RESOLUTION NO. 11,885

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK CALLING AN ELECTION TO BE HELD ON NOVEMBER 3, 2026, FOR VOTER CONSIDERATION OF A BALLOT MEASURE SEEKING VOTER AUTHORIZATION TO REPEAL AND REPLACE CHAPTER 5.04 OF THE NEWARK MUNICIPAL CODE TO AMEND THE CURRENT BUSINESS LICENSE ORDINANCE; ESTABLISHING POLICIES AND PROCEDURES IN CONNECTION WITH SUCH AN ELECTION; REQUESTING THE BOARD OF SUPERVISORS OF THE COUNTY OF ALAMEDA TO CONSOLIDATE THE ELECTION WITH THE GENERAL ELECTION TO BE HELD ON NOVEMBER 3, 2026; REQUESTING CERTAIN SERVICES OF THE REGISTRAR OF VOTERS OF ALAMEDA COUNTY WITH RESPECT TO THE CONSOLIDATED GENERAL MUNICIPAL ELECTION; AND PROVIDING FOR SUBMITTAL OF BALLOT ARGUMENTS AND REBUTTALS AND AUTHORIZING THE FILING OF AN IMPARTIAL ANALYSIS

WHEREAS, in 1970, the City Council of the City of Newark approved the imposition of a business license tax, codified as Chapter 5.04 of the Newark Municipal Code (the "Business License Tax"), which provided for the imposition and collection of a general tax on the privilege of transacting and carrying on business in the of City of Newark (the "City"); and

WHEREAS, the City is facing a budget deficit that could directly impact essential services that local residents rely upon; and

WHEREAS, to protect essential services, including repairing potholes and repairing city streets and sidewalks, reducing blight and keeping neighborhoods safe and clean, maintaining rapid 9-1-1 emergency medical response and fire protection, and maintaining neighborhood police patrols, park, and recreation programs, the City is seeking to enhance locally controlled funding that cannot be taken away by the State; and

WHEREAS, the City requires all businesses operating in Newark to obtain a business license and pay an associated annual tax to help support the roads, infrastructure, and services used by local businesses; and

WHEREAS, the City's current Business License Tax structure has not been updated in over fifty (50) years, and the local economy, industries, and workforce have changed significantly in that time; and

WHEREAS, to ensure that large businesses contribute to the services, roads and infrastructure in the City and to protect small businesses from increased costs, the City is proposing to modernize and simplify the current Business License Tax; and

WHEREAS, the proposed changes to the Business License Tax are designed to attract, retain, and encourage business growth and job creation in Newark, simplify oversight and compliance, and generate approximately $6.6 million in annual funding for local services and infrastructure; and

WHEREAS, the proposed changes to the Business License Tax would not impact Newark residents who do not own or operate a business in Newark; and

WHEREAS, locally controlled funding from the Business License Tax could be used to protect essential services, including repairing potholes and repairing city streets and sidewalks, reducing blight and keeping neighborhoods safe and clean, maintaining rapid 9-1-1 emergency medical response and fire protection, and maintaining neighborhood police patrols, park, and recreation programs; and

WHEREAS, the proposed measure includes fiscal accountability protections to ensure funds are spent properly, including required public disclosure of all spending and mandatory annual audits; and

WHEREAS, all funds from the measure must stay in Newark for local services and infrastructure and no funds may be taken away by the State; and

WHEREAS, under the provisions of the laws relating to general law cities in the State of California, an election shall be held on November 3, 2026, for the submission to the voters of a question relating to an amendment to the business license tax; and

WHEREAS, it is desirable that the election be consolidated with the statewide election to be held on the same date, and that within the City, the precincts, polling places, and election officers of the two elections be the same; and

WHEREAS, on May 28, 2026, the City Council adopted Resolution No. 11852 by which, among other things, the City called and ordered a General Municipal Election to be held on Tuesday, November 3, 2026, for the purpose of electing one (1) Mayor and two (2) at-large Council Members and by which the City requested the Board of Supervisors of the County of Alameda (the "Board of Supervisors") to consolidate that General Municipal Election with the General Election on November 3, 2026, and by which the City requested the Board of Supervisors to issue instructions to the Registrar of Voters of the County of Alameda (the "Registrar of Voters") to provide specified services to the City including any and all steps necessary for the holding of the consolidated election; and by which the City Council authorized reimbursing Alameda County based on Alameda County's established consolidation rate; and

WHEREAS, Article XIIIC, section 2(b) of the California Constitution requires that any general tax for unrestricted general revenue purposes, such as a business license tax, must be submitted to and approved by a majority vote of the voters voting on the issue of imposing any general tax; and

WHEREAS, this proposed measure will only become effective if approved by a simple majority of the City's voters voting on the question at the November 3, 2026 election; and

WHEREAS, based on all of the information presented at the July 23, 2026, meeting of the City Council, both written and oral, including the staff report, minutes, and other relevant materials, the City Council finds that review under CEQA is not required.

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

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

Section 2. The City Council hereby calls an election at which it shall submit to the qualified voters of the City of Newark, a measure that, if approved, would repeal the existing general business license tax and adopt a general business license tax, as authorized by California Government Code Section 37101 and California Business and Professions Code Sections 16000, *et seq.* This measure shall be designated by letter by the Alameda County Registrar of Voters. Pursuant to Elections Code Sections 10400, *et seq.*, the election for this measure shall be consolidated with the established election to be conducted on November 3, 2026.

