

Office of the City Manager

REVISED AGENDA MATERIAL for Supplemental Packet 1

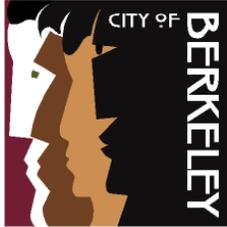
Meeting Date: July 9, 2024

Item Number: 19

Item Description: Initiative Petition – Initiative Ordinance to Adopt a Special Tax on Natural Gas Consumption in Buildings 15,000 Sq. Ft. or Larger

Submitted by: Farimah Faiz Brown, City Attorney

This supplemental includes revised ballot question language for this initiative petition.



Office of the City Manager

ACTION CALENDAR
July 9, 2024

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Mark Numainville, City Clerk

Subject: Initiative Petition – Initiative Ordinance to Adopt a Special Tax on Natural Gas Consumption in Buildings 15,000 Sq. Ft. or Larger

RECOMMENDATION

1) Take action on the initiative petition to:

a) Adopt the provisions of the measure without alteration.

-OR-

b) Adopt a Resolution submitting the measure, without alteration, to a vote of the people at the November 5, 2024 General Municipal Election.

2) Designate, by motion, specific members of the Council to file ballot measure arguments on this measure as provided for in Elections Code Section 9282.

FISCAL IMPACTS OF RECOMMENDATION

No direct fiscal impacts related to the recommended action.

CURRENT SITUATION AND ITS EFFECTS

An initiative petition titled “Initiative Ordinance to Adopt a Special Tax on Natural Gas Consumption in Buildings 15,000 Sq. Ft. or Larger” was filed with the City Clerk on May 15, 2024. The proponents of this petition submitted 4,580 signatures.

Under Berkeley City Charter Article XIII, a successful initiative petition must include valid signatures of at least 5% (2,985) of the votes for all candidates for Mayor in November 2020 (57,885).

The Alameda County Registrar of Voters verified the signatures by reviewing a random sampling of 500 signatures in accordance with State Elections Code §9215. This statistical sampling found 404 valid signatures. When this ratio of valid signatures is applied to the actual number of signatures submitted, it results in a validity rate of 124%, which exceeds the required threshold in the state Elections Code for the petition to be deemed sufficient. Therefore, the petition was certified by the Registrar of Voters as being sufficient on May 28, 2024.

Initiative Petition

ACTION CALENDAR

July 9, 2024

Additionally, with respect to who can author arguments for measures placed on the ballot by petition, Elections Code Section 9282 provides the City Council may authorize the Council as a whole, or members of the Council, to submit an argument against the initiative ordinance.

BACKGROUND

Pursuant to the City Charter, Article XIII §92, once a petition has been found to have a sufficient amount of signatures, the City Council must consider whether to a) Adopt said ordinance without alteration within twenty days after the attachment of the City Clerk's certificate of sufficiency to the accompanying petition (subject to a referendary vote, under the provision of Article XIV of this Charter); or b) Submit the ordinance to the voters of the City of Berkeley at the next general election.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable environmental effects or climate impacts associated with the subject of this report.

RATIONALE FOR RECOMMENDATION

The proposed action is mandated by state codes and the provisions of the City Charter.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Mark Numainville, City Clerk, 981-6900

Attachments:

1. Resolution
 Exhibit A: Full Text of Measure
2. City Clerk's Certificate of Sufficiency

RESOLUTION NO. ##,###-N.S.

SUBMITTING TO THE BERKELEY ELECTORATE AN INITIATIVE ORDINANCE TO ADOPT A SPECIAL TAX ON NATURAL GAS CONSUMPTION IN BUILDINGS 15,000 SQ. FT. OR LARGER FOR THE NOVEMBER 5, 2024 BALLOT

WHEREAS, the Berkeley City Council has elected to submit to the voters at the November 5, 2024 General Municipal Election, an initiative measure to Adopt a Special Tax on Natural Gas Consumption in Buildings 15,000 Sq. Ft. or Larger; and

WHEREAS, certain actions are required in connection with said election; and

WHEREAS, the Council has requested that the Alameda County Board of Supervisors consolidate the General Municipal Election with the Presidential General Election; and

WHEREAS, the Council desires to submit all measures to be placed upon the ballot at said consolidated election.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Board of Supervisors of Alameda County is hereby requested to include on the ballots and sample ballots the measure enumerated above to be voted on by the voters of the qualified electors of the City of Berkeley.

BE IT FURTHER RESOLVED that full text of the measure and the City Attorney's analysis shall be printed in the Voter Information Pamphlet mailed to all voters in the City of Berkeley.

BE IT FURTHER RESOLVED that the above enumerated measure requires a majority vote threshold for passage.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to cause the posting, publication and printing of notices, pursuant to the requirements of the Charter of the City of Berkeley, the Government Code and the Elections Code of the State of California.

BE IT FURTHER RESOLVED that the Registrar of Voters of Alameda County is requested to perform services in connection with said election at the request of the City Clerk.

BE IT FURTHER RESOLVED that the City of Berkeley agrees to reimburse the County of Alameda in full for the cost of election services performed.

BE IT FURTHER RESOLVED that the City Clerk is hereby authorized to enter into any contracts necessary for election consulting services, temporary employment services, printing services, and any such other supplies and services as may be required by the statutes of the State of California and the Charter of the City of Berkeley for the conduct of the November General Municipal Election.

BE IT FURTHER RESOLVED that Pursuant to Elections Code Section 9285 (b), the City Council hereby adopts the provisions of Elections Code Section 9285 (a) providing for the filing of rebuttal arguments for city ballot measures.

BE IT FURTHER RESOLVED that said proposed initiative measure shall appear and be printed upon the ballots to be used at said election as follows:

CITY OF BERKELEY INITIATIVE ORDINANCE	
Shall the measure adopting a tax of \$2.9647/therm of natural gas consumed annually in buildings of 15,000 square feet or larger except government buildings, single-family residences, and residential buildings with at least 50% affordable units, adjusted annually for inflation plus 6%; allocating revenues to building decarbonization programs, and administration; and establishing an oversight committee, generating an estimated <u>\$26.7</u> million the first year and more thereafter until its expiration in December 31, 2050, be adopted?	YES
	NO

BE IT FURTHER RESOLVED that the text of the initiative ordinance be shown as Exhibit A, attached hereto and made a part hereof.

- Exhibits
- A: Text of Ordinance

RECEIVED

FEB 28 2024

CITY OF BERKELEY
FINANCE DEPARTMENT

ORDINANCE NO. #,###-N.S.

ADDING CHAPTER 7.77 TO THE BERKELEY MUNICIPAL CODE TO
EXCISE TAX ON GENERATING GREENHOUSE GAS EMISSIONS IN LARGE
BUILDINGS

BE IT ORDAINED by the People of the City of Berkeley as follows:

Section 1. Adoption. That Chapter 7.77 of the Berkeley Municipal Code is hereby adopted to read as follows:

Chapter 7.77

LARGE BUILDINGS FOSSIL FUEL EMISSIONS TAX

Sections:

- 7.77.010 Short Title.**
- 7.77.020 Findings and Purpose.**
- 7.77.030 Definitions.**
- 7.77.040 Imposition of Tax.**
- 7.77.050 Exemptions and Exclusions.**
- 7.77.060 Administration — Penalties.**
- 7.77.070 Fossil Fuel Free Buildings Just Transition Fund; Deposit of Proceeds.**
- 7.77.080 Expenditure of Proceeds.**
- 7.77.090 Fossil Fuel Free Buildings Just Transition Oversight Committee.**
- 7.77.100 Technical Assistance to the Finance Department.**
- 7.77.110 Prohibited Conduct.**
- 7.77.120 Amendment of Ordinance.**
- 7.77.130 Severability.**

7.77.010 Short Title.

This Chapter shall be known as the "Large Buildings Fossil Fuel Emissions Tax Ordinance," and the tax it imposes shall be known as the "Large Buildings Fossil Fuel Emissions Tax."

