



Office of the City Manager

## SUPPLEMENTAL AGENDA MATERIAL

**Meeting Date:** July 30, 2020

**Item Number:** 7a

**Item Description:** **Placing a Tax Measure on the November 3, 2020 Ballot to Increase the Utility Users Tax to Pay for General Municipal Services and Establish a Climate Equity Action Fund to Support Measures to Reduce Local Greenhouse Gas Emissions and Air Pollution**

**Submitted by:** **Farimah Brown, City Attorney and David White, Deputy City Manager**

At the Special City Council Meeting on July 21, 2020, city staff presented a tax measure for the November 3, 2020 ballot that would increase the Utility Users Tax by 2.5% from 7.5% to 10% for general municipal services and to establish a Climate Equity Action Fund. At the Special City Council meeting, city staff received direction to revise the text of the UUT measure. The following is a summary of comments received from City Council that formed the basis for the revisions to the proposed tax measure for the November 3, 2020 ballot:

- Increase the Utility Users Tax on electricity and gas only from 7.5% to 10%. For all other items (i.e., telephone and video) subject to the Utility Users Tax, the Utility Users Tax remains unchanged at 7.5%.
- City Council may increase the Utility Users Tax for gas up to an additional 2.5%.
- Individuals that are enrolled in PG&E's California Alternate Rates for Energy Program or Family Electric Rate Assistance Program are exempted from the Utility Users Tax on gas and electricity.
- Climate Equity Action Fund. The proposed ballot measures establishes a Climate Equity Action Fund in which revenues received from the Utility Users Tax imposed on electricity and gas above 7.5% and any other funds designated by the City Council may be deposited. At the City Council's discretion, the proceeds may be spent to reduce local greenhouse gas emissions, mitigate

climate impacts on disadvantaged communities, or for any other general municipal purpose.

- Oversight. The proposed tax measure renames the Energy Commission to the Climate Action and Energy Commission that shall provide recommendations to City Council on how to allocate funds deposited into the Climate Equity Action Fund, among other responsibilities.

The revised tax measure is attached for City Council consideration. The revised tax measure is a general tax that requires a majority vote to pass, and is estimated to generate approximately \$2.4 million per year.

RESOLUTION NO. ##,### –N.S.

SUBMITTING TO THE BERKELEY ELECTORATE ON THE NOVEMBER 3, 2020 GENERAL ELECTION BALLOT AN ORDINANCE MEASURE TO INCREASE THE UTILITY USERS TAX ON ELECTRICITY AND GAS FROM 7.5% TO 10%, WITH EXEMPTIONS FOR LOW-INCOME USERS, ~~TO PAY~~ FOR GENERAL MUNICIPAL SERVICES, TO ESTABLISH A CLIMATE EQUITY ACTION FUND TO EQUITABLY REDUCE LOCAL GREENHOUSE GAS EMISSIONS AND CLIMATE POLLUTANTS ~~AIR POLLUTION~~, AND TO AUTHORIZE THE CITY COUNCIL TO INCREASE THE GAS USERS TAX BY UP TO AN ADDITIONAL 2.5% ~~AS FEASIBLE~~, ~~AND TO MODERNIZE AND UPDATE TECHNICAL PROVISIONS OF THE UTILITY USER TAX~~

WHEREAS, the Berkeley City Council has elected to submit to the voters at the November 3, 2020 General Municipal Election, a general tax measure to increase the Utility Users Tax on electricity and gas from 7.5% to 10% and to authorize the City Council to increase the gas users tax by up to an additional 2.5% ~~to fund for~~ general municipal services, and to establish a ~~c~~Climate ~~e~~Equity ~~a~~Action ~~f~~und that may receive ~~a portion of the~~ revenues from the increase in electricity and gas users taxes that could be used to reduce ~~the local impact of climate change and~~ greenhouse gas emissions, with a focus on protecting disadvantaged communities by mitigating their impacts and air pollution, and to modernize and update technical provisions of the utility user taxes; and

WHEREAS, the City Council has requested that the Alameda County Board of Supervisors consolidate the November 3, 2020 General Municipal Election with the November 3, 2020 Presidential General Election; and

WHEREAS, the City of Berkeley hereby requests that the Alameda County Board of Supervisors permit the Registrar of Voters of Alameda County to perform services in connection with said election at the request of the City Clerk. These services are to include all necessary services related to official ballot creation, sample ballot and voter information pamphlet preparation, vote-by-mail, polling places, poll workers, voter registration, voting machines, canvass operations, and any and all other services necessary for the conduct of the consolidated 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 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 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 required to perform necessary services in connection with said election.

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 directed to obtain printing, supplies and services as required.

BE IT FURTHER RESOLVED that the City Clerk is hereby authorized to provide such other services and supplies in connection with said election as may be required by the Statutes of the State of California and the Charter of the City of Berkeley.

