



Igor Tregub
Councilmember, District 4

ACTION CALENDAR
JULY 30, 2024

To: Honorable Mayor and Members of the City Council
From: Councilmember Igor Tregub
Subject: Alternative Ballot Measure to The Large Buildings Fossil Fuel Emissions Tax Ballot Initiative

RECOMMENDATION

1. Solicit input from Councilmembers, staff and members of the public to the attached redlined alternative Ballot Measure to the Large Buildings Fossil Fuel Emissions Tax Ballot Initiative; and
2. Approve placing a Resolution submitting the alternative measure to the Large Buildings Fossil Fuel Emissions Tax Ballot Initiative on the Special City Council meeting on August 5th, 2024 agenda for discussion and possible action; and
3. Direct the City Manager to provide legal and administrative amendments to the Alternative Ballot Measure to Large Buildings Fossil Fuel Emissions Tax Ballot Initiative, and write a resolution submitting Alternative Ballot Measure to Large Buildings Fossil Fuel Emissions Tax Ballot Initiative to a vote of the people at the November 5, 2024 General Municipal Election to be considered at the Special Council meeting on August 5, 2024.

~~Adopt a Resolution to place on the ballot an alternative measure to the initiative-submitted Fossil Fuel Emission Tax Ballot Measure for Large Buildings. This alternative measure was crafted with input from various stakeholders, including labor, environmental organizations, and the small business and nonprofit community.~~

~~Or~~

~~Direct staff to provide analysis, by the August 5, 2024, Special Meeting of the Berkeley City Council, of placing on the ballot a companion measure to the above-referenced initiative-submitted Fossil Fuel Emission Tax Ballot Measure, and to recommend alternative actions to mitigate certain unintended consequences of the initiative should it be adopted by Berkeley voters.~~

FINANCIAL IMPLICATIONS

The Large Buildings Fossil Fuel Emissions Tax Ballot Initiative, that qualified, if passed, calls for creation and management of a special fund. ~~The qualified initiative, if passed, calls for creation and management of a special fund.~~ Per that measure, the assessment of the tax starts in 2025 and collection of the tax commences in February 2026. This imposes very short timeframe between the passage of the tax and the need to establish a program to properly calculate and assess the tax for individual property owners and manage collection and proper distribution of the proceeds from the tax. All of this may incur significant financial obligations to the City before any moneys are received by the city from the tax.

The alternative measure aims to prevent and/or mitigate the immediate fiscal impact on the City and aims to provide additional time to incorporate significant up-front expenditures associated with implementing this measure into the mid-cycle budget amendments and/or next two-year budget.

~~The alternative measure, while providing funding for significant emissions reduction, puts strong protections against displacement of Berkeley residents, business and non-profit organizations protecting other revenue streams for the City and its residents.~~

CURRENT SITUATION AND ITS EFFECTS

Numerous efforts have been launched in the City of Berkeley at various points to address the climate crisis we face, including through the decarbonization of its buildings. These include a prohibition on natural gas infrastructure in new buildings, which was unanimously approved as an ordinance by the Berkeley City Council in 2019¹ but struck down by the Ninth U.S. Circuit Court of Appeals,² and a currently proposed effort to regulate nitrous oxide (NOx) emissions in certain new buildings.³

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 petition was certified by the Registrar of Voters as being sufficient on May 28, 2024.⁴

BACKGROUND

The Large Buildings Fossil Fuel Emissions Tax Ballot Measure has qualified as an initiative for the November 2024 ballot. To address numerous concerns from various stakeholders who have the potential to be adversely impacted by the implementation of this initiative, a collaborative effort was initiated by our office. The ~~to-be-delivered~~ redline changes represent an effort to align the intent of the initiative to respond to the

¹ <https://berkeley.municipal.codes/BMC/12.80>

² <https://apnews.com/article/berkeley-california-natural-gas-ban-overturned-appeals-court-7dafca58d19963f322100d73caf9c31a>

³ <https://berkeleyca.gov/sites/default/files/legislative-body-meeting-agendas/2024-05-16%20Agenda%20Packet%20-%20Health.pdf>

⁴

<https://berkeleyca.gov/sites/default/files/documents/07%2009%2024%20Supp%201%20Item%2019%20CAO.pdf>

climate crisis at the scale it requires with the fiscal limitations and other realities that the City of Berkeley as well as the owners of and tenants in residential, commercial, and industrial properties face, particularly within the context of today's economy. In particular, the alternative measure extends the phase-in period for implementation; exempt a broader number of nonprofits, small businesses, and residential and commercial tenants than the initiative-submitted ordinance; and harmonize the process of collecting and levying fees by the City of Berkeley with existing systems and practices, as compared to the initiative-qualified ballot measure.