7.77.020 Findings and purpose.

The people of the City of Berkeley find and declare as follows:

A. Scientific evidence has established that natural gas combustion, procurement and transportation produce significant greenhouse gas emissions that contribute to global warming and climate change.

B. The following addition to the Berkeley Municipal Code is reasonably necessary because of local climatic, geologic and topographical conditions as listed below:

(1) As a coastal city located on the San Francisco Bay, Berkeley is vulnerable to sea level rise, and human activities releasing greenhouse gases into the atmosphere cause increases in worldwide average temperature, which contribute to melting of glaciers and thermal expansion of ocean water — resulting in rising sea levels.

(2) Berkeley is already experiencing the repercussions of excessive greenhouse gas emissions as rising sea levels threaten the City's shoreline and infrastructure, have caused significant erosion, have increased impacts to infrastructure during extreme tides, and have caused the City to expend funds to modify its sewer system.

(3) Berkeley is situated along a wildland-urban interface and is extremely vulnerable to wildfires and firestorms, and human activities releasing greenhouse gases into the atmosphere cause increases in worldwide average temperature, drought conditions, vegetative fuel, and length of fire seasons.

(4) Structures in Berkeley are located along or near the Hayward fault, which is likely to produce a large earthquake in the Bay Area.

C. The following addition to the Berkeley Municipal Code is also reasonably necessary because of health and safety concerns as Berkeley residents suffer from asthma and other health conditions associated with poor indoor and outdoor air quality exacerbated by the combustion of natural gas.

D. The people of Berkeley, as codified through Measure G (Resolution No. 63,518-N.S.), the City of Berkeley Climate Action Plan (Resolution No. 64,480-N.S.), Berkeley Climate Emergency Declaration (Resolution No. 68,486-N.S.), Prohibition of Natural Gas Infrastructure in New Buildings (Ordinance 7672-NS), all recognize that rapid, far-reaching and unprecedented changes in all aspects of society are required to limit global warming and the resulting environmental threat posed by climate change, including the prompt phasing out of natural gas as a fuel in buildings.

E. Substituting electric heating and cooling infrastructure in new buildings fueled by less greenhouse-gas-intensive electricity is linked to significantly lower greenhouse gas emissions.

F. All-electric building design benefits the health, welfare, and resiliency of Berkeley and its residents.

G. In 2020, the City's building sector accounted for the majority of the City's community-wide greenhouse emissions and natural gas combustion in the residential and commercial sectors respectively accounted for 18 and 14 percent of community-wide emissions.

H. Methane gas leaked into the atmosphere is 84 times more potent as a greenhouse gas than carbon dioxide over the first 20 years of emission.

I. The true greenhouse-gas-emissions impact of Berkeley's natural gas combustion, procurement and transportation is likely many times higher than reported due to leaks of methane gas across the natural gas system, including within Berkeley.

J. It is the intent of the People to disincentivize obsolete natural gas infrastructure and associated greenhouse gas emissions in existing commercial and large residential buildings, thereby reducing the environmental and health hazards produced by the consumption and transportation of natural gas.

K. The City is also working to ensure all public funds available to electrify existing buildings from the City, regional, State and Federal governments are maximized.

L. Even with the addition of City, regional, State, and Federal resources, the City is unable to assist all of its residents with services and funds to convert natural gas appliances and infrastructure to use cleaner electricity.

M. The increased costs of meeting the challenges of electrifying existing buildings, which the City estimates will cost \$1.4 billion for low-rise residential buildings alone, has impacted the City's finances and its capacity to respond to the climate challenges described here.

N. The City needs new funds to pay for municipal services. The Buildings Emissions Tax is intended to disincentivize natural gas consumption and greenhouse gas emissions, thereby increasing the number of commercial and large residential property owners switching energy sources from fossil fuel gas to electricity, while also raising funds for municipal services, including funding a program to: reduce greenhouse gas emissions rapidly through decarbonizing buildings; support unionized trades and municipal jobs; and improve public safety, health, and indoor and outdoor air quality.

O. The special tax this measure imposes is an excise tax on the privilege of consuming natural gas in large buildings to fund climate mitigation strategies and other City services and on the privilege of access to municipal services. It is not a tax on title to property or on the value of property.

P. The Buildings Emissions Tax is intended to incentivize climate mitigation improvements to large buildings in Berkeley but shall not permit the costs of such

improvements to be passed on to residential tenants in the form of rent increases or other increased costs.

7.77.030 Definitions.

Unless otherwise defined in this Chapter, the terms used in this Chapter shall have the meanings given to them in Chapters 2.44, 9.04, and 19.81, as amended from time to time. For purposes of this Chapter, the following definitions apply:

- A. "Alternative Infrastructure and Appliances" means building improvements or infrastructure and appliances that operate on or generate electricity or other zero-carbon-emissions energy sources that are non-fossil-fuel-based or -derived, to include but not limited to those associated with plumbing, HVAC, cooking, clothes drying, heat pumps, solar panels, battery storage, electric panel upgrades, electric vehicle and mobility charging, and any related building electrical system upgrades.
- B. "Base Amount" is defined in section 7.77.070(E)(1).
- C. "Building Decarbonization Retrofits" means Natural Gas Conversion performed by labor subject to Minimum Labor Standards.
- D. "Eligible programs" is defined in section 7.77.070(E)(2).
- E. "Environmental Justice" is defined in section 7.77.080(C).
- F. "Fund" or "Fossil Fuel Free Buildings Just Transition Fund" is defined in Section 7.77.070(A).
- G. "Gross Floor Area" means the total area, as measured between the principal exterior surfaces of the enclosed fixed walls of the building(s). This includes all areas inside the building(s) such as: occupied tenant areas, common areas, meeting areas, break rooms, restrooms, elevator shafts, mechanical equipment areas, and storage rooms. Gross Floor Area should not include interstitial plenum space between floors, which may house pipes and ventilation.
- H. "Minimum Labor Standards" means labor or contractors subject to or providing all of the following:
 - (1) a bona fide collective bargaining agreement;
 - (2) compliance with applicable prevailing wage determinations made by the Director of Industrial Relations Pursuant to California Labor Code Part 7, Chapter 1, Article 2, Sections 1770, 1773, & 1773.1;
 - (3) employer contributions to worker skills and training;
 - (4) healthcare and pension benefits;
 - (5) targeted hiring requirements, including a minimum percentage of work hours performed by disadvantaged workers and/or graduates from approved MC3 (multi-craft core curriculum) pre-apprenticeship programs, and a minimum percentage work hours performed by registered apprentices; and
 - (6) any other applicable City of Berkeley labor standards under this Code or any ordinance of the City Council implementing this Chapter.
- I. "Natural Gas Conversion" means the material and labor associated with replacing natural gas building appliances and infrastructure with Alternative Infrastructure and Appliances.
- J. "Taxable Non-Residential Building" means a building with at least 15,000 square feet of Gross Floor Area that is used or could be used for any occupancy type(s) other than residential where the interior of such Gross Floor Area is actively heated or cooled.

K. "Single-Family Building" means any building comprised solely of 1 to 4 residential units, regardless of size.

L. "Tax Proceeds" is defined in section 7.77.070(A).

M. "Taxable Residential Building" means a building with at least 15,000 square feet of Gross Floor Area that is used or could be used for any residential or mixed-use occupancy type(s) where the interior of such Gross Floor Area is actively heated or cooled. Taxable Residential Building shall not mean Single-Family Buildings and residential buildings more than 50 percent of the units of which are deed-restricted to be affordable to households making less than 80 percent of the Area Median Income.

N. "Oversight Committee" or "Fossil Fuel Free Buildings Just Transition Oversight Committee" is defined in Section 7.77.070(E).

O. "Owner" means a person possessing title to a Taxable Non-Residential Building or Taxable Residential Building as of 11:59 p.m. on December 31 of any calendar year. In the case of a building held in cooperative, condominium, tenants in common, or joint tenants form of ownership, "Owner" means the board of managers, board of directors, homeowners association, or other representative body of the jointly owned building with authority to make decisions about assessments or charges on joint owners to fund maintenance and alterations.

