

<b>Respondent Name</b>
City of Newcastle Officials
<b>Complainant Name</b>
Robert Clark
<b>Complaint Description</b>
<p><a href="#">Robert Clark</a> (Mon, 5 Oct 2020 at 7:48 AM)  Please see the attached file outlining the evidence I am presenting.  Thank you for your attention in this matter.</p>
<b>What impact does the alleged violation(s) have on the public?</b>
<p>The city manager of Newcastle, Rob Wyman, has used city resources to support one side of a pending ballot measure in violation of the codes listed above. This one sided approach is designed to influence the public in one direction only in relation to the Newcastle Referendum 2 ballot measure.</p>
<b>List of attached evidence or contact information where evidence may be found</b>
<p>Please see attached file outlining this evidence.</p>
<b>List of potential witnesses with contact information to reach them</b>
<p>Kandy Schendel (kandy@schendelmedia.com)  Tamra Kammin (kammin@comcast.net)</p>
<b>Certification (Complainant)</b>
<p>I certify (or declare) under penalty of perjury under the laws of the State of Washington that information provided with this complaint is true and correct to the best of my knowledge and belief.</p>

To: Washington State Public Disclosure Commission

City Manager, Rob Wyman, illegally authorized two sets of FAQs posted on the City of Newcastle website regarding Newcastle Referendum 2. The first set was posted on September 18, 2020 and was a clear violation (WAC 390-05-273, <https://apps.leg.wa.gov/WAC/default.aspx?cite=390-05-273>, which is the proviso to RCW 42.17A.555, which states, in part, “No local office or agency may authorize a use of public facilities for the purpose of assisting a candidate's campaign or promoting or opposing a ballot proposition...”). The second set was posted on October 1, 2020 and is equally a violation of Washington State law.

I am one of the members of the “Con” committee who provided the text for the ballot measure opposition. I demanded the first set of FAQs come down, which the city removed. However, a second set of FAQs recently appeared and are equally illegal and misleading to the voters; City Manager Wyman authorized these FAQs and appears to be misleading the citizens to create fear that basic services are in jeopardy when that is patently false information.

City Manager Wyman, I have learned, utilized city funds (estimated to be thousands of dollars) to hire consultants to create these two sets of FAQs. Using city funds to promote the “yes” vote, I believe, is illegal.

In addition, citizens have repeatedly been told that we cannot speak for or against this referendum at any city council meeting, yet the city is taking a multi-faceted approach to promoting the “yes” vote illegally by using the city website, by emailing citizens through the city e-newsletter, and I have also heard they are planning to send a mailer to all citizens. **I need clarification if there is any reason a citizen should not be allowed to speak for or against a ballot measure during public comment period.**

It is clear to me that the city and the city manager are illegally promoting Referendum 2 to the citizens of Newcastle. I am requesting that all such efforts be immediately suspended. These efforts should include all methods of communication, such as email, mailers, use of websites or any other means. My further request is that the city manager be personally notified that he has violated the law regarding this matter. Appropriate legal ramifications should be identified and implemented.

Sincerely,

**Robert Clark**  
Newcastle Citizen

**Attached: Legal references**

## Legal References

### WAC 390-05-273

#### Definition—Normal and regular conduct.

Normal and regular conduct of a public office or agency, as that term is used in the proviso to RCW [42.17A.555 \[app.leg.wa.gov\]](#), means conduct which is (1) lawful, i.e., specifically authorized, either expressly or by necessary implication, in an appropriate enactment, and (2) usual, i.e., not effected or authorized in or by some extraordinary means or manner. **No local office or agency may authorize a use of public facilities for the purpose of assisting a candidate's campaign or promoting or opposing a ballot proposition**, in the absence of a constitutional, charter, or statutory provision separately authorizing such use.