In the extremely short time during which we engaged in the negotiations with the authors of the Ballot Measure and representatives from various stakeholders, significant progress was achieved.

The Alternative Ballot Measure to Large Buildings Fossil Fuel Emissions Tax Ballot Initiative does the following:

- Provides major Tax relief for Berkeley non-profit organizations;
- Provides major Tax relief to building owners who lease to non-profits;
- Provides extra protections to Life Sciences industrial cluster, including laboratory, medical, or pharmaceutical organizations;
- Includes Phase in approach to the Tax collection, providing substantial Tax relief to building owners who want to retrofit in the first few year after the Ordinance takes affect and take advantage of the significantly reduced Tax rates;
- Provides significantly more authority to the City Council to reduce and/or suspend the Tax for certain categories of building owner;
- Pushes the due date for the Tax collection to September 30 from February 28 for each year;
- Expands anti-displacement protections for non-profits, businesses, and other organizations and bolstered overall anti-displacement efforts to mitigate the impacts of the Tax;
- Strengthens labor protections and benefits through financial allocations to direct install programs and other programs with prevailing wages;
- Ensures that all buildings subject to the Tax qualify for funds generated by the Tax; and
- Ensures that the City Council has authority to address natural as well as manmade disasters and utility and supply chain failures that are beyond local control.

- Aligns definitions with existing Berkeley Municipal Code definitions and those used by the staff.

Several other matters remain to be discussed, including the possibility of removing or reducing the 6% Tax escalator and delaying or reducing tax encumbrances for individual building owners who are not able to do the work due to the factors outside their control. The recommendation acknowledges that significant progress in negotiations has been made over a short period of time and requests additional time to finalize these remaining negotiation topics.

In order to harmonize the percentage of voters needed to approve this measure, should it be placed on the ballot by the City Council, with the simple majority needed to pass the initiative-qualified measure, the measure also needs to be changed from a Special Tax to a General Tax. These amendments are responsive to this need.

Substantive Amendments to the Ordinance

The amended language in the attached Ordinance and in the “Substantive amendments” section of this report appears in ~~strike through~~ for deleted language and underlined for added language.

7.77.030 Definitions.

Added definition:

C. “Building Owner” means the owner of record of a building. In the case of a building held in cooperative or condominium form of ownership, the term "Building Owner" shall refer to the board of managers, board of directors, homeowners association, or other representative body of the jointly-owned building with authority to make decisions about building assessments and alterations.”

E. “Life Sciences Buildings” means a Taxable Non-Residential Building 30% or more of which is primarily actively occupied and/or utilized for laboratory, medical, or pharmaceutical purposes.

H. “Non-profit Owned Building” means a taxable non-residential building that is owned by a Non-profit Organization.

I. “Non-profit Organization” means organizations that are exempt from federal income tax under Section 501(c) of the Internal Revenue Code. These are classified as follows: 501(c)(3) charitable organizations, which encompass charitable, religious, educational, scientific, literary, public safety testing, amateur sports, and animal cruelty prevention entities; 501(c)(4) social welfare organizations, including civic leagues and local employee associations promoting social welfare; 501(c)(5) labor,

agricultural, and horticultural organizations aimed at improving workers' conditions and agricultural efficiency; 501(c)(6) business leagues, chambers of commerce, real estate boards, and professional football leagues, which are not for profit; 501(c)(7) social and recreational clubs organized for non-profitable purposes supported by members' dues; and 501(c)(19) veterans' organizations, including posts or organizations of past or present U.S. Armed Forces members, auxiliaries, and trusts, with at least 75% of members being Armed Forces members, and, for the purposes of this chapter, has total annual revenues under \$100,000,000.

