effective for 12 months. The City will need to extend the reduction of the Tax before May 23 to retain the Tax rate of 0%.

Impact on City Resources

The City's existing and proposed budgets do not include any revenues from the Tax.

Environmental Review

This action is not a project within the meaning of the California Environmental Quality Act (CEQA) Guidelines §§15378 and 15061(b)(3) as it will not result in any direct or indirect physical change in the environment.

Public Notice

Public notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting.

Attachments

- A. Resolution
- B. Resolution No. 6834

Report prepared by:
Stephen Stolte, Assistant City Manager

Report reviewed by:
Nira Doherty, City Attorney

RESOLUTION NO. XXXX**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK
EXTENDING THE REDUCTION OF THE UTILITY USERS TAX AT ZERO
PERCENT (0%) PURSUANT TO SECTION 3.14.130 OF THE MENLO PARK
MUNICIPAL CODE**

WHEREAS, Ordinance No. 950 of the City Council of the City of Menlo Park, adopting a Utility Users Tax (the "Tax"), became effective upon approval by a majority of voters at the General Election of November 7, 2006; and

WHEREAS, Ordinance No. 950 established Chapter 3.14 of the City of Menlo Park Municipal Code, known as the "Utility Users Tax Ordinance," which imposed a communication users tax at a rate of 2.5 percent, an electricity users tax at a rate of 3.5 percent, a gas tax at the rate of 3.5 percent, and a water users tax at the rate of 3.5 percent; and

WHEREAS, Menlo Park Municipal Code section 3.14.130 allows the City by resolution and upon a majority vote of the City Council, to temporarily reduce the Tax percentage; and

WHEREAS, on December 28, 2021, Petitioners, in the case of David Fogel et al. v. City of Menlo Park (Case No. 21-CIV-06674) (the "Case") filed a Complaint for Declaratory and Injunctive Relief and Tax Refund in the San Mateo County Superior Court; and

WHEREAS, on April 26, 2023, the Court issued a Statement of Decision in the Case; and

WHEREAS, the Court ruled that the Tax terminated on December 31, 2016, because the City Council had not made requisite findings to continue the Tax pursuant to the Utility Users Tax Ordinance; and

WHEREAS, the City is not, at present, subject to a final judgment and/ or injunction invalidating the Tax or ordering the City to cease collection of the Tax, after expiration or exhaustion of rights to appeal; and

WHEREAS, on May 23, 2023, the City Council adopted Resolution No. 6834, by which the City Council reduced the Utility Users' Tax rate to a rate of zero percent (0%) for a period of no more than twelve (12) months; and

WHEREAS, on or around May 25, 2023, the City sent letters to the utility service suppliers at their addresses on file notifying that on May 23, 2023, the Menlo Park City Council reduced the UUT to zero percent (0%), effective on May 23, 2023, and that pursuant to California Public Utilities Code Section 799(a)(5), service providers must implement the rate reduction within 60 days upon notification via the letter. (Per Public Utilities Code section 799(a)(5), if the 60th day is not the first day of a month, then the public utility or other service supplier shall implement the changes on the first day of the month following the month in which the 60th day occurs); and

WHEREAS, extension of the temporary tax reduction at zero percent (0%) will not adversely affect the City's ability to meet its financial obligations as contemplated in its current or its proposed budget because, in response to the Statement of Decision, the City's proposed budget does not include any revenues from the Tax and because the City will likely be required to refund any future Tax revenues that it collects, so the City's financial position will most likely be the same if the City continues not to collect the tax.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Menlo Park finds the foregoing recitals are true and correct, and they are hereby incorporated by reference into this Resolution.

BE IT FURTHER RESOLVED, that the City Council of the City of Menlo Park at its regular meeting of May 7, 2024 hereby extends the reduction in the Utility Users Tax rate at a rate of zero percent (0%) for a period of no more than twelve (12) months. No other provisions of the Utility Users Tax Ordinance are affected by this Resolution. Nothing herein shall preclude the City Council from modifying the Tax rate set herein during said twelve-month period.