Section 3. The City Council does hereby submit for adoption by the qualified voters of the City of Newark at the General Municipal Election of November 3, 2026, the following question:

"Newark Essential Services Protection Measure. To protect city services such as repairing potholes/streets; keeping neighborhoods safe/clean, and maintaining 9-1-1 emergency response/fire protection/neighborhood police patrols/parks/recreation programs, shall the measure be adopted updating Newark's 56-year-old business license ordinance, lowering many small businesses' taxes, with rates up to 0.3% of gross receipts (as described in the ordinance), raising $6,600,000 annually until ended by voters, with spending disclosure/ independent audits?"	YES	
	NO	

Section 4. The full text of the proposed measure to be submitted to the voters is attached as Exhibit A (the "Measure") hereto. 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 Newark. The City Council hereby approves the Measure, attached as Exhibit A, the form thereof, and its submission to the voters of Newark at the November 3, 2026, election. The Measure specifies that the rate of the tax shall vary by business type, as set forth in Exhibit A. The tax shall be in effect until ended by voters of the City of Newark. The tax shall be collected by the City from businesses at the time of initial issuance or renewal of a business license.

Section 5. The Board of Supervisors of Alameda County is hereby requested to permit the Alameda County Registrar of Voters to provide such services as may be necessary to properly and lawfully hold and conduct an election in the City on November 3, 2026, pursuant to this Resolution, including but not restricted to the providing and printing of ballots and polling place cards, election supplies, voting booths, flags, registration lists and any other materials and services required to lawfully conduct the election. The City recognizes that additional costs will be incurred by the County by reason of this election, and the City agrees to reimburse the County based on the County's established rates. This request is made pursuant to California Elections Code Sections 10002 and 10403.

Section 6. 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. The City Clerk is directed to file a certified copy of this resolution with the Board of Supervisors of Alameda County and the Registrar of Voters of Alameda County.

Section 7. Unless otherwise specified in this Resolution, the election shall be held and conducted as provided in Resolution No. 11852, and as provided by law for holding municipal elections.

Section 8. (a) In accordance with Elections Code Sections 9282 and 9283, arguments submitted for or against the Measure shall not exceed 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 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 2:00 p.m. on August 6, 2026.

(d) The City Council hereby authorizes Mayor Hannon to prepare and file a ballot argument in favor of the ballot measure set forth in this Resolution, which may be signed by members of the City Council, representatives of bona fide associations of citizens, and individual voters eligible to vote on the Measure. Members of the City Council who sign the ballot argument may use their titles. In accordance with Elections Code Section 9287, any council members authorized by the City Council to do so may sign the argument in favor of the Measure.

Section 9. (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 250 words and may be signed by not more than five (5) persons. 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 2:00 p.m. on August 17, 2026.

(d) The City Council hereby authorizes Mayor Hannon to prepare and file a rebuttal argument in favor of the ballot measure set forth in this Resolution, which may be signed by members of the City Council, representatives of bona fide associations of citizens, and individual voters eligible to vote on the Measure, who may be different from the persons who signed the argument in favor of the measure. Members of the City Council who sign the rebuttal argument may use their titles. In accordance with Elections Code Section 9287, any council members authorized by the City Council to do so may sign the rebuttal argument for the Measure.

Section 10. In accordance with Elections Code Section 9280, the City Attorney is directed to file with the City Clerk, by 2:00 p.m. on August 6, 2026, an impartial analysis of the Measure, not to exceed 500 words, showing the effect of the Measure on the existing law and the operation of the Measure.

Section 11. (a) The City Clerk is directed to file a certified copy of this Resolution with the Board of Supervisors of Alameda County and the Alameda County Registrar of Voters. 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.

(b) In all particulars not recited in this Resolution, and except as provided for in Elections Code Sections 10403 and 10418, the election shall be held and conducted as provided by law for holding municipal elections.

Section 12. The jurisdictional boundaries of the City of Newark have not changed since the last general municipal election.

Section 13. The City Manager, City Attorney and City Clerk ("City Officers") are authorized to make all approvals, expend funds, enter into any agreements, and take any and all actions necessary or appropriate to carry out and implement the terms of this Resolution and to administer the City's obligations, responsibilities and duties to be performed herein.

Section 14. 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, modifies the City's business license tax; thus, it can be said with certainty that there is no possibility that the Measure will have a significant effect on the environment. Additionally, the tax that is the subject of this resolution is a general tax that can be used for any legitimate governmental purpose; it is not a commitment to any particular action. As such, under CEQA Guidelines section 15378(b)(4), the tax is not a project within the meaning of CEQA because it creates a government funding mechanism that does not involve any commitment to any specific project that may result

in a potentially significant physical impact on the environment. If revenue from the tax were used for a purpose that would have such effect, the City would undertake the required CEQA review for that particular project at the earliest feasible time prior to approval of the project, consistent with CEQA Guidelines Sections 15004 and 15352. Therefore, pursuant to CEQA Guidelines section 15060, CEQA analysis is not required.