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 Ordinance measure shall appear and be printed upon the ballots to be used at said election as follows:

CITY OF BERKELEY GENERAL TAX ORDINANCE MEASURE	
Shall an ordinance increasing the Utility Users Tax <u>on electricity and gas</u> from 7.5% to 10%, <u>with exemptions for low-income users and oversight, to fund for</u> general municipal services, including programs to <u>equitably</u> reduce local <u>climate change impacts and</u> greenhouse gas emissions <u>using an equity lens and air pollution</u> , and authorizing the City Council to increase the gas users tax by an additional 2.5% <u>when feasible, and modernizing and updating technical provisions of the Utility Users Tax</u> , with the total tax estimated to generate <u>\$2.7544</u> -million annually, until repealed by the voters, be adopted?	YES
	NO

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

Exhibit A

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

**INCREASING THE UTILITY USERS TAXES ~~ON (TELEPHONE, ELECTRICITY AND, GAS, AND VIDEO)~~ FROM 7.5% TO 10% TO FUND GENERAL MUNICIPAL SERVICES AND TO ESTABLISH A CLIMATE EQUITY ACTION FUND TO REDUCE LOCAL GREENHOUSE GAS EMISSIONS AND ~~CLIMATE POLLUTANTS AIR POLLUTON,~~ AND AUTHORIZING THE CITY COUNCIL TO INCREASE THE GAS USERS TAX BY UP TO AN ADDITIONAL 2.5%, ~~AND MODERNIZING AND UPDATING TECHNICAL PROVISIONS OF THE UTILITY USER TAXES~~**

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

Section 1. Findings and declarations.

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

- A. Human activities have warmed the earth and global warming has set in motion catastrophic environmental changes.
- B. According to climate projections, the Earth's temperature is on track to increase at a level that could cause irreparable damage to the environment and uncontrollable global warming.
- C. The effects of global warming are being felt in the City of Berkeley through severe weather patterns, drought, uncontrollable wildfires, and anticipated sea level rise.
- D. In November 2006, Berkeley voters issued a call to action by overwhelmingly endorsing ballot Measure G. The mandate was simple but bold: "Reduce our entire community's greenhouse gas (GHG) emissions by 80% by the year 2050."
- E. In 2009, the City of Berkeley adopted a Climate Action Plan that established a vision and plan to achieve greenhouse gas emissions reduction targets of 33% below 2000 levels by 2020 and consistent with Measure G, 80% below 2000 levels by 2050.

F. While the City has made great strides in reducing greenhouse gas emissions, achieving a 15% reduction below 2000 levels, [Berkeley had not yet achieved its 33% reduction target by 2020.](#)

G. In 2018, Berkeley declared a Climate Emergency (Res. No, 68,486-N.S.) to call attention to the climate crisis and as a call to action to mobilize the city, region, state, and entire country around the urgent need to take action to reduce greenhouse gas emissions.

H. On June 16, 2020, the City adopted an ordinance declaring a Fiscal Emergency due to the significant loss of revenue attributable to the COVID-19 pandemic and does not have the resources to adequately address the climate crisis and support general municipal services. The City needs new funds to pay for municipal services and to establish a ~~climate~~ [Climate equity Equity action Action fund Fund](#) to reduce greenhouse gas emissions, ~~and climate local air pollutants~~ [including such as](#) increasing electric vehicle, bicycle and pedestrian infrastructure and other clean transportation options, ~~;~~ increasing energy efficiency and renewable energy use in homes and businesses, ~~;~~ investing in clean and reliable back-up power for emergency services facilities, ~~;~~ and supporting low-income and historically marginalized individuals [mitigate the impacts of address reduce energy use and costs, and benefit from solutions to](#) the climate crisis.

Section 2. Code Amendment. Berkeley Municipal Code Chapter 7.70 Utility Users Tax, Section 7.70.020 is hereby amended to read as follows:

The following words and phrases whenever used in this chapter shall be construed as defined in this section.

A. "Person" shall mean, without limitation, any domestic, non-profit, or foreign corporation; firm; trust; estate; association; syndicate; joint stock company; limited liability company; partnership of any kind; joint venture; club; private cogeneration facility; Berkeley business; Massachusetts business or common law trust; society; municipal corporation (other than the City); municipal district; cooperative; receiver, trustee, guardian or other representative appointed by order of any court; or any natural individual.

B. "City" shall mean the City of Berkeley.

C. "Telephone corporation," "electrical corporation," and "gas corporation," shall have the same meanings as defined in Sections 234, 218, and 222 respectively, of the Public Utilities Code of the State of California as said sections existed on January 1, 1983. "Electrical corporation" shall be construed to include any municipality or franchised agency engaged in the selling or supplying of electricity to a service user, but shall not be construed to include any private co-generation facility. "Gas corporation" shall be construed to include any municipality or franchised agency engaged in the selling or supplying of gas power to a service user, but shall not be construed to include any private cogeneration facility.

D. "Exempt Wholesale Generator" shall have the same meaning as set forth in the Federal Power Act (15U.S.C. Section 79z-5a) and regulations thereunder.

E. "Service supplier" shall mean any entity or person, including the City, that provides telephone communication, electric, gas or cable television service to a user of such services within the City. The term shall include any entity or person required to collect, or self-collect under Section 7.70.071 of this chapter, and remit a tax imposed by this chapter, including its billing agent in the case of electric, gas or cable television service suppliers.