### RCW [42.17A.555](#)

#### Use of public office or agency facilities in campaigns—Prohibition—Exceptions.

**No elective official nor any employee of his or her office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition.** Facilities of a public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency. However, this does not apply to the following activities:

(1) Action taken at an open public meeting by members of an elected legislative body or by an elected board, council, or commission of a special purpose district including, but not limited to, fire districts, public hospital districts, library districts, park districts, port districts, public utility districts, school districts, sewer districts, and water districts, to express a collective decision, or to actually vote upon a motion, proposal, resolution, order, or ordinance, or to support or oppose a ballot proposition so long as (a) any required notice of the meeting includes the title and number of the ballot proposition, and (b) members of the legislative body, members of the board, council, or commission of the special purpose district, or members of the public are afforded an approximately equal opportunity for the expression of an opposing view;

(2) A statement by an elected official in support of or in opposition to any ballot proposition at an open press conference or in response to a specific inquiry;

(3) Activities which are part of the normal and regular conduct of the office or agency.

(4) This section does not apply to any person who is a state officer or state employee as defined in RCW [42.52.010](#).

## SECOND SET FAQS POSTED ON CITY OF NEWCASTLE WEBSITE

### Referendum 2

#### Why is a utility tax needed?

**A:** Newcastle has three primary sources of revenue: property tax, sales tax and development fees. Multiple forecasts have shown that projected revenues cannot keep pace with projected expenditures. The City's largest revenue source is from property taxes which account for roughly 50% of operating revenue. The City only collects a portion of the overall property tax bill a household pays, typically about 15%. In addition, state law caps increases in property tax revenue to 1% per year, while inflation generally rises at a greater rate.

The revenue collected from sales tax and development fees are prone to fluctuation based on economic conditions. The end result is that the City's three primary revenue sources cannot keep pace with expenditures, creating what is called a structural budget deficit. Because of this, financial professionals have recommended that Newcastle diversify its revenue sources with more stable revenue options, such as a utility tax.

**MISLEADING:** The misleading comments above are addressed throughout the remaining responses to the FAQ. In addition:

Fluctuation in revenue creates additional requirements for reducing non-mandatory expenditures. In addition to the 1% yearly increases in property tax, we receive additional property tax each year for new construction. A structural budget deficit is based on reliability of estimation going forward. Newcastle has not experienced an ACTUAL BUDGET DEFICIT since 2010 and that has been the City's only actual budget deficit other than 1999. Our General Fund Reserve of over \$5.2 million is the highest in the city's history.

#### Q: Why is a utility tax needed now?

**A:** The cost of city services, including public safety services like police and fire, are increasing and existing revenue cannot keep pace. Current projections show that by 2025, 100% of property tax revenue would go to just fund public safety. This is up from 81% only six years ago. Additionally, since the vast majority of land available for new growth has already been developed, the City needs a new, more reliable source of revenue to replace that funding source.

After concerns over sustainability were raised by the state auditor's office and the City Council Finance Committee, City leaders commissioned a financial study by a third-party consultant firm. After careful review of city budgets and projections, these consultants recommended adoption of a utility tax to diversify revenue sources.

**MISLEADING:** It is untrue that the consultants recommended adoption of a utility tax on 9 different utilities. The financial consultants identified 45 options for both revenue enhancement and expenditure reduction, only one of which was the utility tax. The city only pursued one minor cost reduction item and quickly focused on the easy tax option.

## SECOND SET FAQS POSTED ON CITY OF NEWCASTLE WEBSITE

### Referendum 2

#### Q: Is this budget shortfall a result of COVID-19?

**A:** No. Discussions to address the City's anticipated budget shortfall began before the COVID-19 pandemic and City leaders have been exploring ways to address it for over two years. The fiscal impacts of COVID -19 are being monitored and will be discussed further during the 2021 budget process.

**MISLEADING:** Misleading regarding budget shortfall. We have not experienced a budget shortfall. The city has projected a shortfall through consistently underestimating revenue and overestimating expenditures. Final results for 2020 appear to be better than the original budget.

#### Q: Doesn't Newcastle already have a utility tax?

**A:** No. Newcastle is one of only three municipalities in King County that does not have a utility tax. The only other two cities without this source of revenue is Sammamish and SeaTac. Looking at our neighboring cities, Renton's utility taxes are set at 6% and Bellevue's range from 4.5% to 10.4%.