J. "Prevailing wage" is the basic hourly rate paid on public works projects to a majority of workers engaged in a particular craft, classification or type of work within the locality and in the nearest labor market area (if a majority of such workers are paid at a single rate). If there is no single rate paid to a majority, then the single or modal rate being paid to the greater number of workers is prevailing.

K. "Public Interest Building" means a Taxable Non-Residential building that is 50% or more occupied by one or more government agencies or Non-profit Organizations but is not a non-profit owned building.

M. "Square footage" shall mean the total gross horizontal areas of all floors, including usable basement and cellars, below the roof and within the outer surface of the main walls of buildings (or the center lines of party walls separating such buildings or portions thereof) or within lines drawn parallel to and two feet within the roof line of any building or portion thereof without walls (which includes, notwithstanding paragraph 3 below, the square footage of all porches), and including pedestrian access walkways or corridors, but excluding the following:

1. Areas used for off-street parking spaces or loading berths and driveways and maneuvering aisles relating thereto.
2. Areas which are outdoor or semi-outdoor areas included as part of the building to provide a pleasant and healthful environment for the occupants thereof and the neighborhood in which the building is located. This exempted area is limited to stoops, balconies and to natural ground areas, terraces, pools, and patios which are landscaped and developed for active or passive recreational use, and which are accessible for use by occupants of the building.
3. Arcades, porticoes, and similar open areas which are located at or near street level, which are accessible to the general public, and which are not designed or used as sales, display storage, service, or production areas.

Edited definitions:

O. “Single-Family Building” means any building comprised solely of 1 to 4 residential units, or cooperative, condominium, tenants in common, or joint tenants form of ownership regardless of size.

E. “Environmental Justice” ~~is defined in section 7.77.080(C).~~ means mitigating disproportionate impacts on communities identified in the State of California’s Enviroscreen database or any successor to that database and the City’s Affordable Housing Preference Policy or any successor to that policy, including but not limited to retrofit projects at historic places of worship, cultural and civic institutions, and linking Berkeley residents or individuals to training programs, apprenticeships, and other workforce development programs that prepare them to enter and succeed in construction careers.

7.77.040 Imposition of Tax.

Action: Added Section F (1) that allows for the phase in collection of the Tax for Taxable Non-Residential Buildings or Taxable Residential Buildings starting at 20% of the Tax in 2025 and getting to the 100% by year 2029. And Section F (2) that allows phasing in the Tax at the following increments starting at 10% in 2025 and getting to the 100% by year 2031 for “Life Sciences Buildings”. “Life Sciences Buildings” means a Taxable Non-Residential Building 30% or more of which is primarily actively occupied and/or utilized for laboratory, medical, or pharmaceutical purposes.

Purpose: This provision allows for the reduction of the Tax in the initial years of collection for all Large Buildings and provides a larger relief to the building owners who provide space to organizations and businesses with union labor and life supporting services.

F. Notwithstanding subsection 7.77.040 B., the Large Buildings Fossil Fuel Emissions Tax amounts calculated under subsection 7.77.040 B shall be adjusted as follows:

(1) Taxable Non-Residential Buildings or Taxable Residential Buildings other than Life Sciences Buildings for the tax years 2025-2028:

(a) For the 2025 tax year the product of Large Buildings Fossil Fuel Emissions Tax amounts and 0.20;

(b) For the 2026 tax year the product of Large Buildings Fossil Fuel Emissions Tax amounts and 0.40;

(c) For the 2027 tax year the product of the Large Buildings Fossil Fuel Emissions Tax amounts and 0.60;

(d) For the 2028 tax year the product of the Large Buildings Fossil Fuel Emissions Tax amounts and 0.80;

(2) Taxable Life Sciences Buildings for the tax years 2025-2030:

(a) For the 2025 tax year the product of Large Buildings Fossil Fuel Emissions Tax amounts and 0.10;

(b) For the 2026 tax year the product of Large Buildings Fossil Fuel Emissions Tax amounts and 0.15;

(c) For the 2027 tax year the product of the Large Buildings Fossil Fuel Emissions Tax amounts and 0.20;

(d) For the 2028 tax year the product of the Large Buildings Fossil Fuel Emissions Tax amounts and 0.33;

(e) For the 2029 tax year the product of the Large Buildings Fossil Fuel Emissions Tax amounts and 0.50;

(f) For the 2030 tax year the product of the Large Buildings Fossil Fuel Emissions Tax amounts and 0.75;

Action: Changed the Tax collection due date to September 30, 2026 in Section 7.77.040 G and Section 7.77.060 B.