7.77.040 Imposition of Tax.

A. Except as otherwise provided in this Chapter, for the purposes described in Section 7.77.080, the City imposes an annual Large Buildings Fossil Fuel Emissions Tax on each Owner generating greenhouse gas emissions from Taxable Non-Residential Buildings and Taxable Residential Buildings.

B. Large Buildings Fossil Fuel Emissions Tax amounts shall be determined based on the estimated greenhouse gas emissions in metric tons of carbon dioxide equivalent and methane of each Taxable Non-Residential Building and Taxable Residential Building for a tax year, calculated as the sum of:

(1) The product of \$382, the total therms of natural gas consumed in the Taxable Non-Residential Building or Taxable Residential Building during the tax year, and the natural gas carbon emissions factor; and

(2) The product of \$10,044, the total therms of natural gas consumed in the Taxable Non-Residential Building or Taxable Residential Building during the tax year, the natural gas leakage factor, the natural gas methane content factor, and the natural gas therm to metric ton factor.

C. For purposes of this Chapter:

(1) The natural gas carbon emissions factor shall be 0.0053.

(2) The natural gas therm to metric ton factor shall be 0.0026.

(3) The natural gas leakage factor shall be 0.04.

(4) The natural gas methane content factor shall be 0.9.

D. The City Manager, based on calculations from the Finance Department, shall annually adjust the base tax rates in subsection 7.77.040 B. (Originally, \$382 and \$10,044), commencing on January 1, 2026, by the sum of:

(1) The percentage increase in the increase in the Consumer Price Index: All Urban Consumers for the San Francisco/Oakland/Hayward Area for All Items as reported by the United States Bureau of Labor Statistics, or any successor to that index, as of December 31 of the preceding year, beginning with the 2025 tax year; plus

(2) 6%.

E. The Large Buildings Fossil Fuel Emissions Tax shall be payable by the Owner. Not more than one tax per Taxable Non-Residential Building or Taxable Residential Building shall be imposed under this Section 7.77.040 for a tax year by reason of multiple Owners subject to tax. If there are multiple Owners subject to tax, each shall be jointly and severally liable for the tax.

F. The Large Buildings Fossil Fuel Emissions Tax shall take effect on January 1, 2025 and is first due on February 28, 2026. The Large Buildings Fossil Fuel Emissions Tax shall expire at the end of the day on December 31, 2050.

7.77.050 Exemptions and Exclusions.

A. For only so long as, and to the extent that, the City is prohibited from imposing the Large Buildings Fossil Fuel Emissions Tax, any person upon whom the City is prohibited under the Constitution or laws of the State of California or the Constitution or laws of the United States from imposing the Large Buildings Fossil Fuel Emissions Tax shall be exempt from the Large Buildings Fossil Fuel Emissions Tax.

B. The City, the State of California, and any county, municipal corporation, district, or other political subdivision of the State shall be exempt from the Large Buildings Fossil Fuel Emissions Tax, except where any constitutional or statutory immunity from taxation is waived or is not applicable.

C. The City Council by a vote of two-thirds of all City Councilmembers may by Ordinance adopt further exemptions, waivers, discounts, or rebates for the tax for an organization that is exempt from income taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as it may be amended from time to time, and that has total annual revenues under \$1,000,000, and provided that the Council (i) must renew each such exemption annually and (ii) makes an affirmative determination that the imposition of the tax otherwise required by this Chapter would make continued ownership of the property infeasible and that the benefits to the City from the particular organization outweigh the burden to the climate, the City's climate program, and/or other impacts which reasonably may be anticipated to be generated by modification of the tax.

7.77.060 Administration — Penalties.

A. Except as otherwise provided under this Chapter, the City Manager or their designee shall enforce the provisions of this Chapter and may prescribe, adopt, and enforce rules and regulations to facilitate administration and enforcement of this Chapter.

B. The tax required by this Chapter is delinquent if not received by the City on or before February 28 of each year.

C. Any person who fails to timely pay tax due under this Chapter shall pay a one-time penalty of 10 percent of the amount due, in addition to the tax, plus interest on the unpaid tax at the rate of one percent per month from the date on which the tax became due until the date of payment.

D. Transactions with the principal purpose of avoiding or evading all or a portion of the Large Buildings Fossil Fuel Emissions Tax shall be disregarded for purposes of determining the amount of the Large Buildings Fossil Fuel Emissions Tax and whether the Large Buildings Fossil Fuel Emissions Tax is due. Any Owner determined to have engaged in one or more transactions with the principal purpose of avoiding or evading

all or a portion of the Large Buildings Fossil Fuel Emissions Tax shall be liable for the Large Buildings Fossil Fuel Emissions Tax and also liable for a penalty in an amount equal to the Large Buildings Fossil Fuel Emissions Tax. If unpaid, the penalty shall be subject to interest under paragraph C of this section, but not to the 10 percent penalty provided there.

E. Any tax required to be paid by an Owner under this Chapter shall be deemed a debt owed by the Owner to the City. Any person owing money to the City under this Chapter shall be liable to an action brought in the name of the City for the recovery of such amount, along with any collection and other costs incurred by the City as a result of the person's noncompliance with this Chapter, including, but not limited to, reasonable attorneys' fees, plus interest and penalties as provided in this Chapter.

7.77.070 Fossil Fuel Free Buildings Just Transition Fund; Deposit of Proceeds.

A. Establishment of Fund. The Fossil Fuel Free Buildings Just Transition Fund ("Fund") is hereby established as a special purpose fund, and shall receive all taxes, penalties, interest, and costs collected from the Large Buildings Fossil Fuel Emissions Tax imposed under this Chapter ("Tax Proceeds").

B. Use of Fund. Monies in the Fund shall be used exclusively for the purposes described in Section 7.77.080 of this Chapter.

C. Administration of Fund. Commencing with a report filed no later than February 15, 2026, covering the fiscal year ending June 30, 2025, the City Manager shall file annually with the Council, by February 15 of each year, a report of the monies collected in and expended from the Fund during the prior fiscal year, the status of any project required or authorized to be funded by Section 7.77.080, and such other information as the Finance Director, in the Finance Director's sole discretion, deems relevant to the implementation of this Chapter.

D. Accounting. All Tax Proceeds shall be deposited in the Fund. The Fund shall be maintained separate and apart from all other City funds and shall be subject to appropriation. Any balance remaining in the Fund at the close of any fiscal year shall be deemed to have been provided for a special purpose and shall be maintained in the Fund for the purposes described in Section 7.77.080.

E. Appropriations May Not Supplant Existing Expenditures. Monies in the Fund shall be expended only for Eligible Programs. Monies in the Fund shall not be spent to supplant existing programs funded by the City for climate programs, which shall continue to be funded, at a minimum, at the Base Amount. All funds unexpended from the Fund shall be held in the Fund and may be expended on Eligible Programs. For purposes of this subsection E:

(1) "Base Amount" means the City Department of Finance's calculation of the amount of City appropriations (not including appropriations from the Fund and exclusive of expenditures funded by private funding or funded or mandated by state or federal law) for Eligible Programs for the fiscal year ending June 30, 2024.

(2) "Eligible Programs" means all programs and expenditures described in Section 7.77.080.

7.77.080 Expenditure of Proceeds.

Monies in the Fund shall be appropriated and used exclusively for the following purposes:

- A. Up to 3% of the Tax Proceeds distributed in any proportion to the Finance Department and other City Departments for the administration of the Tax and of the Fund.
- B. Refunds of any overpayments of the Tax, including any related penalties, interest, and collection costs.
- C. All remaining amounts for the following purposes, in the following percentages, which amounts shall include the costs of administering the programs described. The voters also intend that, in expending remaining amounts, the City prioritize principles of environmental justice, tenant protections and other initiatives to prevent displacement of residents; retrofit projects at a neighborhood, block, utility zone or designation, or other comparable geographic scale; and ensure compliance with Berkeley Municipal Code Chapter 13.84 specifying requirements for property owners who relocate residents for tenant improvements. For purposes of this section, "environmental justice" means mitigating disproportionate impacts on communities identified in the State of California's EnviroScreen database or any successor to that database. The voters also intend that the City prioritize the use and support of labor satisfying the definition of 7.77.030.C ("Minimum Labor Standards").