I HEREBY CERTIFY the foregoing resolution was introduced at a regular meeting of the City Council of the City of Newark held on July 23, 2026, by Vice Mayor Jorgens who moved its adoption and passage, which motion was carried after being duly seconded, and passed by the following vote:

AYES:	Council Members Catancio, Little, Vice Mayor Jorgens, and Mayor Hannon
NOES:	Council Member Grindall
ABSENT:	None
SECONDED:	Council Member Little

APPROVED:

MICHAEL K. HANNON
Mayor

ATTEST:

NEETU SALWAN
City Clerk

APPROVED AS TO FORM:

KRISTOPHER J. KOKOTAYLO
City Attorney

Attachments:

1. Exhibit A - Proposed Business License Tax Amendment Measure Ordinance

ORDINANCE NO. XXXX

AN ORDINANCE OF THE CITY OF NEWARK REPEALING AND REPLACING CHAPTER 5.04, BUSINESS LICENSES, OF THE NEWARK MUNICIPAL CODE

WHEREAS, in 1970, the City Council of the City of Newark approved the imposition of a business license tax, codified as Chapter 5.04 of the Newark Municipal Code (the "Business License Tax"), which provided for the imposition and collection of a general tax on the privilege of transacting and carrying on business in the City; and

WHEREAS, the City is facing a budget deficit that could directly impact essential services that local residents rely upon; and

WHEREAS, to protect essential services, including repairing potholes and repairing city streets and sidewalks, reducing blight and keeping neighborhoods safe and clean, maintaining rapid 9-1-1 emergency medical response and fire protection, and maintaining neighborhood police patrols, park, and recreation programs, the City is seeking to enhance locally controlled funding that cannot be taken away by the State; and

WHEREAS, the City requires all businesses operating in Newark to obtain a business license and pay an associated annual tax to help support the roads, infrastructure, and services used by local businesses; and

WHEREAS, the City's current Business License Tax structure has not been updated in over 50 years and the local economy, industries, and workforce have changed significantly in that time; and

WHEREAS, to ensure that large businesses contribute to the services, roads and infrastructure in the City and to protect small businesses from increased costs, the City is proposing to modernize and simplify the current Business License Tax; and

WHEREAS, the proposed changes to the Business License Tax are designed to attract, retain, and encourage business growth and job creation in Newark, simplify oversight and compliance, and generate approximately $6.6 million in annual funding for local services and infrastructure; and

WHEREAS, the proposed changes to the Business License Tax would not impact Newark residents who do not own or operate a business in Newark; and

WHEREAS, locally controlled funding from the Business License Tax could be used to protect essential services, including repairing potholes and repairing city streets and sidewalks, reducing blight and keeping neighborhoods safe and clean, maintaining rapid 9-1-1 emergency medical response and fire protection, and maintaining neighborhood police patrols, park, and recreation programs; and

WHEREAS, the proposed measure includes fiscal accountability protections to ensure funds are spent properly, including required public disclosure of all spending and mandatory annual audits; and

WHEREAS, all funds from the measure must stay in Newark for local services and infrastructure and no funds may be taken away by the State.

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.

The City of Newark Municipal Code Chapter 5.04 is repealed in its entirety and replaced with the text in Exhibit A, attached hereto and incorporated herein by reference (the "Amended Business License Tax"), beginning January 1, 2027, the date upon which the Amended Business License Tax shall first be implemented.

SECTION 3. Compliance with the California Environmental Quality Act.

The approval of this Ordinance 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"). This ordinance imposes a general tax that can be used for any legitimate governmental purpose; it is not a commitment to any particular action. As such, under CEQA Guidelines section 15378(b)(4), the ordinance is not a project within the meaning of CEQA because it creates a government funding mechanism that does not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment. If revenue from the tax were used for a purpose that would have such effect, the City would undertake the required CEQA review for that particular project at the earliest feasible time prior to the approval of the project consistent with CEQA Guidelines Sections 15004 and 15352. Therefore, pursuant to CEQA Guidelines section 15060, CEQA analysis is not required.

SECTION 4. 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 5. Amendment or Repeal.

The Amended Business License Tax 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 of any provision that would increase the rate of any tax levied pursuant to this Ordinance or change the methodology for calculating the tax that would result in a tax increase for any person subject to the tax. 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 6. 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 7. Publication and Effective Date.

Within fifteen (15) days from and after adoption, this Ordinance shall be published once in 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, 2026, election, pursuant to Elections Code Section 9217, this Ordinance shall become effective ten (10) days after the Council declares the results of the election.

Chapter 5.04 BUSINESS LICENSE

5.04.010 Definitions.

The following words and phrases, whenever used in this chapter, shall have the meanings defined in this section unless the context clearly requires otherwise:

"Business" means and includes full-time or part-time professional services and retail, wholesale, manufacturing, or other occupations, trades, or callings of any kind, whether or not carried on for profit or livelihood.

"Business tax" means the business activity tax.

"City" means the City of Newark, a municipal corporation of the State of California in its present incorporated form or in any later reorganized, consolidated, enlarged or reinforced form.

"Code" means the Newark Municipal Code, as amended from time to time.

"Collector" means the Finance Director of the City or other City officer or employee charged with administration of this chapter.

"County" means the County of Alameda.

"Constitution" means the United States Constitution or the California Constitution, as the case may be.

"Fixed place of business" means premises in the City where a business is conducted from day to day and regularly kept open for the purposes of such business, also referred to as "regular place of business."

"Gross receipts" means the total amount of the sale price of all sales, and/or the total amount charged or received for the performance of any act or service or employment, of whatever nature it may be, for which a charge is made or credit allowed, whether or not such act, service or employment is done as a part of or in connection with the sale of materials, goods, wares or merchandise, and when such act, service or employment occurs as a result of any activity within the City. Included in "gross receipts" shall be all receipts, cash, credits and property of any kind or nature, except as excluded in this subsection, without any deduction therefrom on account of the cost of the property sold, the cost of the materials used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever as shown by either the Federal or State income tax return required to be filed by such person. Where the gross receipts are less than the cost of maintaining the operations of the licensee, then the licensee shall be deemed to produce gross receipts in an amount at least equal to the cost of maintaining such operations. Such cost of operations includes, but is not limited to, rent, depreciation, salaries, wages, fixed charges, and other expenses. For the purpose of calculating the business tax as specified in Section 5.04.300, gross receipts shall be stated in dollars of the United States.