F. "Non-utility service supplier" shall mean:

1. a service supplier, other than a supplier of electric distribution services to all or a significant portion of the City, which generates electricity for sale to others, and shall include but is not limited to any publicly-owned electric utility, investor-owned utility, cogenerator, distributed generation provider, exempt wholesale generator, municipal utility district, federal power marketing agency, electric rural cooperative, or other supplier or seller of electricity;

2. an electric service provider (ESP), electricity broker, marketer, aggregator, pool operator, or other electricity supplier other than a providersupplier of electric distribution services to all or a significant portion of the City, which sells or supplies electricity or supplemental services to electricity users within the City; and

3. a gas service supplier, aggregator, marketer or broker, other than a supplier of gas distribution services to all or a significant portion of the City, which sells or supplies gas or supplemental services to gas users within the City.

G. "Service user" shall mean a person required to pay a tax imposed by this chapter.

H. "Month" shall mean a calendar month.

I. "Tax administrator" shall mean the City Manager of the City, or his or her authorized representative.

J. "Gas" shall mean natural or manufactured gas or any alternative hydrocarbon fuel, which may be substituted therefore.

K. "Public utility," as used in Section 7.70.070, shall be construed to include "electrical corporations," as defined in Section 218 of the Public Utilities Code, but shall not be construed to include any private cogeneration facility.

L. "Cogenerator" shall mean any corporation or person employing cogeneration (as defined in Section 2168.65 of the Public Utilities Code) for producing power for the generation of electricity for self use or sale to others from a qualified cogeneration facility (as defined in the federal Public Utility Regulatory Policies Act of 1978 and regulations thereunder).

M. "Video service supplier" shall mean any person, company, or service which provides one or more channels of video programming, including any communications that are ancillary, necessary or common to the use and enjoyment of the video programming, to or from an address in the City, including to or from a business, home, condominium, or apartment, where some fee is paid, whether directly or included in dues or rental charges for that service, whether or not public rights-of-way are utilized in the delivery of the video programming or communications. A "video service supplier" includes, but is not limited to, multi-channel video programming distributors [as defined in 47 U.S.C.A. Section 522(13)], open video systems (OVS) suppliers, suppliers of cable television, master antenna television, satellite master antenna television, multichannel multipoint distribution services, direct broadcast satellite (to the extent allowed by federal law), and other suppliers of video programming or communications (including two-way communications), whatever their technology.

N. "Video services" shall mean any and all services related to the providing of video programming (including origination programming), including any communications that are ancillary, necessary or common to the use and enjoyment of the video programming, regardless of the content of such video programming or communications. "Video services" shall not include services for which a tax is paid under Section 7.70.050 of this chapter.

O. "Service address" shall mean the residential street address or the business street address of the premises of the gas or electricity service user. For a telephone communications service user, "service address" shall mean the residential street address or the business street address of the service user's primary place of telephone communication service usage.

P. "Billing address" shall mean the mailing address of the service user where the service supplier submits invoices or bills for payment by the customer.

Q. "Telephone communication services" shall mean and include the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, whether or not such information is transmitted through interconnected service with the public switched network, whatever the technology used, whether such transmission, conveyance or routing occurs by wire, cable, fiber-optic, light wave, laser, microwave, radio wave (including, but not limited to, cellular service, commercial mobile service, personal communications service (PCS), specialized mobile radio (SMR), and other types of personal wireless service--see 47 USCA Section 332(c)(7)(C)(i)--regardless of radio spectrum used), switching facilities, satellite or any other technology now existing or developed after the adoption of the ordinance codified in this chapter, and includes, without limitation, fiber optic, coaxial cable, and wireless. The term "telephone communication services" includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether such services are referred to as voice over internet protocol (VoIP) services or are classified by the Federal Communications



Commission as enhanced or value added, and includes video and/or data services that are functionally integrated with telecommunications services. "Telephone communication services" include, but are not limited to, the following services regardless of the manner or basis on which such services are calculated or billed: central office and custom calling features (including but not limited to call waiting, call forwarding, caller identification and three-way calling); local number portability; text messaging; ancillary telecommunication services; prepaid and post-paid telecommunications services (including but not limited to prepaid calling cards); mobile telecommunications service; private telecommunication service; paging service; 800 service (or any other toll-free numbers designated by the Federal Communications Commission); and value-added non-voice data service. For purposes of this section, "private telecommunication service" means any dedicated telephone communications service that entitles a user to exclusive or priority use of communications channels. "Telephone communication service" does not include: internet access services to the extent they are exempt from taxation under the Internet Tax Freedom Act, 47 U.S.C. 151 note; video programming services; and digital downloads, such as downloads of books, music, ringtones, games and similar digital products.

R. Reserved.

S. "Ancillary telecommunications services" shall mean services that are associated with or incidental to the provision, use or enjoyment of telecommunications services including, but not limited to, the following:

1. Services that link two or more participants of an audio or video conference call, including the provision of a telephone number.
2. Services that separately state information pertaining to individual calls on a customer's billing statement.
3. Services that provide telephone number information, and/or address information.
4. Services offered in connection with one or more telecommunications services, which offer advanced calling features that allow customers to identify callers and to manage multiple calls and call connections.
5. Services that enable customers to store, send or receive recorded messages.