(1) 90% to fund expenses associated with Natural Gas Conversion of existing buildings, prioritizing Building Decarbonization Retrofits. The City shall prioritize funding for Natural Gas Conversion and Building Decarbonization Retrofits in low-rise residential buildings and restaurants, including low- or no-interest loans to assist property owners in retrofitting properties or otherwise to achieve the purposes of this Chapter.

(2) 10% to fund permanent, career, City positions in an employee bargaining unit subject to a collective bargaining agreement to administer and facilitate a citywide program of Natural Gas Conversion and Building Decarbonization Retrofits and administrative expenses connected therewith.

D. Notwithstanding subsections C(1) and (2) of this section, if the Council finds on the basis of substantial evidence that the infrastructure and appliances of the building stock in the City have been completely and permanently transitioned from natural gas, remaining Tax Proceeds may fund other City programs that directly reduce or avoid greenhouse gas emissions.

E. The Fossil Fuel Free Buildings Just Transition Oversight Committee established under Section 7.77.090 ("Oversight Committee") shall make recommendations to the Council to ensure the Fund is administered consistently with this section.

7.77.090 Fossil Fuel Free Buildings Just Transition Oversight Committee.

A. The Environment and Climate Commission established pursuant to Chapter 3.82 of this Code or any successor to that commission shall serve as the Oversight Committee and make recommendations to the Council to ensure the Fund is administered consistently with section 7.77.080.

B. The Oversight Committee shall monitor, and make recommendations as to, the administration of the Fund, to ensure it is administered in a manner that is accountable to the community and consistent with this Chapter and other law, and to advise the Council on appropriations from the Fund. The Oversight Committee shall:

- (1) Develop recommendations for the use of the Fund;
 - (2) By December 31, 2025, and every year thereafter, conduct a needs assessment as to retrofitting existing buildings in the City and make annual recommendations about appropriations from the Fund to the Council informed by that needs assessment;
 - (3) Promote and facilitate transparency in the administration of the Fund;
 - (4) Promote implementation of the programs funded by the Fund in a manner that is equitable, culturally sensitive, and supportive of labor;
- C. The City shall provide adequate staffing to the Oversight Committee to achieve its purposes.
- D. The Transportation and Infrastructure Commission or any successor to it, the Labor Commission or any successor to it, the Council Facilities, Infrastructure, Transportation, Environment and Sustainability Policy Committee or any successor to it, may each make recommendations to the Council to ensure the Fund is administered consistently with this Chapter.
- E. Nothing in this section 7.77.090 shall limit the authority of the Council to propose, amend, and adopt a budget under the Charter.

7.77.100 Technical Assistance to the Finance Department.

The Office of Energy and Sustainable Development or any successor office or department shall provide technical assistance to the Finance Department upon the City Manager's or Director of Finance's request to administer the Large Buildings Fossil Fuel Emissions Tax.

7.77.110 Prohibited Conduct.

Except as the Berkeley Rent Stabilization Board expressly determines, the Owner of a Taxable Residential Building shall not pass on the tax imposed by this Chapter to tenants in the form of rent increases or in any other manner. Inclusion of such charges shall be a complete defense to any action for unlawful detainer for failure to pay rent absent such express determination of the Berkeley Rent Stabilization Board.

7.77.120 Amendment of Ordinance.

- A. The Council may, by two-thirds vote of the entire City Council, amend this Chapter to further its purposes, provided that such amendments do not constitute a tax increase within the meaning of California Government Code section 53750, subdivision (h) or expand the exemptions provided by section 7.77.050, or amend this section 7.77.120.
- B. The City Council shall not reduce the inflation-adjusted tax rates authorized by this Chapter or otherwise reduce the tax absent a finding supported by substantial evidence that doing so is necessary to address unusual circumstances such as a natural disaster, the undercollection is temporary, and the reduced tax will nevertheless achieve the purposes of this Chapter.
- C. For purposes of this section 7.77.120, the purposes of this Chapter are those stated in section 7.77.020 and the expenditures authorized by section 7.77.080.

7.77.130 Severability.

If any word, phrase, sentence, part, section, subsection, or other portion of this ordinance, or any application thereof to any person or circumstance is declared void,

unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this Chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The People of the City of Berkeley hereby declare that they would have passed this ordinance, and each word, phrase, sentence, part, section, subsection, or other portion hereof, irrespective of the fact that any one or more words, phrases, sentences, parts, sections, subsections, or other portions hereof has been declared invalid or unconstitutional.

Section 2. Increase Appropriations Limit. Pursuant to California Constitution Article XIII B and applicable laws, for four years from November 5, 2024, the appropriations limit for the City shall be increased by the aggregate sum collected by the levy of the tax imposed under this ordinance.

Section 3. Special Tax: Majority Vote Requirement. This Ordinance imposes a Special tax and shall be effective only if approved by a majority of the voters voting thereon.

Section 4. Certification: Publication: Numbering.

A. Upon approval by the voters, the City Clerk shall assign this ordinance an ordinance number and insert it where indicated on the first page above, certify to the passage and adoption of this ordinance, and cause it to be published according to law.

B. Upon approval by the voters, the Mayor and City Clerk shall execute this ordinance where indicated below to give evidence of that approval.

We hereby certify that the foregoing ordinance was duly adopted by the voters of the City of Berkeley participating in the November 5, 2024 election.

, Mayor

Attest:

Mark Numainville, City Clerk

BERKELEY CITY CLERK CERTIFICATE OF PETITION

I, Mark Numainville, City Clerk of the City of Berkeley, California, do hereby certify the following:

An Initiative Petition entitled: "Initiative Ordinance to Adopt a Special Tax on Natural Gas Consumption in Buildings 15,000 Sq. Ft. or Larger" was filed with the Berkeley City Clerk on May 15, 2024 within the statutory time limit and forwarded to the office of the Alameda County Registrar of Voters for verification on May 16, 2024; and

The petition contained **4,580** unverified signatures; and

Pursuant to the Charter of the City of Berkeley, in order to be sufficient, the petition must have been signed by at least **2,985** qualified registered voters of the City of Berkeley, the number being equal to 5% of the total votes cast for all candidates for mayor in the last general municipal election; and

I have examined or caused to be examined, signatures on the petition pursuant to California Elections Code sections 9211 and 9115; and

I have determined that the petition contained a valid signature rate of **124%** based on a random sample of the signatures as performed and certified by the Registrar of Voters in Exhibit A attached herewith; and

This number meets or exceeds the valid signature rate needed to qualify the initiative; therefore

The petition is found to be sufficient to require the City Council of the City of Berkeley to take appropriate action specified under Article XIII of the Berkeley City Charter.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 26th day of June, 2024.




Mark Numainville
City Clerk
City of Berkeley

REGISTRAR OF VOTERS CERTIFICATE TO PETITION

I, **Tim Dupuis**, Registrar of Voters for the County of Alameda, State of California, hereby certify that: an Initiative Entitled: City of Berkeley To Adopt a Special Tax on Natural Gas Consumption in Buildings 15,000 Sq. Ft. or Larger, was filed with the Berkeley City Clerk within the statutory time limit and forwarded to this office for verification on May 16, 2024; and

The petition contained 4,580 unverified signatures: and

In accordance with Article XIII of the Berkeley City Charter, it was determined that the total number of votes cast for all candidates for Mayor at the November 2020 General Election was 57,885, the requisite number of signatures required to qualify this initiative is 5% of 57,885 or 2,985.

I have examined, or caused to be examined, signatures on the petition pursuant to California Elections Code sections 9211 and 9115; and

Have determined that the petition contained 404 valid signatures of qualified registered voters in the City of Berkeley based on the random sample examination set forth in section 9115 and the formula prescribed by the California Secretary of State: and

That this number represents 124% of the total number of signatures needed to qualify the initiative, therefore.

The petition is found to be sufficient to require the City Council of the City of Berkeley to take the appropriate action specified in the California Elections Code.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 28th day of **May 2024**.