Excluded from "gross receipts" shall be:

(a) Cash discounts allowed and taken on sales;

(b) Credit allowed on property accepted as part of the purchase price and which property may later be sold;

(c) Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;

(d) Such part of the sale price of property returned by purchasers upon rescission of the contract of sale as is refunded either in cash or by credit;

(e) Amounts collected for others where the Business is acting as an agent or trustee to the extent that such amounts are paid to those whom collected;

(f) As to a real estate agent or broker, the sales price of real estate sold for the account of others, except that portion which represents commission or other income to the agent or broker;

(g) As to a gasoline dealer, a portion of his receipts from the sale of motor vehicle fuels equal to the motor vehicle fuel tax imposed by and previously paid under the provisions of Part 2 of Division 2 of the Revenue and Taxation Code of the state; and

(h) As to a retail gasoline dealer, the special motor fuel license tax imposed by Section 4041 of Title 26 of the United States Code, if paid by the dealer or collected by him from the consumer or purchaser.

"Hearing officer" means an impartial person designated by the City Manager.

"Manufacturing" means making materials, raw or partly finished, into wares suitable for use by persons other than the manufacturer, including, but not limited to, fabrication, processing, packing, bottling, assembling, canning, compounding, and forging.

"Not-for-profit entities" means any organization that qualifies under Section 501, subsection (c)(3) of the United States Internal Revenue Code or equivalent federal statute.

"Person" means any individual, firm, company, partnership, limited liability partnership, joint venture, association, proprietorship, social club, fraternal organization, joint stock company, domestic or foreign corporation, limited liability corporation, estate, trust, business trust, receiver, trustee, trustee in bankruptcy, administrator, executor, assignee, syndicate, or any other group or combination acting as a unit, whether mutual, cooperative, fraternal, nonprofit or otherwise, excepting: the United States of America, the State of California, and any political subdivision of either thereof upon which the City is without power to impose the tax herein provided.

"State" means the State of California.

"Sworn statement" means an affidavit sworn to before a person authorized to take oaths or a declaration or certification made under penalty of perjury.

"Tax certificate" means the business tax certificate and any other identifying decal or marker as may be required by the collector for purposes of this chapter.

"Tax certificate holder" means the person to whom a tax certificate has been issued.

"Transient business" means every business not conducted at a "fixed place of business" or at a regular place of business, whether the person conducting such transient business is or is not a resident of the City.

"Wholesale business" means every business conducted solely for the purpose of selling goods, wares, or merchandise in wholesale lots for resale.

5.04.020 Revenue measure.

This chapter is enacted for the sole purpose of raising revenue for municipal purposes and is not intended for regulation. The issuance of any tax certificate shall not be construed as authorizing any business to operate without first complying with all other applicable laws and regulations.

5.04.030 Effect on other laws.

A. Persons required to pay a business tax for transacting and carrying on any business under this chapter shall not be relieved from the payment of any similar tax for the privilege of doing such business required by any other law of the City, the County or the State and shall remain subject to the regulatory provisions of those other laws.

B. Any person required to pay a business tax for transacting and carrying on any business under this chapter shall not be relieved from the payment of such business tax, notwithstanding that such business is not in compliance with zoning, health, safety, or other regulatory provisions of the Code or other State or federal

law. Compliance with the provisions of this chapter shall not constitute evidence that such business is in compliance with any other such regulations or provisions of law.

5.04.040 Required business tax payment.

A. It shall be unlawful for any person to transact and carry on any business, trade, profession, calling, or occupation in the City without first having paid the business tax, as prescribed in this chapter or without complying with any and all applicable requirements of this chapter.

B. This section shall not be construed to require any person to pay a business tax or to comply with any other requirement of this chapter prior to doing business within the City if such requirements conflict with applicable statutes of the United States or of the State.

5.04.050 Evidence of doing business.

When any person, by the use of signs, circulars, cards, telephone books, or newspapers, shall advertise, hold out, or represent that the person is in business in the City, or when any person holds an active license or permit issued by a governmental agency indicating that the person is in business in the City, or when any person makes a sale, takes an order, renders a commercial service, or performs any other similar act within the City, and such person fails to deny by a sworn statement given to the Collector that the person is not conducting a business in the City after being requested to do so by the Collector, then such facts shall be considered prima facie evidence that the person is conducting a business in the City.

5.04.060 Constitutional apportionment.

A. None of the business taxes provided for by this chapter shall be so applied as to occasion an undue burden upon interstate commerce or be violative of the equal protection and due process clauses of the Constitution.

B. In any case where a business tax is believed by a person transacting or carrying on any business in the City to place an undue burden upon interstate commerce or be violative of such constitutional clauses, such person may apply to the Collector for an adjustment of the tax. Such application may be made before or at the time the tax is required to be paid or within six (6) months after the payment of the prescribed business tax. The applicant, by sworn statement and supporting testimony, shall show the applicant's method of business, the gross volume or estimated gross volume of such business, and such other information as the Collector may deem necessary in order to determine the extent, if any, of such undue burden or violation. The Collector shall then conduct an investigation and, after having first obtained the written approval of the City Attorney, shall fix as the business tax for the applicant an amount that is reasonable and nondiscriminatory or, if the business tax has already been paid, shall order a refund of the amount over and above the business tax so fixed. Such investigation, fixing of the business tax, and order of refund shall be accomplished within a reasonable time upon receiving the requisite information by the City. In fixing the business tax, the Collector shall have the power to fix the business tax on any basis which will assure that the business tax assessed shall be uniform with that assessed on businesses of like nature, so long as the amount assessed does not exceed the business tax prescribed by this chapter. If it is determined that no business tax is due, the applicant exempt from the business tax shall obtain, and the Collector shall issue, a tax certificate indicating such exemption from the tax.