Section 3. Code Amendment. Berkeley Municipal Code Chapter 7.70 Utility Users Tax, Section 7.70.060 is hereby amended to read as follows:

**7.70.060 Electricity users tax.**

A. There is hereby imposed a tax upon every person ~~other than an electrical or gas corporation,~~ using electricity in the City, ~~except individuals that enrolled have been accepted into the California Alternate Rates for Energy Program ("CARE") or the Family~~

Electric Rate Assistance Program (“FERA”). The tax imposed by this section shall be at the rate of ~~seven and one-half ten~~ percent (7.510%) of the charges made for such electricity, and for any supplemental services or other associated activities directly related to and/or necessary for the provision of electricity to the service user, which are provided by a service supplier or non-utility service supplier to a service user. The tax shall be collected from the service user by the service supplier or non-utility service supplier, or its billing agent. There is a presumption that electricity services, which are billed to a service address in the City or have electricity meter(s) located in the City, are used within the City’s boundaries, and such services are subject to taxation under this section.

B. The tax administrator may, from time to time, survey the electric service suppliers to identify the various unbundled billing components of electric retail service that they commonly provide to residential and commercial/industrial customers in the City, and the charges therefore, including those items that are mandated by state or federal regulatory agencies as a condition of providing such electric service. The tax administrator may, thereafter, issue and disseminate to such electric service suppliers an administrative ruling identifying those components and items which are: i) necessary or ~~the various unbundled billing components of electric retail service that they commonly provide to~~ common to the receipt, use and enjoyment of electric service; or, ii) currently, or historically have been, included in a single or bundled rate for electric service by a local distribution company to a class of retail customers. ~~Unbundled e~~Charges for such components and items shall be subject to the tax of subsection (A) above.

C. As used in this section, the term “charges” shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the electricity or services related to the provision of such electricity. If a non-taxable service and a taxable service are billed together under a single charge, the entire charge shall be deemed taxable unless the service supplier can reasonably identify charges not subject to the utility users tax based upon its books and records that are kept in the regular course of business, which shall be consistent with generally accepted accounting principles. If a non-taxable service and a taxable service are billed together under a single charge, the entire charge shall be deemed taxable.

D. As used in this section, the term “using electricity” shall not be construed to mean:

1. The use of an electricity product of which a significant portion is derived from high-quality, new renewable resources. The tax administrator shall adopt rules and regulations not inconsistent with this section to establish definitions and criteria for electricity products that qualify under this paragraph. This paragraph shall become inoperative and be deemed repealed five years after its effective date, unless extended by an ordinance adopted by the City Council.
2. The mere receiving of such electricity by an electric public utility or governmental agency at a point within the City for resale; or the use of such electricity in the production or distribution of water by a public utility or a government agency.
3. The use of “self-generated electricity” from sources other than a conventional power source as defined in Public Utilities Code Section 2805. “Self-generated electricity” shall mean electricity which is generated by the end user of the electricity within the City and is delivered to the end user on a dedicated set of conductors that are owned by or operated exclusively on behalf of the producer/consumer. This paragraph shall become inoperative and be deemed repealed five years after its effective date, unless extended by an ordinance adopted by the City Council.

E. The tax on electricity provided by self-production or by a non-utility service supplier not under the jurisdiction of this chapter shall be collected and remitted in the manner set forth in Section 7.70.071 of this chapter. All other taxes on charges for electricity imposed in this section shall be collected from the service user by the service supplier or its billing agent. The amount of tax collected in one (1) month shall be remitted to the tax administrator, and must be received by the tax administrator on or before the last day of the following month; or, at the option of the person required to collect and/or remit the tax, such person shall remit an estimated amount of tax measured by the tax billed in the previous month or upon the payment pattern of the service user, which must be received by the tax administrator on or before the last day of the following month, provided that the service user shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the tax administrator, may be applied against any subsequent tax bill that becomes due.

F. As used in this section, the term "charges" shall apply to all services, components and items that are: i) necessary or common to the receipt, use and enjoyment of electric service; or, ii) currently, or historically have been, included in a single or bundled rate for electric service by a local distribution company to a class of retail customers. The term "charges" shall include, but is not limited to, the following charges:

1. Energy charges;

2. Distribution or transmission charges;

3. Metering charges;

4. Standby, reserves, firming, voltage support, regulation, emergency, or other similar charges for supplemental services to self-generation service users;

5. Customer charges, late charges, service establishment or reestablishment charges, demand charges, fuel or other cost adjustments, power exchange charges, independent system operator (ISO) charges, stranded investment or competitive transition charges (CTC), public purpose program charges, nuclear decommissioning charges, trust transfer amounts (bond financing charges), franchise fees, franchise surcharges, annual and monthly charges, and other charges, fees and surcharges which are necessary to or common for the receipt, use and enjoyment of electric service; and

6. Charges, fees, or surcharges for electricity services or programs, which are mandated by the California Public Utilities Commission or the Federal Energy Regulatory Commission, or by any state or federal law, whether or not such charges, fees, or surcharges appear on a bundled or line item basis on the customer billing, or whether they are imposed on the service provider or the customer.