Purpose: Align City's data collection and availability dates with the tax collection dates.

G. The Large Buildings Fossil Fuel Emissions Tax shall take effect on January 1, 2025 and is first due on ~~February 28~~ September 30, 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.

Action: Added Sections 7.77.050 C (1) and (2). This section correspond with the new definitions for Public Interest Buildings and Non-profit Owned Buildings.

Purpose: Because the definition of the Non-profit Organization was added to Section 7.77.030, and that definition now includes all categories of non-profits with total annual revenues under \$100,000,000, this amendment provides Tax

relief to Non-profit organizations and landlords providing space to non-profit organization. Most Non-profit organizations in Berkeley have annual revenues under \$100,000,000. These provisions would ostensibly provide tax relief to almost all Berkeley Non-profits.

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:

(1) Public Interest Buildings provided that the Council (i) must verify its occupancy status annually and (ii) makes an affirmative determination that the benefits to the City from the tenant organizations 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;

(2) Non-profit Owned Buildings 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.

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

Action: This Section got deleted.

Purpose: In order to harmonize the percentage of voters needed to approve this measure, should it be placed on the ballot by the City Council, with the simple majority needed to pass the initiative-qualified measure, the measure also needs to be changed from a Special Tax to a General Tax. These amendments are responsive to this need.

7.77.080 Expenditure of Proceeds became 7.77.070 and was amended as follows.

Action:

- Added language to Section 7.77.080 C. and Section 7.77.080 C. (1) that allows to expand anti-displacement protections to non-profits, businesses, and other organizations and bolstered overall anti-displacement efforts to mitigate the impacts of the Tax.
- Added language to Section 7.77.080 C. (1) that strengthened Labor protections and benefits through money allocations to direct install programs and programs with prevailing wages.
- Added language to Section 7.77.080 C. (1) that ensures that all buildings subject to the Tax qualify for the money generated by the Tax.

Purpose: Ensure that the measure does not have adverse effects on most vulnerable individuals and organizations and promotes fair labor practices.

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, non-profits, businesses, and other organizations; 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. 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 or anti-displacement efforts to mitigate the impacts of this tax or its programs. The City shall prioritize funding for Natural Gas Conversion and Building Decarbonization Retrofits in low-rise residential buildings and restaurants, including, but not limited to low- or no-interest loans, subject to prevailing wage, grants, or direct install programs to assist property owners in retrofitting properties or otherwise to achieve the purposes of this Chapter. Buildings subject to the tax are eligible to receive funding under this subsection.

7.77.090 Fossil Fuel Free Buildings Just Transition Oversight Committee became 7.77.080 and was amended as follows.

Action: This Section got amended as follows.

Purpose: In order to harmonize the percentage of voters needed to approve this measure, the measure needs to be changed from a Special Tax to a General Tax. These amendments further align this measure with that need.

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~~ proceeds from the Tax are is administered consistently with section 7.77.0780.

B. The Oversight Committee shall monitor, and make recommendations as to, the administration of the proceeds from the Tax-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-Tax. The Oversight Committee shall develop recommendations to the Berkeley City Council in regard to the following:

(1) for the use of the Fund;

(2) By December 31, 2025, and every year thereafter, towards a needs assessment related to the retrofit of existing buildings in the City and appropriations from the Fund based on that needs assessment;

(3) Actions that promote and facilitate transparency in the administration of the Fund;

(4) Actions that promote the implementation of the programs funded by the Fund in a manner that is equitable culturally sensitive, and supportive of labor;

C. These recommendations may be made annually or biannually, as the Commission deems appropriate in light of the City's budget cycle and other relevant funding cycles.

D. The Commission's recommendations shall be promptly published on the City's web site and transmitted to the City Council.

E. The City Council shall consider, but need not follow, the Commission's recommendations, and shall annually inform the Commission as to the extent to which it has implemented the recommendations.