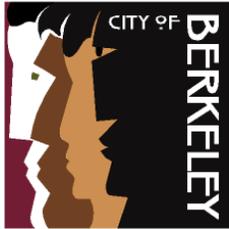


DocuSigned by:

Tim Dupuis

C504117C2A294A7...

Tim Dupuis
Registrar of Voters
County of Alameda
State of California



Office of the City Manager

ACTION CALENDAR
July 30, 2024
(Continued from July 9, 2024)

To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Submitted by: Mark Numainville, City Clerk
Subject: Initiative Petition – Initiative Ordinance to Adopt a Special Tax on Natural Gas Consumption in Buildings 15,000 Sq. Ft. or Larger

RECOMMENDATION

- 1) Take action on the initiative petition to:
 - a) Adopt the provisions of the measure without alteration.
 - OR-
 - b) Adopt a Resolution submitting the measure, without alteration, to a vote of the people at the November 5, 2024 General Municipal Election.
- 2) Designate, by motion, specific members of the Council to file ballot measure arguments on this measure as provided for in Elections Code Section 9282.

FISCAL IMPACTS OF RECOMMENDATION

No direct fiscal impacts related to the recommended action.

CURRENT SITUATION AND ITS EFFECTS

An initiative petition titled “Initiative Ordinance to Adopt a Special Tax on Natural Gas Consumption in Buildings 15,000 Sq. Ft. or Larger” was filed with the City Clerk on May 15, 2024. The proponents of this petition submitted 4,580 signatures.

Under Berkeley City Charter Article XIII, a successful initiative petition must include valid signatures of at least 5% (2,985) of the votes for all candidates for Mayor in November 2020 (57,885).

The Alameda County Registrar of Voters verified the signatures by reviewing a random sampling of 500 signatures in accordance with State Elections Code §9215. This statistical sampling found 404 valid signatures. When this ratio of valid signatures is applied to the actual number of signatures submitted, it results in a validity rate of 124%, which exceeds the required threshold in the state Elections Code for the petition to be deemed sufficient. Therefore, the petition was certified by the Registrar of Voters as being sufficient on May 28, 2024.

Initiative Petition

ACTION CALENDAR

July 30, 2024

Additionally, with respect to who can author arguments for measures placed on the ballot by petition, Elections Code Section 9282 provides the City Council may authorize the Council as a whole, or members of the Council, to submit an argument against the initiative ordinance.

BACKGROUND

Pursuant to the City Charter, Article XIII §92, once a petition has been found to have a sufficient amount of signatures, the City Council must consider whether to a) Adopt said ordinance without alteration within twenty days after the attachment of the City Clerk's certificate of sufficiency to the accompanying petition (subject to a referendary vote, under the provision of Article XIV of this Charter); or b) Submit the ordinance to the voters of the City of Berkeley at the next general election.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable environmental effects or climate impacts associated with the subject of this report.

RATIONALE FOR RECOMMENDATION

The proposed action is mandated by state codes and the provisions of the City Charter.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Mark Numainville, City Clerk, 981-6900

Attachments:

1. Resolution
 Exhibit A: Full Text of Measure
2. City Clerk's Certificate of Sufficiency

RESOLUTION NO. ##,###-N.S.

SUBMITTING TO THE BERKELEY ELECTORATE AN INITIATIVE ORDINANCE TO ADOPT A SPECIAL TAX ON NATURAL GAS CONSUMPTION IN BUILDINGS 15,000 SQ. FT. OR LARGER FOR THE NOVEMBER 5, 2024 BALLOT

WHEREAS, the Berkeley City Council has elected to submit to the voters at the November 5, 2024 General Municipal Election, an initiative measure to Adopt a Special Tax on Natural Gas Consumption in Buildings 15,000 Sq. Ft. or Larger; and

WHEREAS, certain actions are required in connection with said election; and

WHEREAS, the Council has requested that the Alameda County Board of Supervisors consolidate the General Municipal Election with the Presidential General Election; and

WHEREAS, the Council desires to submit all measures to be placed upon the ballot at said consolidated election.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Board of Supervisors of Alameda County is hereby requested to include on the ballots and sample ballots the measure enumerated above to be voted on by the voters of the qualified electors of the City of Berkeley.

BE IT FURTHER RESOLVED that full text of the measure and the City Attorney's analysis shall be printed in the Voter Information Pamphlet mailed to all voters in the City of Berkeley.

BE IT FURTHER RESOLVED that the above enumerated measure requires a majority vote threshold for passage.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to cause the posting, publication and printing of notices, pursuant to the requirements of the Charter of the City of Berkeley, the Government Code and the Elections Code of the State of California.

BE IT FURTHER RESOLVED that the Registrar of Voters of Alameda County is requested to perform services in connection with said election at the request of the City Clerk.

BE IT FURTHER RESOLVED that the City of Berkeley agrees to reimburse the County of Alameda in full for the cost of election services performed.

BE IT FURTHER RESOLVED that the City Clerk is hereby authorized to enter into any contracts necessary for election consulting services, temporary employment services, printing services, and any such other supplies and services as may be required by the statutes of the State of California and the Charter of the City of Berkeley for the conduct of the November General Municipal Election.

BE IT FURTHER RESOLVED that Pursuant to Elections Code Section 9285 (b), the City Council hereby adopts the provisions of Elections Code Section 9285 (a) providing for the filing of rebuttal arguments for city ballot measures.

BE IT FURTHER RESOLVED that said proposed initiative measure shall appear and be printed upon the ballots to be used at said election as follows:

CITY OF BERKELEY INITIATIVE ORDINANCE	
Shall the measure adopting a tax of \$2.9647/therm of natural gas consumed annually in buildings of 15,000 square feet or larger except government buildings, single-family residences, and residential buildings with at least 50% affordable units, adjusted annually for inflation plus 6%; allocating revenues to building decarbonization programs, and administration; and establishing an oversight committee, generating an estimated \$___ million the first year and more thereafter until its expiration in December 31, 2050, be adopted?	YES
	NO

BE IT FURTHER RESOLVED that the text of the initiative ordinance be shown as Exhibit A, attached hereto and made a part hereof.

Exhibits

A: Text of Ordinance

RECEIVED

FEB 28 2024

CITY OF BERKELEY
FINANCE DEPARTMENT

ORDINANCE NO. #,###-N.S.

ADDING CHAPTER 7.77 TO THE BERKELEY MUNICIPAL CODE TO
EXCISE TAX ON GENERATING GREENHOUSE GAS EMISSIONS IN LARGE
BUILDINGS

BE IT ORDAINED by the People of the City of Berkeley as follows:

Section 1. Adoption. That Chapter 7.77 of the Berkeley Municipal Code is hereby adopted to read as follows:

Chapter 7.77

LARGE BUILDINGS FOSSIL FUEL EMISSIONS TAX

Sections:

- 7.77.010 Short Title.**
- 7.77.020 Findings and Purpose.**
- 7.77.030 Definitions.**
- 7.77.040 Imposition of Tax.**
- 7.77.050 Exemptions and Exclusions.**
- 7.77.060 Administration — Penalties.**
- 7.77.070 Fossil Fuel Free Buildings Just Transition Fund; Deposit of Proceeds.**
- 7.77.080 Expenditure of Proceeds.**
- 7.77.090 Fossil Fuel Free Buildings Just Transition Oversight Committee.**
- 7.77.100 Technical Assistance to the Finance Department.**
- 7.77.110 Prohibited Conduct.**
- 7.77.120 Amendment of Ordinance.**
- 7.77.130 Severability.**

7.77.010 Short Title.

This Chapter shall be known as the "Large Buildings Fossil Fuel Emissions Tax Ordinance," and the tax it imposes shall be known as the "Large Buildings Fossil Fuel Emissions Tax."

7.77.020 Findings and purpose.

The people of the City of Berkeley find and declare as follows:

A. Scientific evidence has established that natural gas combustion, procurement and transportation produce significant greenhouse gas emissions that contribute to global warming and climate change.