Section 4. Code Amendment. Berkeley Municipal Code Chapter 7.70 Utility Users Tax, Section 7.70.070 is hereby amended to read as follows:

**7.70.070 Gas users tax.**

A. There is hereby imposed a tax upon every person ~~other than a gas corporation or electrical corporation,~~ using gas within the City, which is delivered through a pipeline distribution system or by mobile transport, except individuals that have been accepted/enrolled into the CARE or FERA Program. The tax imposed by this section shall be at the rate of ~~seven and one-half ten~~ percent (~~7.510~~%) of the charges made for such gas, including all services related to the storage, transportation and delivery of such gas. The City Council may by ordinance further increase the tax by up to an additional two and one-half percent (2.5%) from 10% up to 12.5%. The tax shall be collected from the service user by the service supplier or non-utility service supplier, or its billing agent, and shall apply to all uses of gas, including, but not limited to, heating, transportation, and the use of gas as a component of a manufactured product. There is a presumption that gas services, which are billed to a service address in the City or have gas meter(s) located in the City, are used within the City's boundaries, and such services are subject to taxation under this section. Individuals that have been accepted into the California Alternate Rates for Energy Program ("CARE") are exempt from this tax.

B. The tax administrator, from time to time, may survey the gas service suppliers to identify the various unbundled billing components of gas retail service that they commonly provide to residential and commercial/industrial customers in the City, and the charges therefor, including those items that are mandated by state or federal regulatory agencies as a condition of providing such gas service. The tax administrator may, thereafter, issue and disseminate to such gas service suppliers an administrative ruling identifying those components and items which are: i) necessary or common to the receipt, use and

enjoyment of gas service; or, ii) currently, or historically have been, included in a single or bundled rate for gas service by a local distribution company to a class of retail customers. ~~Unbundled-c~~Charges for such components and items shall be subject to the tax of subsection (A) above.

C. As used in this section, the term "charges" shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the gas or services related to the delivery of such gas. If a non-taxable service and a taxable service are billed together under a single charge, the entire charge shall be deemed taxable unless the service supplier can reasonably identify charges not subject to the utility users tax based upon its books and records that are kept in the regular course of business, which shall be consistent with generally accepted accounting principles.

D. There shall be excluded from the calculation of the tax imposed in this section:

1. Charges made for gas which is to be resold and delivered through mains, pipes, by mobile transport, or other means~~a pipeline distribution system by a public utility or governmental agency.~~

~~2.—Charges made for gas used in the production of electricity by a public utility, or for the production or distribution of water by a public utility or governmental agency.~~

E. The tax ~~on that is calculated on charges for~~ gas provided by self-production or by a non-utility service supplier not under the jurisdiction of this chapter shall be collected and remitted in the manner set forth in Section 7.70.071 of this chapter. All other taxes on charges for gas imposed ~~in~~by this section shall be collected from the service user by the gas service supplier or its billing agent. The amount collected in one (1) month shall be remitted to the tax administrator, and must be received by the tax administrator on or before the last day of the following month; or at the option of the person required to collect and/or remit the tax, such person shall remit an estimated amount of tax measured by the tax billed in the previous month, or upon the payment pattern of the service user, which must be received by the tax administrator on or before the last day of the following month, provided that the service user shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the tax administrator, may be applied against any subsequent tax bill that becomes due.

F. As used in this section, the term "charges" shall apply to all services, components and items for gas service that are: i) necessary or common to the receipt, use and enjoyment of gas service; or, ii) currently, or historically have been, included in a single or bundled rate for gas service by a local distribution company to a class of retail customers. The term "charges" shall include, but is not limited to, the following charges:

1. The commodity charges for purchased gas, or the cost of gas owned by the service user (including the actual costs attributed to drilling, production, lifting, storage, gathering, trunkline, pipeline, and other operating costs associated with the production

and delivery of such gas), which is delivered through a gas pipeline distribution system;

2. Gas transportation charges (including interstate charges to the extent not included in commodity charges);

3. Storage charges; provided, however, that the service provider shall not be required to apply the tax to any charges for gas storage services when the service providers cannot, as a practical matter, determine the jurisdiction where such stored gas is ultimately used; but it shall be the obligation of the service user to self-collect the amount of tax not applied to any charge for gas storage by the service supplier and to remit the tax to the appropriate jurisdiction;

4. Capacity or demand charges, late charges, service establishment or reestablishment charges, marketing charges, administrative charges, transition charges, customer charges, minimum charges, annual and monthly charges, and any other charges which are necessary or common to the receipt, use and enjoyment of gas service; and,

5. Charges, fees, or surcharges for gas services or programs, which are mandated by the California Public Utilities Commission or the Federal Energy Regulatory Commission, whether or not such charges, fees, or surcharges appear on a bundled or line item basis on the customer billing, or whether they are imposed on the service provider or the customer.