5.04.070 Exemptions.

A. Nothing contained in this chapter shall be deemed or construed as applying to any person transacting, engaging in, and carrying on any business exempt by virtue of the Constitution or applicable statutes of the United States or of the State from payment of taxes prescribed herein.

B. Exemptions requiring tax-exempt tax certificates. The following persons shall be exempted from the provisions of this chapter, except that any such person shall be required to obtain a tax-exempt tax certificate:

1. Not-for-profit entities, as defined in this Code;

2. Banks, including national banking associations as provided by subsection 1(a) of Section 16 of Article XIII of the State Constitution;

3. Insurance companies and associations as provided by Section 14 of Article XIII of the State Constitution provided however that insurance brokers shall not be excluded under this section;

4. The business of agriculture except for the retail activities conducted in connection therewith; and

5. The conducting of any entertainment, concert, exhibition or lecture on scientific, historical, literary, benevolent or moral subjects within the City whenever the receipts of any such entertainment, concert, exhibition or lecture are to be appropriated to any church or school or to any benevolent purpose within the City.

C. Exemptions not requiring tax-exempt tax certificates. The following persons shall be exempted from the provisions of this chapter, and shall not be required to obtain a tax-exempt tax certificate:

1. Any delivery by a firm lacking a fixed place of business in the City, which delivery is occasional and incidental to a business carried on outside the City provided, however, that four (4) or more deliveries within any twelve (12) month period shall be considered proof that any further delivery is not occasional and incidental to such business;

2. Any public utility or other organization which is wholly owned and operated by a political subdivision of the State and any public district organized under the laws of the State; and

3. Any vehicle which is subject to the Motor Carriers of Property Permit Fee Act (California Revenue and Taxation Code section 7231 et. al); provided, however, this exemption shall only apply to the transportation business.

D. Claims for exemption. Any person desiring to claim an exemption from the payment of a business tax and to have a free tax-exempt tax certificate issued shall make an application therefor upon a form prescribed by the City and shall furnish such information and make such affidavits as may be required, on an annual basis. Upon the determination being made that the applicant is entitled to an exemption from the payment of the business tax for any reason set forth in this chapter, the City, upon the applicant complying with the provisions of this chapter or any other law of the City which may require a permit for the doing of the particular act proposed to be done, shall issue a free tax-exempt tax certificate to such person, which certificate shall show upon its face that the business is exempt from the business tax.

E. Revocation of exemptions. The City may revoke any tax-exempt tax certificate granted pursuant to the provisions of this chapter upon information that the business is not entitled to the exemption as provided therein. In such revocation, the procedure to be followed and the right of appeal shall be as provided in this chapter for the determination of a disputed tax.

F. Sworn statements. The City may require the filing of a sworn statement from any person claiming to be excluded by the provisions of the section, which statement shall set forth all the facts upon which the exclusion is claimed.

5.04.080 Posting and keeping tax certificates—Record keeping.

A. Any person carrying on business at a fixed place of business in the City shall keep the tax certificate posted in a conspicuous place on the premises where such business is carried on.

B. Every tax certificate holder not having a fixed place of business in the City shall keep the tax certificate upon his or her person, or if required by the Collector affixed in plain view upon any cart, vehicle, van, or other movable structure or device, at all times while transacting or carrying on the business for which it is issued.

C. All persons subject to the provisions of this chapter shall keep complete records of business transactions, including sales, receipts, purchases, and other expenditures, and shall retain all such records for examination by the Collector. Such records shall be maintained for a period of at least three (3) years. No person required to keep records under this section shall refuse to allow authorized representatives of the Collector to examine said records at reasonable times and places.

5.04.090 Information confidentiality.

No statement shall be conclusive as to the matters set forth in any application filed under the provisions of this chapter and neither the filing thereof, the assessment or payment of any tax, nor the issuance of any tax certificate shall preclude the City from collecting by appropriate action such sum as is actually due and payable. Such statement, and each of the several items therein contained, shall be subject to audit and verification by the Collector, who is hereby authorized to examine, audit, and inspect such books and records of any tax certificate holder or applicant for a tax certificate as may be necessary for the judgment of the Collector to verify or ascertain the amount of business tax due.

A. It is unlawful for the Collector or any person having an administrative duty under the provisions of this chapter to make known in any manner whatever the business affairs, operations, or information obtained by an investigation of records and equipment of any person required to have a tax certificate, or pay a business tax, or any other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth in any statement or application, or copy of either, or any book containing any abstract particulars thereof to be seen or examined by any person. Provided that nothing in this section shall be construed to prevent:

1. The disclosure to, or the examination of records and equipment by, another City official, employee, or agent for collection of taxes for the sole purpose of administering or enforcing any provisions of this chapter, or collecting taxes imposed hereunder;

2. The disclosure of information to, or the examination of records by Federal or State officials, or the tax officials of another city or county, or city and county, if a reciprocal arrangement exists, or to a grand jury or court of law, upon subpoena;