B. The following addition to the Berkeley Municipal Code is reasonably necessary because of local climatic, geologic and topographical conditions as listed below:

(1) As a coastal city located on the San Francisco Bay, Berkeley is vulnerable to sea level rise, and human activities releasing greenhouse gases into the atmosphere cause increases in worldwide average temperature, which contribute to melting of glaciers and thermal expansion of ocean water — resulting in rising sea levels.

(2) Berkeley is already experiencing the repercussions of excessive greenhouse gas emissions as rising sea levels threaten the City's shoreline and infrastructure, have caused significant erosion, have increased impacts to infrastructure during extreme tides, and have caused the City to expend funds to modify its sewer system.

(3) Berkeley is situated along a wildland-urban interface and is extremely vulnerable to wildfires and firestorms, and human activities releasing greenhouse gases into the atmosphere cause increases in worldwide average temperature, drought conditions, vegetative fuel, and length of fire seasons.

(4) Structures in Berkeley are located along or near the Hayward fault, which is likely to produce a large earthquake in the Bay Area.

C. The following addition to the Berkeley Municipal Code is also reasonably necessary because of health and safety concerns as Berkeley residents suffer from asthma and other health conditions associated with poor indoor and outdoor air quality exacerbated by the combustion of natural gas.

D. The people of Berkeley, as codified through Measure G (Resolution No. 63,518-N.S.), the City of Berkeley Climate Action Plan (Resolution No. 64,480-N.S.), Berkeley Climate Emergency Declaration (Resolution No. 68,486-N.S.), Prohibition of Natural Gas Infrastructure in New Buildings (Ordinance 7672-NS), all recognize that rapid, far-reaching and unprecedented changes in all aspects of society are required to limit global warming and the resulting environmental threat posed by climate change, including the prompt phasing out of natural gas as a fuel in buildings.

E. Substituting electric heating and cooling infrastructure in new buildings fueled by less greenhouse-gas-intensive electricity is linked to significantly lower greenhouse gas emissions.

F. All-electric building design benefits the health, welfare, and resiliency of Berkeley and its residents.

G. In 2020, the City's building sector accounted for the majority of the City's community-wide greenhouse emissions and natural gas combustion in the residential and commercial sectors respectively accounted for 18 and 14 percent of community-wide emissions.

H. Methane gas leaked into the atmosphere is 84 times more potent as a greenhouse gas than carbon dioxide over the first 20 years of emission.

I. The true greenhouse-gas-emissions impact of Berkeley's natural gas combustion, procurement and transportation is likely many times higher than reported due to leaks of methane gas across the natural gas system, including within Berkeley.

J. It is the intent of the People to disincentivize obsolete natural gas infrastructure and associated greenhouse gas emissions in existing commercial and large residential buildings, thereby reducing the environmental and health hazards produced by the consumption and transportation of natural gas.

K. The City is also working to ensure all public funds available to electrify existing buildings from the City, regional, State and Federal governments are maximized.

L. Even with the addition of City, regional, State, and Federal resources, the City is unable to assist all of its residents with services and funds to convert natural gas appliances and infrastructure to use cleaner electricity.

M. The increased costs of meeting the challenges of electrifying existing buildings, which the City estimates will cost \$1.4 billion for low-rise residential buildings alone, has impacted the City's finances and its capacity to respond to the climate challenges described here.

N. The City needs new funds to pay for municipal services. The Buildings Emissions Tax is intended to disincentivize natural gas consumption and greenhouse gas emissions, thereby increasing the number of commercial and large residential property owners switching energy sources from fossil fuel gas to electricity, while also raising funds for municipal services, including funding a program to: reduce greenhouse gas emissions rapidly through decarbonizing buildings; support unionized trades and municipal jobs; and improve public safety, health, and indoor and outdoor air quality.

O. The special tax this measure imposes is an excise tax on the privilege of consuming natural gas in large buildings to fund climate mitigation strategies and other City services and on the privilege of access to municipal services. It is not a tax on title to property or on the value of property.

P. The Buildings Emissions Tax is intended to incentivize climate mitigation improvements to large buildings in Berkeley but shall not permit the costs of such

improvements to be passed on to residential tenants in the form of rent increases or other increased costs.

7.77.030 Definitions.

Unless otherwise defined in this Chapter, the terms used in this Chapter shall have the meanings given to them in Chapters 2.44, 9.04, and 19.81, as amended from time to time. For purposes of this Chapter, the following definitions apply:

- A. "Alternative Infrastructure and Appliances" means building improvements or infrastructure and appliances that operate on or generate electricity or other zero-carbon-emissions energy sources that are non-fossil-fuel-based or -derived, to include but not limited to those associated with plumbing, HVAC, cooking, clothes drying, heat pumps, solar panels, battery storage, electric panel upgrades, electric vehicle and mobility charging, and any related building electrical system upgrades.
- B. "Base Amount" is defined in section 7.77.070(E)(1).
- C. "Building Decarbonization Retrofits" means Natural Gas Conversion performed by labor subject to Minimum Labor Standards.
- D. "Eligible programs" is defined in section 7.77.070(E)(2).
- E. "Environmental Justice" is defined in section 7.77.080(C).
- F. "Fund" or "Fossil Fuel Free Buildings Just Transition Fund" is defined in Section 7.77.070(A).
- G. "Gross Floor Area" means the total area, as measured between the principal exterior surfaces of the enclosed fixed walls of the building(s). This includes all areas inside the building(s) such as: occupied tenant areas, common areas, meeting areas, break rooms, restrooms, elevator shafts, mechanical equipment areas, and storage rooms. Gross Floor Area should not include interstitial plenum space between floors, which may house pipes and ventilation.
- H. "Minimum Labor Standards" means labor or contractors subject to or providing all of the following:
 - (1) a bona fide collective bargaining agreement;
 - (2) compliance with applicable prevailing wage determinations made by the Director of Industrial Relations Pursuant to California Labor Code Part 7, Chapter 1, Article 2, Sections 1770, 1773, & 1773.1;
 - (3) employer contributions to worker skills and training;
 - (4) healthcare and pension benefits;
 - (5) targeted hiring requirements, including a minimum percentage of work hours performed by disadvantaged workers and/or graduates from approved MC3 (multi-craft core curriculum) pre-apprenticeship programs, and a minimum percentage work hours performed by registered apprentices; and
 - (6) any other applicable City of Berkeley labor standards under this Code or any ordinance of the City Council implementing this Chapter.
- I. "Natural Gas Conversion" means the material and labor associated with replacing natural gas building appliances and infrastructure with Alternative Infrastructure and Appliances.
- J. "Taxable Non-Residential Building" means a building with at least 15,000 square feet of Gross Floor Area that is used or could be used for any occupancy type(s) other than residential where the interior of such Gross Floor Area is actively heated or cooled.

K. "Single-Family Building" means any building comprised solely of 1 to 4 residential units, regardless of size.

L. "Tax Proceeds" is defined in section 7.77.070(A).

M. "Taxable Residential Building" means a building with at least 15,000 square feet of Gross Floor Area that is used or could be used for any residential or mixed-use occupancy type(s) where the interior of such Gross Floor Area is actively heated or cooled. Taxable Residential Building shall not mean Single-Family Buildings and residential buildings more than 50 percent of the units of which are deed-restricted to be affordable to households making less than 80 percent of the Area Median Income.

N. "Oversight Committee" or "Fossil Fuel Free Buildings Just Transition Oversight Committee" is defined in Section 7.77.070(E).

O. "Owner" means a person possessing title to a Taxable Non-Residential Building or Taxable Residential Building as of 11:59 p.m. on December 31 of any calendar year. In the case of a building held in cooperative, condominium, tenants in common, or joint tenants form of ownership, "Owner" means the board of managers, board of directors, homeowners association, or other representative body of the jointly owned building with authority to make decisions about assessments or charges on joint owners to fund maintenance and alterations.

7.77.040 Imposition of Tax.

A. Except as otherwise provided in this Chapter, for the purposes described in Section 7.77.080, the City imposes an annual Large Buildings Fossil Fuel Emissions Tax on each Owner generating greenhouse gas emissions from Taxable Non-Residential Buildings and Taxable Residential Buildings.