Section 5. Berkeley Municipal Code Chapter 7.70 Utility Users Tax, Section 7.70.073 is hereby added to read as follows:

**7.70.073 Climate Equity Action Fund; Climate Action and Energy Commission.**

A. The Climate Equity Action Fund is hereby established. Revenues received from the user tax imposed on electricity and gas above 7.5% and any other funds designated by the City Council ~~may be placed in the fund, as well as donations from the public, foundations, or corporations, may be placed in the fund.~~ and ~~t~~The Climate Action and Energy Commission or successor commission shall provide non-binding recommendations to the City Council on how these proceeds could be spent to address climate equity issues. At the City Council's discretion, the proceeds may be spent to reduce ~~local climate change impacts and climate pollutants~~ ~~greenhouse gas emissions or air pollution~~ ~~greenhouse gas emissions or for any other municipal purpose.~~ Funds may be used for City government expenditures, and/or to provide grants to local non-profit organizations, businesses, and government agencies. ~~Grants may not be made directly to individuals.~~

B. The Energy Commission is renamed the Climate Action and Energy Commission. The Climate Action and Energy Commission shall develop guidelines for the Climate Equity Action Fund, communicate with the public on the availability and uses of the Fund, and make recommendations to the Council on how and to what extent the City should establish and/or fund programs. Considerations should include the effect of proposed actions on greenhouse gas emissions, on equity and environmental justice, participation of low income, disadvantaged, and vulnerable populations in climate action programs, and reduce the impacts of climate change on the City's low income and most vulnerable populations.

C. Each member of the Climate Action and Energy Commission must have one or more of the following qualifications:

1. Experience in community-based inclusive equity-based programs; and/or
2. Experience in social and racial equity; and/or
3. Experience in climate and energy conservation or renewable energy policies and programs; and/or
4. Experience in municipal-scale inclusive and equitable energy and transportation initiatives; and/or
5. Technical expertise in health and other disproportionate impacts of climate change on low income and vulnerable populations.

D. In addition to its standing duties and responsibilities, the Climate Action and Energy Commission shall, by majority vote, publish an annual report that includes the following:

1. Recommendations on how to allocate funds deposited into the Climate Equity and Action Fund ~~the City's general funds~~ to reduce the emission of greenhouse gases, increase participation of low income, disadvantaged, and vulnerable populations in climate action programs, and reduce the impacts of climate change on the City's low income and most vulnerable populations.

Information, if available, concerning the impact of funds deployed from the Climate Equity and Action Fund ~~this Chapter~~ on the achievement of goals in the City's Climate Action Plan;

2. Any additional information that the Climate Action and Energy Commission deems appropriate.

E. Within 4530 days of receipt of the annual report of the Climate Action and Energy Commission's, the City Manager shall cause the report to be published on the City's website and transmitted to the City Council.

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

Section 6. 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 section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional.

Section 7. Increase appropriations limit. Pursuant to California Constitution Article XIII B, the appropriation limit for the City of Berkeley is hereby increased by the aggregate sum authorized to be levied by this ~~special-general~~ tax for each of the four fiscal years from 2021 through 2024.

Section 8. Amendment, repeal, and reenactment. The City Council may amend this ordinance in any manner, including reducing any applicable tax rates or adding or modifying exemptions that does not result in an increase in the tax imposed herein without further voter approval. If the City Council repeals this ordinance, it may subsequently reenact it without voter approval, as long as the reenacted ordinance does not result in an increase in the tax imposed herein.

Section 9. California Environmental Quality Act Requirements. This Ordinance is exempt from the California Environmental Quality Act, Public Resources Code section 21000 et seq., under, including without limitation, Public Resources Code section 21065 and CEQA Guidelines sections 15378(b)(4) and 15061(b)(3), as it can be seen with certainty that there is no possibility that the activity authorized herein may have a significant effect on the environment and pursuant to Public Resources Code section 21080, subdivision (b)(8), and CEQA Guidelines section 15273 as the approval of government revenues to fund existing services.

Section 10. ~~General Tax; Majority Vote Requirement.~~ This Ordinance imposes a general tax for general revenue purposes and shall be effective only if approved by a majority of the voters voting thereon.





Office of the City Manager

**ACTION CALENDAR**  
 July 30, 2020  
 (Continued from July 21, 2020)

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Mark Numainville, City Clerk

Subject: Placing a Tax Measure on the November 3, 2020 Ballot to Increase the Utility Users Tax to Pay for General Municipal Services and Establish a Climate Equity Action Fund to Support Measures to Reduce Local Greenhouse Gas Emissions and Air Pollution

**RECOMMENDATION**

1. Adopt a Resolution submitting a ballot measure to increase the Utility Users Tax to pay for general municipal services and to establish a Climate Equity Action Fund to support measures to reduce local greenhouse gas emissions and air pollution to a vote of the electors at the November 3, 2020 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**

If the measure is approved by voters, the City would receive additional funds from increased tax revenues estimated at \$4 million annually. This revenue estimate is based on an increase in the Utility Users Tax from 7.5% to 10%.

The table below shows the year-by-year costs for elections since 2012. Cost increases have occurred year-over-year due to the addition of required languages and a new, permanent surcharge to fund the County’s voting equipment replacement account.