3. The disclosure of information and results of the examination of records of particular taxpayers, or relating to particular payers, to a court of law in a proceeding brought to determine the existence or amount of any business tax liability of the particular taxpayers to the City;

4. The disclosure after the filing of a written request to that effect, to the taxpayer himself, or to his successors, receivers, trustees, executors, administrators, assignees, and guarantors, if directly interested, of information as to the items included to the measure of any paid tax, any unpaid tax or amounts of tax required to be collected, interest and penalties; further provided, however, that the City Attorney approves each such disclosure and that the Collector may refuse to make any disclosure referred to in this paragraph when in his opinion the public interest would suffer thereby;

5. The disclosure of the names and addresses of persons to whom business tax receipts have been issued, and the general type or nature of their business;

6. The disclosure by way of public meeting or otherwise of such information as may be necessary to the City Council in order to permit it to be fully advised as the facts when a taxpayer files a claim for refund of business taxes or submits an offer of compromise with regard to a claim asserted against him by the City for business taxes, or when acting upon any other matter;

7. The disclosure of general statistics regarding taxes collected or business done in the City.

5.04.100 Failure to file statements or corrected statements.

A. If any person fails to file any required statement within the time prescribed, or if, after demand therefor made by the Collector, such person fails to file a corrected statement, or if any person subject to the tax imposed by this chapter fails to submit the information required by the Collector necessary to determine the business tax due and payable, or if the Collector is not satisfied with the information supplied and the statement filed, the Collector may determine the amount of the business tax due from such person by means of such information as he may be able to obtain.

B. If such a determination is made, the Collector shall give notice of the amount so assessed by serving such notice electronically, personally, or by depositing it in the United States Post Office, postage prepaid, addressed to the person so assessed at their last known address.

C. Assessments so established shall be paid within fifteen (15) days after the mailing of such notice, subject to the provisions of section 5.04.180 of this chapter.

5.04.110 Amount of business tax debt to city.

The amount of any business tax imposed by this chapter shall be deemed a debt to the City, and any person carrying on any trade, calling, profession or occupation mentioned in this chapter without having a tax certificate from the City shall be liable to an action in the name of the City in any court of competent jurisdiction for the amount of the business tax by this chapter imposed on such trade, calling, profession, or occupation.

5.04.120 Effect of convictions.

The conviction and punishment of any person for transacting any trade, calling, profession, or occupation without a tax shall not excuse or exempt such person from the payment of any business tax due or unpaid at the time of such conviction, and nothing in this chapter shall prevent a criminal prosecution for any violation of the provisions of this chapter.

5.04.130 Duty of City to issue business tax certificates.

A. It shall be the duty of the City to prepare and issue a tax certificate pursuant to the provisions of this chapter for every person liable to pay a business tax and to state in each tax certificate the period of time covered thereby; the name of the person or business to whom issued; the business classification to which the tax certificate is issued; the trade, calling, profession, or occupation to which the license certificate is issued and the location or place of business where such trade, calling, profession, or occupation is to be carried.

B. No tax certificate granted or issued under any provision of this chapter shall be in any manner transferred or assigned, nor shall such tax certificate authorize any person, other than is therein mentioned or named, to not pay a business tax.

C. The City may make a charge in an amount specified in the City's fee schedule for each duplicate tax certificate issued to replace any tax certificate issued under the provisions of this chapter that has been lost or destroyed. In no case shall any mistake made by the City in stating the amount of a business tax prevent or prejudice the collection by the City of what shall be due from any person carrying on a trade, calling, profession, or occupation subject to business tax under this chapter.

5.04.140 Business taxes payable in specified manner

All business taxes shall be paid in advance in lawful money of the United States to the City of Newark, in a manner prescribed by the Collector.

5.04.150 Separate business tax certificate required.

A separate tax certificate shall be obtained for each branch establishment or location. Warehouses and distributing establishments used in connection with and incidental to a business taxed under the provisions of this chapter shall not be deemed to be separate places of business or branch establishments.

5.04.160 Business tax certificate period.

No tax certificate shall be issued for a period of more than twelve (12) months from the initial date of issuance or renewal.

5.04.170 Business taxes—Payment, delinquencies, and penalties.

A. All business taxes shall be due on the first day of business license issuance and annually thereafter and will be considered delinquent at 30 days after business taxes are due.

B. For failure to pay a business tax when due, the Collector shall add a penalty of twenty (20%) percent of such business tax on the first day of delinquency and shall add a further penalty of twenty (20%) percent of such business tax on the first day of every subsequent calendar month following such first day of delinquency provided the amount of such penalties to be added shall in no event exceed fifty (50%) percent of the business tax due. The penalties provided in this subsection shall be assessed from the date when such deficiency was required to be paid pursuant to the provisions of this chapter.

5.04.180 Application—Initial.

A. Upon a person making an application for the first business tax certificate for a newly established or acquired business, such person shall furnish to the Collector a statement, upon a form provided by the Collector; setting forth the following information:

1. The exact nature or kind of business;
2. The place where such business is to be carried on, and if the same is not to be carried on at any permanent place of business, the places of residence of the owners of same;
3. In all cases where the amount of tax to be paid is measured by gross receipts, the application shall set forth such information as may be therein required and as may be necessary to determine the amount of the tax to be paid by the applicant;
4. Any further information which the Collector may require.