B. Large Buildings Fossil Fuel Emissions Tax amounts shall be determined based on the estimated greenhouse gas emissions in metric tons of carbon dioxide equivalent and methane of each Taxable Non-Residential Building and Taxable Residential Building for a tax year, calculated as the sum of:

(1) The product of \$382, the total therms of natural gas consumed in the Taxable Non-Residential Building or Taxable Residential Building during the tax year, and the natural gas carbon emissions factor; and

(2) The product of \$10,044, the total therms of natural gas consumed in the Taxable Non-Residential Building or Taxable Residential Building during the tax year, the natural gas leakage factor, the natural gas methane content factor, and the natural gas therm to metric ton factor.

C. For purposes of this Chapter:

(1) The natural gas carbon emissions factor shall be 0.0053.

(2) The natural gas therm to metric ton factor shall be 0.0026.

(3) The natural gas leakage factor shall be 0.04.

(4) The natural gas methane content factor shall be 0.9.

D. The City Manager, based on calculations from the Finance Department, shall annually adjust the base tax rates in subsection 7.77.040 B. (Originally, \$382 and \$10,044), commencing on January 1, 2026, by the sum of:

(1) The percentage increase in the increase in the Consumer Price Index: All Urban Consumers for the San Francisco/Oakland/Hayward Area for All Items as reported by the United States Bureau of Labor Statistics, or any successor to that index, as of December 31 of the preceding year, beginning with the 2025 tax year; plus

(2) 6%.

E. The Large Buildings Fossil Fuel Emissions Tax shall be payable by the Owner. Not more than one tax per Taxable Non-Residential Building or Taxable Residential Building shall be imposed under this Section 7.77.040 for a tax year by reason of multiple Owners subject to tax. If there are multiple Owners subject to tax, each shall be jointly and severally liable for the tax.

F. The Large Buildings Fossil Fuel Emissions Tax shall take effect on January 1, 2025 and is first due on February 28, 2026. The Large Buildings Fossil Fuel Emissions Tax shall expire at the end of the day on December 31, 2050.

7.77.050 Exemptions and Exclusions.

A. For only so long as, and to the extent that, the City is prohibited from imposing the Large Buildings Fossil Fuel Emissions Tax, any person upon whom the City is prohibited under the Constitution or laws of the State of California or the Constitution or laws of the United States from imposing the Large Buildings Fossil Fuel Emissions Tax shall be exempt from the Large Buildings Fossil Fuel Emissions Tax.

B. The City, the State of California, and any county, municipal corporation, district, or other political subdivision of the State shall be exempt from the Large Buildings Fossil Fuel Emissions Tax, except where any constitutional or statutory immunity from taxation is waived or is not applicable.

C. The City Council by a vote of two-thirds of all City Councilmembers may by Ordinance adopt further exemptions, waivers, discounts, or rebates for the tax for an organization that is exempt from income taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as it may be amended from time to time, and that has total annual revenues under \$1,000,000, and provided that the Council (i) must renew each such exemption annually and (ii) makes an affirmative determination that the imposition of the tax otherwise required by this Chapter would make continued ownership of the property infeasible and that the benefits to the City from the particular organization outweigh the burden to the climate, the City's climate program, and/or other impacts which reasonably may be anticipated to be generated by modification of the tax.

7.77.060 Administration — Penalties.

A. Except as otherwise provided under this Chapter, the City Manager or their designee shall enforce the provisions of this Chapter and may prescribe, adopt, and enforce rules and regulations to facilitate administration and enforcement of this Chapter.

B. The tax required by this Chapter is delinquent if not received by the City on or before February 28 of each year.

C. Any person who fails to timely pay tax due under this Chapter shall pay a one-time penalty of 10 percent of the amount due, in addition to the tax, plus interest on the unpaid tax at the rate of one percent per month from the date on which the tax became due until the date of payment.

D. Transactions with the principal purpose of avoiding or evading all or a portion of the Large Buildings Fossil Fuel Emissions Tax shall be disregarded for purposes of determining the amount of the Large Buildings Fossil Fuel Emissions Tax and whether the Large Buildings Fossil Fuel Emissions Tax is due. Any Owner determined to have engaged in one or more transactions with the principal purpose of avoiding or evading

all or a portion of the Large Buildings Fossil Fuel Emissions Tax shall be liable for the Large Buildings Fossil Fuel Emissions Tax and also liable for a penalty in an amount equal to the Large Buildings Fossil Fuel Emissions Tax. If unpaid, the penalty shall be subject to interest under paragraph C of this section, but not to the 10 percent penalty provided there.

E. Any tax required to be paid by an Owner under this Chapter shall be deemed a debt owed by the Owner to the City. Any person owing money to the City under this Chapter shall be liable to an action brought in the name of the City for the recovery of such amount, along with any collection and other costs incurred by the City as a result of the person's noncompliance with this Chapter, including, but not limited to, reasonable attorneys' fees, plus interest and penalties as provided in this Chapter.

7.77.070 Fossil Fuel Free Buildings Just Transition Fund; Deposit of Proceeds.

A. Establishment of Fund. The Fossil Fuel Free Buildings Just Transition Fund ("Fund") is hereby established as a special purpose fund, and shall receive all taxes, penalties, interest, and costs collected from the Large Buildings Fossil Fuel Emissions Tax imposed under this Chapter ("Tax Proceeds").

B. Use of Fund. Monies in the Fund shall be used exclusively for the purposes described in Section 7.77.080 of this Chapter.

C. Administration of Fund. Commencing with a report filed no later than February 15, 2026, covering the fiscal year ending June 30, 2025, the City Manager shall file annually with the Council, by February 15 of each year, a report of the monies collected in and expended from the Fund during the prior fiscal year, the status of any project required or authorized to be funded by Section 7.77.080, and such other information as the Finance Director, in the Finance Director's sole discretion, deems relevant to the implementation of this Chapter.

D. Accounting. All Tax Proceeds shall be deposited in the Fund. The Fund shall be maintained separate and apart from all other City funds and shall be subject to appropriation. Any balance remaining in the Fund at the close of any fiscal year shall be deemed to have been provided for a special purpose and shall be maintained in the Fund for the purposes described in Section 7.77.080.

E. Appropriations May Not Supplant Existing Expenditures. Monies in the Fund shall be expended only for Eligible Programs. Monies in the Fund shall not be spent to supplant existing programs funded by the City for climate programs, which shall continue to be funded, at a minimum, at the Base Amount. All funds unexpended from the Fund shall be held in the Fund and may be expended on Eligible Programs. For purposes of this subsection E:

(1) "Base Amount" means the City Department of Finance's calculation of the amount of City appropriations (not including appropriations from the Fund and exclusive of expenditures funded by private funding or funded or mandated by state or federal law) for Eligible Programs for the fiscal year ending June 30, 2024.

(2) "Eligible Programs" means all programs and expenditures described in Section 7.77.080.

7.77.080 Expenditure of Proceeds.

Monies in the Fund shall be appropriated and used exclusively for the following purposes:

- A. Up to 3% of the Tax Proceeds distributed in any proportion to the Finance Department and other City Departments for the administration of the Tax and of the Fund.
- B. Refunds of any overpayments of the Tax, including any related penalties, interest, and collection costs.
- C. All remaining amounts for the following purposes, in the following percentages, which amounts shall include the costs of administering the programs described. The voters also intend that, in expending remaining amounts, the City prioritize principles of environmental justice, tenant protections and other initiatives to prevent displacement of residents; retrofit projects at a neighborhood, block, utility zone or designation, or other comparable geographic scale; and ensure compliance with Berkeley Municipal Code Chapter 13.84 specifying requirements for property owners who relocate residents for tenant improvements. For purposes of this section, "environmental justice" means mitigating disproportionate impacts on communities identified in the State of California's EnviroScreen database or any successor to that database. The voters also intend that the City prioritize the use and support of labor satisfying the definition of 7.77.030.C ("Minimum Labor Standards").