Date	Election				
	Nov. 2012	Nov. 2014	Nov. 2016	Mar. 2017	Nov. 2018
<b>No. of Measures</b>	10	7	11	0	4
<b>No. of Candidates</b>	26	23	29	2	30
<b>General Costs</b>	\$367,884	\$392,331	\$706,901	-	\$385,246
<b>RCV Costs</b>	\$101,041	\$189,148	\$181,954	-	\$185,578
<b>Total Costs</b>	<b>\$468,925</b>	<b>\$581,479</b>	<b>\$888,855</b>	<b>\$85,628</b>	<b>\$570,824</b>

## CURRENT SITUATION AND ITS EFFECTS

The City Manager is presenting this measure for addition to the November 3, 2020 ballot pursuant to the direction provided by the City Council at the June 16, 2020 regular City Council meeting.

Adoption of the resolution attached to this item will place the measure on the ballot. In addition, with respect to who can author arguments for measures placed on the ballot by the Council, Elections Code Section 9282(b) provides that the legislative body may submit an argument in favor of the measure. The City Council may authorize the Council as a whole, or certain members of the Council, to submit an argument in favor of the measure.

## BACKGROUND

The City of Berkeley adopted a Climate Action Plan in June 2009. Subsequent to that, on June 12, 2018, the Council adopted a goal of creating a “Fossil Fuel Free Berkeley” and a “Declaration of a Climate Emergency,” which together reinforced the City Council’s desires to make Berkeley a global leader on reducing the threat of climate change.

Rising greenhouse gas concentrations in the atmosphere are leading to rising global average temperatures and greater incidence of drought, wildfire, flooding, extreme weather, and other impacts. Berkeley contributes to greenhouse gas emissions, due to reliance of its residents on gasoline and diesel vehicles, natural gas in homes and businesses, consumption of goods with high levels of “embedded emissions” from manufacturing and distribution, and other sources. New technologies, along with changes to infrastructure and human behavior, offer significant potential to cut fossil fuel use and carbon emissions in Berkeley.

The community is making notable progress in reducing greenhouse gas (“GHG”) emissions. Based on the best currently available data from 2018, the community has reduced overall GHG emissions by 26% since 2000, despite population increasing by 18% and an expanding economy.<sup>1</sup> This achievement is largely due to reduced energy use in buildings and the transition to purchasing cleaner electricity provided by East Bay Community Energy (EBCE), Alameda County’s community-based electricity provider, which started enrolling customers in 2018. Although Berkeley has made progress, additional work is required to achieve the City’s ambitious goal to become a Fossil Fuel-Free City.

A significant impediment to greater progress on the City’s Climate Action Plan is the lack of funding. While City departments sometimes implement measures that cut carbon emissions, their budgets do not have line items for climate action, and rarely are actions prioritized solely because of the carbon reduction benefits. Instead, the City’s sustainability programs are often forced to seek support from outside funding sources,

---

<sup>1</sup> Staff Report: Berkeley Economic Dashboards, March 26, 2019:  
[https://www.cityofberkeley.info/uploadedFiles/Manager/Economic\\_Development/2019-03-26%20Item%2026%20Berkeley%20Economic%20Dashboards.pdf](https://www.cityofberkeley.info/uploadedFiles/Manager/Economic_Development/2019-03-26%20Item%2026%20Berkeley%20Economic%20Dashboards.pdf)

such as state and philanthropic grants. Given the City's declared fiscal emergency and budget deficit due to the loss of revenue attributed to the COVID-19 pandemic, the City does not have the resources to invest in programs and measures that would reduce local greenhouse gas emissions and air pollution. For this reason, the City Council directed city staff to survey the community on its support for an increase in the Utility Users Tax to support general municipal services and measures to reduce greenhouse gas emissions and local air pollution, including increasing electric vehicle, bicycle and pedestrian infrastructure and other clean transportation options, increasing energy efficiency and renewable energy use in homes and businesses, and investing in clean and reliable back-up power for emergency services facilities. The results of the community survey indicated strong community support for the increase in the utility users tax and on June 16, 2020, City Council directed staff to prepare a tax measure for the November 3, 2020 ballot. Should the proposed increase in the Utility Users Tax be adopted by the voters, it would provide much needed revenue to support city services and to be proactive in achieving its climate action goals.

ENVIRONMENTAL SUSTAINABILITY

This measure, if it passes, would potentially generate additional funding to support reduction of local greenhouse gas emissions and air pollution.

RATIONALE FOR RECOMMENDATION

The City Clerk is presenting this action in accordance with the direction given by the City Council at the June 16, 2020 meeting.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Mark Numainville, City Clerk, (510) 981-6900

Attachments:

1: Resolution

Exhibit A: Text of Measure

RESOLUTION NO. ##,### –N.S.