F. The City shall provide adequate staffing to the Oversight Committee to achieve its purposes.

7.77.120 Amendment of Ordinance became 7.77.110 and was amended as follows

Action:

- Added language to Section 7.77.110 B. allowing the City Council to reduce the Tax in the event of manmade as well as natural disasters, and utility or supply chain failures.

Purpose: Ensure that the measure takes into account circumstances similar the ones that just recently experienced during COVID-19 pandemic and other failures that could occur due to the predictable and unforeseen circumstances.

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 or manmade disasters, or catastrophic utility or supply chain failures, the undercollection is temporary, and the reduced tax will nevertheless achieve the purposes of this Chapter.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

The environmental sustainability and climate impacts of both the alternative measure and the ballot-submitted initiative are unknown and require further staff analysis. However, the intent of the measure is to align the intent of the initiative to respond to the climate crisis at the scale it requires with the fiscal limitations and other realities that the City of Berkeley as well as the owners of and tenants in residential, commercial, and industrial properties face, particularly within the context of today's economy.

CONTACT PERSON

Councilmember Igor Tregub Council District 4 510-981-7140
Olga Bolotina, Chief of Staff

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

Alternative Ballot Measure to Large Buildings Fossil Fuel Emissions Tax Ballot Initiative

WHEREAS, Numerous efforts have been launched in the City of Berkeley at various points to address the climate crisis we face, including through the decarbonization of its buildings. These include a prohibition on natural gas infrastructure in new buildings, which was unanimously approved as an ordinance by the Berkeley City Council in 2019 but struck down by the Ninth U.S. Circuit Court of Appeals, and a currently proposed effort to regulate nitrous oxide (NOx) emissions in certain new buildings; and

WHEREAS, 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 and certified by the Registrar of Voters as being sufficient on May 28, 2024; and

WHEREAS, To address numerous concerns from various stakeholders who have the potential to be adversely impacted by the implementation of this initiative, a collaborative effort was initiated by our office; and

WHEREAS, The redline changes represent an effort to align the intent of the initiative to respond to the climate crisis at the scale it requires with the fiscal limitations and other realities that the City of Berkeley as well as the owners of and tenants in residential, commercial, and industrial properties face, particularly within the context of today’s economy; and

WHEREAS, In particular, the alternative measure seeks to extend the phase-in period for implementation; exempt a broader number of nonprofits, small businesses, and residential and commercial tenants than the initiative-submitted ordinance; and harmonize the process of collecting and levying fees by the City of Berkeley with existing systems and practices, as compared to the initiative-qualified ballot measure; and

WHEREAS, Several other matters remain to be discussed, including the possibility of removing or reducing the 6% Tax escalator and delaying or reducing tax encumbrances for individual building owners who are not able to do the work due to the factors outside their control; and

WHEREAS, The recommendation acknowledges that significant progress in negotiations has been made over a short period of time and additional time to finalize these remaining negotiation topics is needed.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley Adopt a Resolution to:

1. Solicit input from Councilmembers, staff and members of the public to the attached redlined alternative Ballot Measure to the Large Buildings Fossil Fuel Emissions Tax Ballot Initiative; and
2. Approve placing a Resolution submitting the alternative measure to the Large Buildings Fossil Fuel Emissions Tax Ballot Initiative on the Special City Council meeting on August 5th, 2024 agenda for discussion and possible action; and
3. Direct the City Manager to provide legal and administrative amendments to the Alternative Ballot Measure to Large Buildings Fossil Fuel Emissions Tax Ballot Initiative, and write a resolution submitting Alternative Ballot Measure to Large Buildings Fossil Fuel Emissions Tax Ballot Initiative to a vote of the people at the November 5, 2024 General Municipal Election to be considered at the Special Council meeting on August 5, 2024.

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

ADDING CHAPTER 7.77 TO THE BERKELEY MUNICIPAL CODE TO IMPOSE AN
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.**~~

~~**7.77.0780 Expenditure of Proceeds.**~~

~~**7.77.0890 Fossil Fuel Free Buildings Just Transition Oversight Committee.**~~

~~**7.77.1900 Technical Assistance to the Finance Department.**~~

~~**7.77.1040 Prohibited Conduct.**~~

~~**7.77.1120 Amendment of Ordinance.**~~

~~**7.77.1230 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), [Existing Building Electrification Installation Incentives and Just Transition Pilot Program \(Resolution No. 70,414-NS\)](#), 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).~~

~~B.C.~~ “Building Decarbonization Retrofits” means Natural Gas Conversion performed by labor subject to Minimum Labor Standards.