(1) 90% to fund expenses associated with Natural Gas Conversion of existing buildings, prioritizing Building Decarbonization Retrofits. The City shall prioritize funding for Natural Gas Conversion and Building Decarbonization Retrofits in low-rise residential buildings and restaurants, including low- or no-interest loans to assist property owners in retrofitting properties or otherwise to achieve the purposes of this Chapter.

(2) 10% to fund permanent, career, City positions in an employee bargaining unit subject to a collective bargaining agreement to administer and facilitate a citywide program of Natural Gas Conversion and Building Decarbonization Retrofits and administrative expenses connected therewith.

D. Notwithstanding subsections C(1) and (2) of this section, if the Council finds on the basis of substantial evidence that the infrastructure and appliances of the building stock in the City have been completely and permanently transitioned from natural gas, remaining Tax Proceeds may fund other City programs that directly reduce or avoid greenhouse gas emissions.

E. The Fossil Fuel Free Buildings Just Transition Oversight Committee established under Section 7.77.090 ("Oversight Committee") shall make recommendations to the Council to ensure the Fund is administered consistently with this section.

7.77.090 Fossil Fuel Free Buildings Just Transition Oversight Committee.

A. The Environment and Climate Commission established pursuant to Chapter 3.82 of this Code or any successor to that commission shall serve as the Oversight Committee and make recommendations to the Council to ensure the Fund is administered consistently with section 7.77.080.

B. The Oversight Committee shall monitor, and make recommendations as to, the administration of the Fund, to ensure it is administered in a manner that is accountable to the community and consistent with this Chapter and other law, and to advise the Council on appropriations from the Fund. The Oversight Committee shall:

- (1) Develop recommendations for the use of the Fund;
 - (2) By December 31, 2025, and every year thereafter, conduct a needs assessment as to retrofitting existing buildings in the City and make annual recommendations about appropriations from the Fund to the Council informed by that needs assessment;
 - (3) Promote and facilitate transparency in the administration of the Fund;
 - (4) Promote implementation of the programs funded by the Fund in a manner that is equitable, culturally sensitive, and supportive of labor;
- C. The City shall provide adequate staffing to the Oversight Committee to achieve its purposes.
- D. The Transportation and Infrastructure Commission or any successor to it, the Labor Commission or any successor to it, the Council Facilities, Infrastructure, Transportation, Environment and Sustainability Policy Committee or any successor to it, may each make recommendations to the Council to ensure the Fund is administered consistently with this Chapter.
- E. Nothing in this section 7.77.090 shall limit the authority of the Council to propose, amend, and adopt a budget under the Charter.

7.77.100 Technical Assistance to the Finance Department.

The Office of Energy and Sustainable Development or any successor office or department shall provide technical assistance to the Finance Department upon the City Manager's or Director of Finance's request to administer the Large Buildings Fossil Fuel Emissions Tax.

7.77.110 Prohibited Conduct.

Except as the Berkeley Rent Stabilization Board expressly determines, the Owner of a Taxable Residential Building shall not pass on the tax imposed by this Chapter to tenants in the form of rent increases or in any other manner. Inclusion of such charges shall be a complete defense to any action for unlawful detainer for failure to pay rent absent such express determination of the Berkeley Rent Stabilization Board.

7.77.120 Amendment of Ordinance.

- A. The Council may, by two-thirds vote of the entire City Council, amend this Chapter to further its purposes, provided that such amendments do not constitute a tax increase within the meaning of California Government Code section 53750, subdivision (h) or expand the exemptions provided by section 7.77.050, or amend this section 7.77.120.
- B. The City Council shall not reduce the inflation-adjusted tax rates authorized by this Chapter or otherwise reduce the tax absent a finding supported by substantial evidence that doing so is necessary to address unusual circumstances such as a natural disaster, the undercollection is temporary, and the reduced tax will nevertheless achieve the purposes of this Chapter.
- C. For purposes of this section 7.77.120, the purposes of this Chapter are those stated in section 7.77.020 and the expenditures authorized by section 7.77.080.

7.77.130 Severability.

If any word, phrase, sentence, part, section, subsection, or other portion of this ordinance, or any application thereof to any person or circumstance is declared void,

unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this Chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The People of the City of Berkeley hereby declare that they would have passed this ordinance, and each word, phrase, sentence, part, section, subsection, or other portion hereof, irrespective of the fact that any one or more words, phrases, sentences, parts, sections, subsections, or other portions hereof has been declared invalid or unconstitutional.

Section 2. Increase Appropriations Limit. Pursuant to California Constitution Article XIII B and applicable laws, for four years from November 5, 2024, the appropriations limit for the City shall be increased by the aggregate sum collected by the levy of the tax imposed under this ordinance.

Section 3. Special Tax: Majority Vote Requirement. This Ordinance imposes a Special tax and shall be effective only if approved by a majority of the voters voting thereon.

Section 4. Certification: Publication: Numbering.

A. Upon approval by the voters, the City Clerk shall assign this ordinance an ordinance number and insert it where indicated on the first page above, certify to the passage and adoption of this ordinance, and cause it to be published according to law.

B. Upon approval by the voters, the Mayor and City Clerk shall execute this ordinance where indicated below to give evidence of that approval.

We hereby certify that the foregoing ordinance was duly adopted by the voters of the City of Berkeley participating in the November 5, 2024 election.

, Mayor

Attest:

Mark Numainville, City Clerk

BERKELEY CITY CLERK CERTIFICATE OF PETITION

I, Mark Numainville, City Clerk of the City of Berkeley, California, do hereby certify the following:

An Initiative Petition entitled: "Initiative Ordinance to Adopt a Special Tax on Natural Gas Consumption in Buildings 15,000 Sq. Ft. or Larger" was filed with the Berkeley City Clerk on May 15, 2024 within the statutory time limit and forwarded to the office of the Alameda County Registrar of Voters for verification on May 16, 2024; and

The petition contained **4,580** unverified signatures; and

Pursuant to the Charter of the City of Berkeley, in order to be sufficient, the petition must have been signed by at least **2,985** qualified registered voters of the City of Berkeley, the number being equal to 5% of the total votes cast for all candidates for mayor in the last general municipal election; and

I have examined or caused to be examined, signatures on the petition pursuant to California Elections Code sections 9211 and 9115; and

I have determined that the petition contained a valid signature rate of **124%** based on a random sample of the signatures as performed and certified by the Registrar of Voters in Exhibit A attached herewith; and

This number meets or exceeds the valid signature rate needed to qualify the initiative; therefore

The petition is found to be sufficient to require the City Council of the City of Berkeley to take appropriate action specified under Article XIII of the Berkeley City Charter.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 26th day of June, 2024.




Mark Numainville
City Clerk
City of Berkeley

REGISTRAR OF VOTERS CERTIFICATE TO PETITION

I, **Tim Dupuis**, Registrar of Voters for the County of Alameda, State of California, hereby certify that: an Initiative Entitled: City of Berkeley To Adopt a Special Tax on Natural Gas Consumption in Buildings 15,000 Sq. Ft. or Larger, was filed with the Berkeley City Clerk within the statutory time limit and forwarded to this office for verification on May 16, 2024; and

The petition contained 4,580 unverified signatures: and

In accordance with Article XIII of the Berkeley City Charter, it was determined that the total number of votes cast for all candidates for Mayor at the November 2020 General Election was 57,885, the requisite number of signatures required to qualify this initiative is 5% of 57,885 or 2,985.

I have examined, or caused to be examined, signatures on the petition pursuant to California Elections Code sections 9211 and 9115; and

Have determined that the petition contained 404 valid signatures of qualified registered voters in the City of Berkeley based on the random sample examination set forth in section 9115 and the formula prescribed by the California Secretary of State: and

That this number represents 124% of the total number of signatures needed to qualify the initiative, therefore.

The petition is found to be sufficient to require the City Council of the City of Berkeley to take the appropriate action specified in the California Elections Code.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 28th day of **May 2024**.



DocuSigned by:

Tim Dupuis

C504117C2A294A7...

Tim Dupuis
Registrar of Voters
County of Alameda
State of California

