

[CONSENT OR ACTION]

CALENDAR

[Meeting Date (MM dd, yyyy)]

To: Honorable Mayor and Members of the City Council

From: Environment and Climate Commission

Submitted by: [Name of Commission Chairperson], Chairperson, Environment and Climate Commission

Subject: Fossil Fuel and Just Transition Gas Station Tax

RECOMMENDATION

Refer to the City Attorney the development of a ballot initiative for the November 2022 ballot, which would:

- 1) Establish a “Fossil Fuel and Just Transition Gas Station Tax”, levied on properties within city limits which sell transportation fuels made from nonrenewable sources (such as gasoline or methane).
- 2) Set the tax rate at a modest level per square foot of parcel effective January 1, 2025. ECC recommends \$0.10 per square foot, such that a gas station on a 10,000 square foot parcel would pay \$1,000 per year.
- 3) Automatically increase the tax dramatically every few years. ECC recommends tenfold every 5 years. Effective January 1st, 2030, the rate would be \$1 per square foot. Effective 2035, it would be \$10 per square foot, until reaching a maximum rate of \$10,000 per square foot in 2050.
- 4) Dedicate all revenues from the tax to just transition and Green New Deal efforts, either as a general tax (with recommendations from ECC) or a special tax.

SUMMARY

This proposal would create a ballot initiative which, if passed, would levy new taxes on fossil fuel dealerships (gas stations) to fund just transition and Green New Deal efforts.

FISCAL IMPACTS OF RECOMMENDATION

Some staff time required to develop ballot initiative. If approved, additional costs associated with placing the item on the ballot. If adopted, the initiative would provide some additional revenue depending on how many gas stations remain in Berkeley.

BACKGROUND

Berkeley has permitted, and even encouraged, the sale of fossil fuels for decades. Numerous Berkeley businesses are known to promote the use of these dangerous

chemicals, which pollute our air, water, and soil; pose major fire risks; contribute to the risk of cancer; and are either themselves potent greenhouse gases or, upon combustion, leading contributors to climate change.

These fossil fuel dealerships – colloquially known as gasoline stations – cause significant traffic and congestion, generate elevated levels of carcinogenic air pollutants in their local neighborhoods, and are frequently found to have leaked toxic chemicals into the ground, contaminating our soil and groundwater.

Gasoline, diesel, and other carbon-based transportation fuels are also known to be harmful chemicals, posing a variety of risks to human health, public safety, and the environment, both of their own virtue and as a result of their combustion or oxidation for powering transportation^{1,2,3}.

In recent years, the cumulative climate and health impacts of these chemicals has become untenable. In July 2018, the City Council declared a Climate Emergency and adopted a Fossil Fuel Free Berkeley resolution, setting the goal of eliminating fossil fuels in Berkeley. On September 15th, 2020, City Council adopted a goal of 100% sustainable trips by 2040, with a 50% improvement by 2030, and referred to the Environmental, Energy, and Transportation commissions to develop relevant proposals and recommendations. As the successor commission to the Environmental and Energy Commissions, the Environment and Climate Commission is now tasked with developing proposals and recommendations to achieve 100% sustainable transportation and a Fossil Free City.

CURRENT SITUATION AND ITS EFFECTS

In 2018, according to California Energy Commission data, over 20 million gallons of gasoline was sold in Berkeley at roughly 15 gas stations throughout the city. Ten of these gas stations had unresolved CalEPA violations as of October 2019.

Berkeley's Electric Mobility Roadmap sets forth the City vision for our transportation future: an all-electric fleet of bikes, buses, BART trains, and cars to transport residents, workers, and visitors across our city. Gasoline, and the associated dispensaries, play no role in this future.

However, Berkeley is currently far from achieving its ambitious Fossil Free City goal of eliminating fossil fuels by 2030.

¹ Material Safety Data Sheet: Gasoline, All Grades, Vermillion County, IL: <https://www.vercounty.org/MSDS/EMA/9950allgradesgasoline.pdf> (accessed September 2019)

² Safety Data Sheet: Diesel Fuels, Valero: [https://www.valero.com/en-us/Documents/OSHA_GHS_SDS/SDS/SDS%20US%20-%20102-GHS%20DIESEL%20FUELS%20rev2%205-14.pdf](https://www.valero.com/en-us/Documents/OSHA_GHS_SDS/SDS%20US%20-%20102-GHS%20DIESEL%20FUELS%20rev2%205-14.pdf) (accessed September 2019)

³ Safety Data Sheet: Natural Gas Odorized, Hess Corporation: <https://www.hess.com/docs/us-safety-data-sheets/natural-gas.pdf?sfvrsn=2> (accessed September 2019)

ENVIRONMENTAL SUSTAINABILITY

Banning gas stations as a permitted use and expanding the availability of EV charging will reduce greenhouse gas emissions and improve environmental sustainability.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Because this activity does not have the potential to cause a significant effect on the environment, it is covered by the common sense exemption that CEQA applies only to projects which have the potential for causing a significant impact on the environment (CEQA Guidelines 15061(b)(3)).