I, Judi A. Herren, City Clerk of Menlo Park, do hereby certify that the above and foregoing City Council Resolution was duly and regularly passed and adopted at a meeting by said City Council on the seventh day of May, 2024, by the following votes:

AYES:

NOES:

ABSENT:

ABSTAIN:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official Seal of said City on this ___ day of May, 2024.

Judi A. Herren, City Clerk

RESOLUTION NO. 6834

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK
REDUCING THE UTILITY USERS TAX TO ZERO PERCENT (0%) PURSUANT
TO SECTION 3.14.130 OF THE MENLO PARK MUNICIPAL CODE**

WHEREAS, Ordinance No. 950 of the City Council of the City of Menlo Park, adopting a Utility Users Tax (the "Tax"), became effective upon approval by a majority of voters at the General Election of November 7, 2006; and

WHEREAS, Ordinance No. 950 established Chapter 3.14 of the City of Menlo Park Municipal Code, known as the "Utility Users Tax Ordinance," which imposed a communication users tax at a rate of 2.5 percent, an electricity users tax at a rate of 3.5 percent, a gas tax at the rate of 3.5 percent, and a water users tax at the rate of 3.5 percent; and

WHEREAS, Menlo Park Municipal Code section 3.14.130 allows the City by resolution and upon a majority vote of the City Council, to temporarily reduce the Tax percentage; and

WHEREAS, on December 28, 2021, Petitioners, in the case of *David Fogel et al. v. City of Menlo Park* (Case No. 21-CIV-06674) (the "Case") filed a Complaint for Declaratory and Injunctive Relief and Tax Refund in the San Mateo County Superior Court; and

WHEREAS, on April 26, 2023, the Court issued a Statement of Decision in the Case; and

WHEREAS, the Court found that the Tax terminated on December 31, 2016, because the City had not made requisite findings to continue the Tax pursuant to the Utilities Users Tax Ordinance;

WHEREAS, the Court has not issued a final judgment or injunction invalidating the Tax or ordering the City to cease collection of the Tax, but the City anticipates that the Court may subsequently do so pursuant to the Statement of Decision;

WHEREAS, the temporary tax reduction shall not adversely affect the City's ability to meet its financial obligations as contemplated in its current or its proposed budget because, in response to the Statement of Decision, the City's proposed budget does not include any revenues from the Tax and because the City will likely be required to refund any future Tax revenues that it collects, so the City's financial position will most likely be the same if the City ceases to collect the Tax as it would be if the City continued to collect the Tax at its current rate.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Menlo Park finds the foregoing recitals are true and correct, and they are hereby incorporated by reference into this Resolution.

BE IT FURTHER RESOLVED, that the City Council of the City of Menlo Park at its regular meeting of May 23, 2023 hereby establishes a reduction in the Utility Users' Tax rate to a rate of zero percent (0%) for a period of no more than twelve (12) months. Said reduction in the Utility User's Tax rate shall become effective on the earliest date possible following notification by the City pursuant to Public Utilities Code section 799(a)(5). No other provisions of the Utility Users' Tax Ordinance are affected by this Resolution. Nothing herein shall preclude the City Council from modifying the Tax rate set herein during said twelve-month period.

I, Judi A. Herren, City Clerk of Menlo Park, do hereby certify that the above and foregoing City Council Resolution was duly and regularly passed and adopted at a meeting by said City Council on the twenty-third day of May, 2023, by the following votes:

AYES: Combs, Doerr, Nash, Taylor, Wolosin

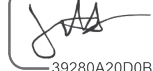
NOES: None

ABSENT: None

ABSTAIN: None

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official Seal of said City on this twenty-fourth day of May, 2023.

DocuSigned by:



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Judi A. Herren, City Clerk