**MISLEADING:** The city property tax levy is higher than other cities because we do not have a utility tax per se. In addition, the city added an 8.49% city "fee" onto everyone's Waste Management bill. If the utility tax passes, citizens will then pay 11.49%, so it is disingenuous to pretend our citizens aren't being charged added tax, or in this case the city called it a "fee" on a utility.

#### Q: How would the utility tax be applied?

**A:** The utility tax would distribute the burden among all Newcastle businesses, homeowners and renters, and is anticipated to generate sufficient revenue to maintain existing city services. Unlike property and sales taxes, 100% of the revenue collected would go to the City. Additionally, the proposed rate of 3% is not set to increase.

**MISLEADING:** It is totally misleading to state that the 3% rate "is not set to increase." While technically not set to increase yet, the percentages can be increased with a simple majority vote of the council. As noted in the above FAQ statement, Renton and Bellevue have certainly increased their percentages.

#### Q: What utilities would this tax apply to?

**A:** The 3% tax would be applied to the following utilities:

- Electricity and Natural Gas (Monthly from Puget Sound Energy)
- Garbage (Quarterly from Waste Management)
- Water/Sewer (Bimonthly from Coal Creek Utility District)
- Cable Television (Monthly from Comcast)
- Phone Voice Fees\*

\*The voice portion of a mobile bill typically accounts for one-third of the total bill

## SECOND SET FAQS POSTED ON CITY OF NEWCASTLE WEBSITE

### Referendum 2

**MISLEADING:** There are actually nine (9) utilities noted in the Ordinance. Phone voice fees applies to both land line phone and cell phone voice fees. Additionally, the Ordinance includes stormwater. This is initially set at 0% since the city does not have an easy way to collect the fee. This utility is included in the ordinance in readiness for increasing the percentage.

**What utilities are not subject to the utility tax?**

**A:** Cable internet, stormwater, mobile phone text, data and non-voice fees.

**MISLEADING:** Stormwater is included in the Ordinance but currently set to 0% because the city has not yet determined an easy way to collect it. Once determined, it will be collected.

**Q: How much will this cost me and my family?**

**A:** The average household in Newcastle will pay between \$8 and \$14 a month total.

**MISLEADING:** This number is merely a starting point that was an estimate from early in 2020. The council has discussed various schedules of increase and therefore, the figures noted will be only temporary. In addition, utility patterns have changed significantly through the COVID lockdown period.

**Q: What are the impacts of approving/rejecting the utility tax?**

**A:** If approved, it is estimated the utility tax will generate approximately \$880,000 in revenue. The City anticipates using the projected revenue to pay for public safety services (fire and police), as the City's 2020 budget identified increased costs relating to police and fire contracts in the future. If rejected, it is projected that the City will have an approximately \$1 million shortfall in the 2021 budget alone, and will need to consider cutting public safety (police and fire) and other services.

**TOTALLY MISLEADING:** It is misleading for the city to state that the 2021 budget has a \$1 million shortfall. The city providing a "wish list" is not a budget, nor has a budget been approved to state this as fact. It is also egregious to state that the city would need to consider cutting public safety. This is the city's # 1 priority. This is being used as a fear tactic to scare voters into approving this referendum. The city is clearly taking the "pro" side of this issue and promoting this position on multiple fronts.

*Whether the utility tax passes or not, the city council would be irresponsible in its duties if they approve a budget for 2021 with over a \$1 million deficit. The current budget proposal from the city manager which reflects said deficit includes adding a new accountant, a new police officer and incorporating a parks planner. The accountant and the police officer are positions that have not been part of city staff previously and would therefore represent NEW services and NOT reduction in services.*

*If the Utility Tax does not pass, the city has more than enough money in the General Fund reserve (over \$5.2 million) to cover a potential deficit for 2020 and a potential deficit for 2021. The city should focus on investigating potential structural expenditure reductions in the expenditures required to operate the city and to focus on fiscal discipline prior to adding additional taxation on our citizens.*