RATIONALE FOR RECOMMENDATION

This item supports the goal of 100% sustainable trips by beginning to phase out fossil fuel sales for transportation uses in Berkeley, and expanding the availability of zero-emission fueling stations.

Gas stations are a land use inconsistent with achieving a fossil-free city that uses 100% sustainable transportation modes. Removing gas stations as a permitted use will prevent new gas stations from being permitted, and classify existing gas stations as a “nonconforming use”, requiring a Use Permit with a public hearing (UP(PH)) for any substantial expansion or change. It will *not* force existing gas stations to close.

Removing the reference to “gas/auto fuel stations” in [BMC 23.324.050\(B\)\(2\)\(b\)](#) will allow (but not require) the Zoning Adjustments Board to prevent any gas or other fuel station which shuts down for a year or more from reopening as a gas or other fuel station.

Replacing “Alternative Fuel Station” with “Hydrogen Fuel Station” will prevent new fueling stations from opening up which would dispense natural gas (methane), or a host of other hydrocarbon fuels (derived from biological material or otherwise) including methanol, denatured ethanol, or other alcohols; mixtures containing 85% or more by volume of methanol, denatured ethanol, and other alcohols with gasoline or other fuels; liquefied petroleum gas; coal-derived liquid fuels; or non-alcohol fuels (such as biodiesel) derived from biological material. It would make existing stations that dispense these fuels non-conforming uses, requiring a UP(PH) to expand or change, and would prevent them from re-opening if they cease operations for a year or more. However, it would still permit hydrogen fueling stations.

Adding “Electric Vehicle Charging Station” as a permitted use or accessory use to all zoning districts would allow electric vehicle charging facilities to be operated as a business anywhere in the city. It would not allow parking spaces to be constructed. Electric vehicle supply equipment (the hardware for electric vehicle charging) would remain subject to building code, electrical, and safety requirements.

Making “Electric Vehicle Charging Station” require a zoning certificate would make approval of an electric vehicle charging business an over-the-counter process subject only to the approval of Land Use Planning Staff, without the discretion and appeals process currently allowed with an Administrative Use Permit.

ALTERNATIVE ACTIONS CONSIDERED

ECC considered taking no action on removing gasoline and alternative fuel stations as a permitted use. While new gas stations are unlikely to be built, the ECC determined that banning gas stations is an important symbolic step towards achieving a fossil-free city.

ECC considered taking no action on the “Uses with Major Investments” clause on the exceptions to terminations of non-conforming uses and determined that no action would be inconsistent with achieving a fossil-free city.

ECC considered preserving biofuels and biodiesel as alternative fuels permitted, but determined that doing so would not address the inequitable health and safety risks, and that the continued use of any hydrocarbon-powered vehicles was likely to delay the transition to a fully zero-emission economy and fossil-free city.

ECC considered taking no action on removing restrictions on EV charging station zoning, but determined that the restrictions on EV charging station zoning could hamper the ability to achieve widespread access to EV charging, and that without changes to restrictions on creation of new parking spaces, there were unlikely to be any significant traffic or other impacts from the operation of EV charging businesses.

ECC considered taking no action on changing the permitting for EV charging stations from AUP to ZC, but determined that the benefit of streamlined permitting and approval outweighed the likely minimal impacts from EV charging businesses.

CITY MANAGER

The City Manager [TYPE ONE] concurs with / takes no position on the content and recommendations of the Commission’s Report. [OR] Refer to the budget process.

Note: If the City Manager does not (a) concur, (b) takes any other position, or (c) refer to the budget process, a council action report must be prepared. Indicate under the CITY MANAGER heading, “See companion report.”

CONTACT PERSON

[Name], Chairperson, Environment and Climate Commission, [Phone Number]
Ben Gould, Commissioner, Environment and Climate Commission, 510-725-9176