~~C. “Building Owner” means the owner of record of a building. In the case of a building held in cooperative or condominium form of ownership, the term “Building Owner” shall refer to the board of managers, board of directors, homeowners association, or other representative body of the jointly-owned building with authority to make decisions about building assessments and alterations.”~~

~~D. “Eligible programs” is defined in section 7.77070(E)(2).~~

~~D.E.~~ “Environmental Justice” ~~is defined in section 7.77.080(C).~~ means mitigating disproportionate impacts on communities identified in the State of California’s EnviroScreen database or any successor to that database and the City’s Affordable Housing Preference Policy or any successor to that policy, including but not limited to retrofit projects at historic places of worship, cultural and civic institutions, and linking Berkeley residents or individuals to training programs, apprenticeships, and other workforce development programs that prepare them to enter and succeed in construction careers.

~~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.~~

~~E.~~ “Life Sciences Buildings” means a Taxable Non-Residential Building 30% or more of which is primarily actively occupied and/or utilized for laboratory, medical, or pharmaceutical purposes.

~~F.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.

G. “Natural Gas Conversion” means the material and labor associated with replacing natural gas building appliances and infrastructure with Alternative Infrastructure and Appliances.

H. “Non-profit Owned Building” means a taxable non-residential building that is owned by a Non-profit Organization.

I. “Non-profit Organization” means organizations that are exempt from federal income tax under Section 501(c) of the Internal Revenue Code. These are classified as follows: 501(c)(3) charitable organizations, which encompass charitable, religious, educational, scientific, literary, public safety testing, amateur sports, and animal cruelty prevention entities; 501(c)(4) social welfare organizations, including civic leagues and local employee associations promoting social welfare; 501(c)(5) labor, agricultural, and horticultural organizations aimed at improving workers' conditions and agricultural efficiency; 501(c)(6) business leagues, chambers of commerce, real estate boards, and professional football leagues, which are not for profit; 501(c)(7) social and recreational clubs organized for non-profitable purposes supported by members' dues; and 501(c)(19) veterans' organizations, including posts or organizations of past or present U.S. Armed Forces members, auxiliaries, and trusts, with at least 75% of members being Armed Forces members, and, for the purposes of this chapter, has total annual revenues under \$100,000,000.

J. “Prevailing wage” is the basic hourly rate paid on public works projects to a majority of workers engaged in a particular craft, classification or type of work within the locality and in the nearest labor market area (if a majority of such workers are paid at a single rate). If there is no single rate paid to a majority, then the single or modal rate being paid to the greater number of workers is prevailing.

K. “Public Interest Building” means a Taxable Non-Residential building that is 50% or more occupied by one or more government agencies or Non-profit Organizations but is not a non-profit owned building.

L. “Single-Family Building” means any building comprised solely of 1 to 4 residential units, or cooperative, condominium, tenants in common, or joint tenants form of ownership regardless of size.

M. "Square footage" shall mean the total gross horizontal areas of all floors, including usable basement and cellars, below the roof and within the outer surface of the main walls of buildings (or the center lines of party walls separating such buildings or portions thereof) or within lines drawn parallel to and two feet within the roof line of any building or portion thereof without walls (which includes, notwithstanding paragraph 3 below, the square footage of all porches), and including pedestrian access walkways or corridors, but excluding the following:

1. Areas used for off-street parking spaces or loading berths and driveways and maneuvering aisles relating thereto.

2. Areas which are outdoor or semi-outdoor areas included as part of the building to provide a pleasant and healthful environment for the occupants thereof and the neighborhood in which the building is located. This exempted area is limited to stoops, balconies and to natural ground areas, terraces, pools, and patios which are landscaped and developed for active or passive recreational use, and which are accessible for use by occupants of the building.

3. Arcades, porticoes, and similar open areas which are located at or near street level, which are accessible to the general public, and which are not designed or used as sales, display storage, service, or production areas.