B. If the amount of the tax to be paid by the applicant is measured by gross receipts, he or she shall estimate the gross receipts for the period covered. Such estimate, if accepted by the Collector as reasonable, shall be used in determining the amount of tax to be paid by the applicant; provided, however, the amount of the tax so determined shall be tentative only, and such person shall, within 30 days after the expiration of the period covered, furnish the Collector with a statement, upon a form prescribed by the Collector, showing the applicant's actual gross receipts during the period covered, and the tax for such period shall be finally ascertained and paid in the manner provided by this chapter for the ascertaining and paying of such taxes, after deducting from the payment found to be due the amounts initially paid.

C. In all cases, the applicant shall, upon filing his or her application, pay no less than the prescribed minimum tax in advance, without being prorated, to cover the remaining portion of the current reporting period.

D. The Collector shall not issue to any such person another business tax certificate for the same or any other business until such person shall have furnished to them a statement and paid the tax as herein required.

5.04.190 Application—Renewal.

In all cases, the applicant for the renewal of a business tax certificate shall submit to the Collector for their guidance in ascertaining the amount of the tax to be paid by the applicant, a statement, upon a form prescribed by the Collector, setting forth such information concerning the applicant's business during the preceding year as may be required by the Collector to enable them to ascertain the amount of the tax to be paid by said applicant pursuant to the provisions of this chapter.

5.04.200 Extensions of filing dates—Interest charges.

The Collector shall have the power, for good cause, to extend the time for filing any required sworn statement for a period not exceeding sixty (60) days and in such case to waive any penalty that would have otherwise accrued.

5.04.210 Refunds.

No refund of an overpayment of a business tax imposed by this chapter shall be allowed in whole or in part unless a claim for a refund is filed with the Collector within a period of one (1) year after the last day that payment was made, and all such claims for refunds shall be filed with the Collector on forms the Collector furnishes in the manner prescribed by the Collector. Upon the filing of such a claim and when the Collector determines, in a reasonable time, that an overpayment has been made, the Collector may refund the amount overpaid.

5.04.220 Determinations of business classifications an administrative function.

The final determination of which business or class of business a tax certificate holder or applicant for a tax certificate is engaged in, or about to engage in, shall be an administrative function of the City.

5.04.230 Applications for changes of business classifications.

A. In any case, where a tax certificate holder or an applicant for a tax certificate believes that their business is not assigned to the proper classification under this chapter because of circumstances peculiar to it, as distinguished from other businesses of the same kind, they may apply to the Collector for reclassification. Such application shall contain such information as the Collector may deem necessary and require in order to determine whether the applicant's individual business is properly classified. The Collector shall then conduct an investigation following which they shall assign the applicant's individual business to the classification shown to be proper on the basis of such investigation. The proper classification is that classification which, in the opinion of the Collector, most nearly fits the applicant's business. The reclassification shall not be retroactive but shall apply at the time of the next regularly ensuing calculation of the applicant's tax. No business shall be classified more than once a year.

B. The Collector shall notify the applicant of the action taken on the application for reclassification. Such notice shall be given by serving it personally or by depositing it in the United States Post Office postage prepaid, addressed to the applicant at their last known address. Such applicant may, within ten (10) working days after the mailing or serving of such notices, make a written request to the Collector for an appeal hearing on the application's reclassification. If such a request is made within the time prescribed, the Collector shall cause the matter to be set for hearing before the City Council within fifteen (15) days. The Collector shall give the applicant at least ten (10) days' notice of the time and place of the hearing. The City Council shall consider all evidence adduced and shall adopt a resolution reflecting its decision. The decision of the City Council shall be final.

5.04.240 Appeals on decisions of business classifications.

Any applicant or tax certificate holder aggrieved by the business classification decision of the City shall have the right of appeal to a Hearing Officer designated by the City Manager. Such appeal shall be taken by filing with the City Clerk, within fifteen (15) days after the notice of the decision of the City, a written statement setting forth the grounds for the appeal. The City Clerk shall set a time and place for a hearing on such appeal within thirty (30) days after the receipt of the appeal. The decisions and orders of the Hearing Officer shall be final and conclusive.

5.04.250 Rules and regulations.

The City Manager may promulgate such rules and regulations, not inconsistent with the provisions of this chapter, as may be necessary or desirable to aid in the administration or enforcement of the provisions of this chapter.

5.04.260 Referrals to other agencies—Prepayment of taxes.

A. Referrals to other agencies. The Collector may refer to any governmental agency any statement and all other information submitted by persons subject to the provisions of this chapter in connection with the conduct of a Business regulated or supervised or otherwise the concern of any such agency, including agencies concerned with health regulations, zoning conformance, fire safety, police considerations, or any other safeguard of the public interest.

B. Prepayment of taxes. The Collector may advise any person filing a statement in connection with the payment of a business tax for a new or other business not actually in operation that such person may desire to defer the payment of the business tax until the person has obtained whatever approval may be required in order to transact and carry on the business until such business is actually in operation. If any person does, however, pay the business tax in advance of the commencement of the operation of the business, but does not operate the business because City or other governmental agency did not grant an approval which is required by regulation or law in order for such Business to be transacted and carried on, then the business tax shall be refunded in full, after the person has informed Collector in a timely manner, to the person having paid such tax minus the application fee as set by resolution of the City Council and revised from time to time.

5.04.270 Enforcement.

A. It shall be the duty of the Collector to enforce each and all of the provisions of this chapter, and the various City departments shall render such assistance in the enforcement as may from time to time be required by the Collector, City Manager, or City Council.

B. The Collector, in the exercise of the duties imposed upon the Collector shall examine, or cause to be examined, all places of business in the City to ascertain whether the provisions of this chapter have been complied with.