NJ. “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.~~

~~OL. “Tax Proceeds” mean all taxes, penalties, interest, and costs collected from the Large Buildings Fossil Fuel Emissions Tax imposed under this Chapter is defined in section 7.77.070(A).~~

PM. “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. Notwithstanding subsection 7.77.040 B., the Large Buildings Fossil Fuel Emissions Tax amounts calculated under subsection 7.77.040 B shall be adjusted as follows:

(1) Taxable Non-Residential Buildings or Taxable Residential Buildings other than Life Sciences Buildings for the tax years 2025-2028:

(a) For the 2025 tax year the product of Large Buildings Fossil Fuel Emissions Tax amounts and 0.20;

(b) For the 2026 tax year the product of Large Buildings Fossil Fuel Emissions Tax amounts and 0.40;

(c) For the 2027 tax year the product of the Large Buildings Fossil Fuel Emissions Tax amounts and 0.60;

(d) For the 2028 tax year the product of the Large Buildings Fossil Fuel Emissions Tax amounts and 0.80;

(2) Taxable Life Sciences Buildings for the tax years 2025-2030:

(a) For the 2025 tax year the product of Large Buildings Fossil Fuel Emissions Tax amounts and 0.10;

(b) For the 2026 tax year the product of Large Buildings Fossil Fuel Emissions Tax amounts and 0.15;

(c) For the 2027 tax year the product of the Large Buildings Fossil Fuel Emissions Tax amounts and 0.20;

(d) For the 2028 tax year the product of the Large Buildings Fossil Fuel Emissions Tax amounts and 0.33;

(e) For the 2029 tax year the product of the Large Buildings Fossil Fuel Emissions Tax amounts and 0.50;

(f) For the 2030 tax year the product of the Large Buildings Fossil Fuel Emissions Tax amounts and 0.75;

GF. The Large Buildings Fossil Fuel Emissions Tax shall take effect on January 1, 2025 and is first due on ~~February 28~~ September 30, 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:

(1) Public Interest Buildings provided that the Council (i) must verify its occupancy status annually and (ii) makes an affirmative determination that the benefits to the City from the tenant organizations 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;

(2) Non-profit Owned Buildings 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.

~~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~~ September 30 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.~~

7.77.0780 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 ~~e~~Environmental ~~j~~Justice, tenant protections and other initiatives to prevent displacement of residents; non-profits, businesses, and other organizations; 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 or anti-displacement efforts to mitigate the impacts of this tax or its programs. The City shall prioritize funding for Natural Gas Conversion and Building Decarbonization Retrofits in low-rise residential buildings and restaurants, including, but not limited to -low- or no-interest loans, subject to prevailing wage, grants, or direct install programs to assist property owners in retrofitting properties or otherwise to achieve the purposes of this Chapter. Buildings subject to the tax are eligible to receive funding under this subsection.

(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.

7.77.0~~8~~90 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 proceeds from the Tax areis administered consistently with section 7.77.0780.

B. The Oversight Committee shall monitor, and make recommendations as to, the administration of the proceeds from the TaxFund, 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 FundTax. The Oversight Committee shall develop recommendations to the Berkeley City Council in regard to the following:

(1) for the use of the Fund;

(2) By December 31, 2025, and every year thereafter, towards a needs assessment related to the retrofit of existing buildings in the City and appropriations from the Fund based on that needs assessment;

(3) Actions that promote and facilitate transparency in the administration of the Fund;

(4) Actions that promote the implementation of the programs funded by the Fund in a manner that is equitable culturally sensitive, and supportive of labor;

C. These recommendations may be made annually or biannually, as the Commission deems appropriate in light of the City's budget cycle and other relevant funding cycles.

D. The Commission's recommendations shall be promptly published on the City's web site and transmitted to the City Council.

E. The City Council shall consider, but need not follow, the Commission's recommendations, and shall annually inform the Commission as to the extent to which it has implemented the recommendations.

F. The City shall provide adequate staffing to the Oversight Committee to achieve its purposes.

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. ~~090100~~ 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. ~~100110~~ 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. ~~110120~~ 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 or manmade disasters, or catastrophic utility or supply chain failures, 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.

7.77.120130 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