C. The Collector, and each designee, and any police officer or duly authorized inspector, shall have the power and authority to enter free of charge at any reasonable time any place of business or to question any person, which business or person is, or there is reasonable cause to believe such business or person may be, subject to the provision of this chapter, and demand an exhibition of proof of business tax payment.

5.04.280 Remedies cumulative.

All remedies prescribed in this chapter shall be cumulative, and the use of one or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions of this chapter.

5.04.290 Violations—Penalties.

Any person violating any of the provisions of this chapter or knowingly or intentionally misrepresenting to any officer or employee of the City any material fact in procuring, or attempting to procure, the business tax certificate provided for in this chapter shall be deemed guilty of an infraction.

5.04.300 Determination of tax due based on gross receipts plus annual registration tax.

A. Every person who engages in business within the City shall pay a business tax consisting of a base tax on the first $100,000 in annual gross receipts, plus the applicable category rate applied to gross receipts in excess of $100,000, all as set forth in this section.

B. Every person subject to the business tax shall pay a base tax of twenty-five dollars ($25.00) on the first $100,000 in annual gross receipts, or any portion thereof. Gross receipts in excess of $100,000 shall be subject to the business tax at the category rates set forth in subsection C.

C. Categories of businesses and associated business tax rates:

1. CATEGORY 1: General retail and restaurants ($25 base tax, plus 0.0003 × gross receipts in excess of $100,000):

    a. Any establishment or business that conducts retail (the sale of goods to ultimate consumers, usually in small quantities), or restaurant (an establishment where meals, prepared food, and / or beverages are served to customers).

2. CATEGORY 2: Professional services ($25 base tax, plus 0.0025 × gross receipts in excess of $100,000):

    a. "Professional services" means any professional services, as that term is ordinarily and commonly used and understood, wherein individuals are engaged in the business of offering to the public professional or semiprofessional services for compensation, and not specifically covered under any other part, chapter or section of this chapter, and shall include those professions generally requiring governmental certification or a professional degree, but not be limited to the serves rendered by a person engaged in the practice or profession of law, medicine, surgery, dentistry, ophthalmologist, optometry, chiropractic, osteopathy, chiropody, dental technician, hairstylist, beautician or cosmetologist, aesthetician, laboratory technician, physical therapist, massage establishments and technicians, mortician, undertaker, psychologist, psychotherapy, radiologist, speech therapist, veterinary, licensed financial planner, licensed investment counselor, land developer, real estate agent, real estate broker, stock / bond or security agent or broker, civil, mechanical, electrical, industrial, or other class of engineer, surveyor, geologist, appraiser, architect, accountant, real estate management, property management, income tax preparers, bookkeepers, income tax consultants, developer, or marriage counselors.

3. CATEGORY 3: Contractors and Services ($25 base tax, plus 0.002 × gross receipts in excess of $100,000):

    a. "Contractors" means every person, firm, or corporation conducting, managing, or carrying on the business of a contractor, subcontractor, or builder; or engaging in the construction or repair of any buildings; or engaged in any engineering, construction, operating, or advertising as such, or representing himself as such, and regularly employing help for building construction, sewer construction, plumbing construction or general construction.

    b. "Services" means any services, as that term is ordinarily and commonly used and understood, wherein individuals are engaged in the business of offering to the public services for compensation, and shall include but not be limited to the services rendered by a person engaged in the practice such as gardeners, personal shoppers/assistants, event planners, pet sitters,

tutoring, arts instructor, delivery services, administrative/general office, public utilities, towing, and transportation (public). If a business cannot clearly be classified within a category listed in this chapter or could reasonably be classified in more than one category, the Collector shall classify the business as a "services" business, and the business shall be subject to the business tax rate for Category 3.

4. CATEGORY 4: Rental (Commercial and Residential), self-storage, hotels, motels and short-term rentals ($25 base tax, plus 0.00075 × gross receipts in excess of $100,000):

   a. Any business, individual, or entity that leases, rents, or otherwise provides property to another individual or entity for compensation.

5. CATEGORY 5: Manufacturing, wholesaling and importing/exporting of goods ($25 base tax, plus 0.00075 × gross receipts in excess of $100,000):

   a. "Manufacturing" includes every person conducting or carrying on a business consisting of manufacturing, packing, or processing any goods, wares, merchandise, or commodities at a fixed place of business within the City or conducting or carrying on a business of cold storage or refrigeration. This type of industrial business involves the production of goods on a large scale, using labor and machines, and then selling these goods in bulk to retailers, other manufacturers, or wholesalers. It encompasses a wide range of sectors, from food production to electronics and automotive manufacturing. Examples include, but are not limited to, food production companies, electronics manufacturers, pharmaceutical manufacturing, and automotive parts wholesalers.

   b. "Wholesaling" means every business conducted solely for the purpose of selling goods, wares, or merchandise in wholesale lots for resale.

6. CATEGORY 6: Distribution and logistics ($25 base tax, plus 0.003 × gross receipts in excess of $100,000):

   a. "Distribution and logistics" means every business conducted solely for the purpose of maintaining or renting space for the storage of any kind of property or transporting or distributing property. These operations include distribution centers, fulfillment centers, and storage facilities (other than self-storage). It also includes business conducted for the purpose of distributing and transporting goods, including but not limited to:
   General Freight Trucking

   Packing And Crating

   Warehousing And Storage

   Motor Vehicle Towing

   Truck Transportation

   Specialized Freight (except Used Goods) Trucking, Local

   Inland Water Freight Transportation

   Other Support Activities for Road Transportation

   Used Household and Office Goods Moving

   Freight Transportation Arrangement

   General Warehousing and Storage