SUBMITTING TO THE BERKELEY ELECTORATE ON THE NOVEMBER 3, 2020 GENERAL ELECTION BALLOT AN ORDINANCE MEASURE TO INCREASE THE UTILITY USERS TAX FROM 7.5% TO 10% TO PAY FOR GENERAL MUNICIPAL SERVICES, TO ESTABLISH A CLIMATE EQUITY ACTION FUND TO REDUCE LOCAL GREENHOUSE GAS EMISSIONS AND AIR POLLUTION, TO AUTHORIZE THE CITY COUNCIL TO INCREASE THE GAS USERS TAX BY UP TO AN ADDITIONAL 2.5%, AND TO MODERNIZE AND UPDATE TECHNICAL PROVISIONS OF THE UTILITY USER TAX

WHEREAS, the Berkeley City Council has elected to submit to the voters at the November 3, 2020 General Municipal Election, a general tax measure to increase the Utility Users Tax from 7.5% to 10% and to authorize the City Council to increase the gas users tax by up to an additional 2.5% to fund general municipal services, to establish a climate equity action fund that may receive a portion of the revenues from the increase in electricity and gas users taxes that could be used to reduce local greenhouse gas emissions and air pollution, and to modernize and update technical provisions of the utility user taxes; and

WHEREAS, the City Council has requested that the Alameda County Board of Supervisors consolidate the November 3, 2020 General Municipal Election with the November 3, 2020 Presidential General Election; and

WHEREAS, the City of Berkeley hereby requests that the Alameda County Board of Supervisors permit the Registrar of Voters of Alameda County to perform services in connection with said election at the request of the City Clerk. These services are to include all necessary services related to official ballot creation, sample ballot and voter information pamphlet preparation, vote-by-mail, polling places, poll workers, voter registration, voting machines, canvass operations, and any and all other services necessary for the conduct of the consolidated 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 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 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 required to perform necessary services in connection with said election.

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 directed to obtain printing, supplies and services as required.

BE IT FURTHER RESOLVED that the City Clerk is hereby authorized to provide such other services and supplies in connection with said election as may be required by the Statutes of the State of California and the Charter of the City of Berkeley.

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 Ordinance measure shall appear and be printed upon the ballots to be used at said election as follows:

<b>CITY OF BERKELEY GENERAL TAX ORDINANCE MEASURE</b>	
Shall an ordinance increasing the Utility Users Tax from 7.5% to 10% to fund general municipal services, including programs to reduce local greenhouse gas emissions and air pollution, authorizing the City Council to increase the gas users tax by an additional 2.5%, and modernizing and updating technical provisions of the Utility Users Tax, with the total increase in the tax estimated to generate \$4 million annually, until repealed by the voters, be adopted?	YES
	NO

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

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

**INCREASING THE UTILITY USERS TAXES (TELEPHONE, ELECTRICITY, GAS, AND VIDEO) FROM 7.5% TO 10% TO FUND GENERAL MUNICIPAL SERVICES AND TO ESTABLISH A CLIMATE EQUITY ACTION FUND TO REDUCE LOCAL GREENHOUSE GAS EMISSIONS AND AIR POLLUTON, AUTHORIZING THE CITY COUNCIL TO INCREASE THE GAS USERS TAX BY UP TO AN ADDITIONAL 2.5%, AND MODERNIZING AND UPDATING TECHNICAL PROVISIONS OF THE UTILITY USER TAXES**

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

Section 1. Findings and declarations.

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

- A. Human activities have warmed the earth and global warming has set in motion catastrophic environmental changes.
- B. According to climate projections, the Earth's temperature is on track to increase at a level that could cause irreparable damage to the environment and uncontrollable global warming.
- C. The effects of global warming are being felt in the City of Berkeley through severe weather patterns, drought, uncontrollable wildfires, and anticipated sea level rise.
- D. In November 2006, Berkeley voters issued a call to action by overwhelmingly endorsing ballot Measure G. The mandate was simple but bold: "Reduce our entire community's greenhouse gas (GHG) emissions by 80% by the year 2050."
- E. In 2009, the City of Berkeley adopted a Climate Action Plan that established a vision and plan to achieve greenhouse gas emissions reduction targets of 33% below 2000 levels by 2020 and consistent with Measure G, 80% below 2000 levels by 2050.
- F. While the City has made great strides in reducing greenhouse gas emissions, achieving a 15% reduction below 2000 levels, there is still much work to be done.
- G. In 2018, Berkeley declared a Climate Emergency (Res. No, 68,486-N.S.) to call attention to the climate crisis and as a call to action to mobilize the city, region, state, and entire country around the urgent need to take action to reduce greenhouse gas emissions.
- H. On June 16, 2020, the City adopted an ordinance declaring a Fiscal Emergency due to the significant loss of revenue attributable to the COVID-19 pandemic and does not

have the resources to adequately address the climate crisis and support general municipal services. The City needs new funds to pay for municipal services and to establish a climate equity action fund to reduce greenhouse gas emissions and local air pollution including increasing electric vehicle, bicycle and pedestrian infrastructure and other clean transportation options, increasing energy efficiency and renewable energy use in homes and businesses, investing in clean and reliable back-up power for emergency services facilities, and supporting low-income and historically marginalized individuals address the climate crisis.

Section 2. Code Amendment. Berkeley Municipal Code Chapter 7.70 Utility Users Tax, Section 7.70.020 is hereby amended to read as follows:

The following words and phrases whenever used in this chapter shall be construed as defined in this section.

A. "Person" shall mean, without limitation, any domestic, non-profit, or foreign corporation; firm; trust; estate; association; syndicate; joint stock company; limited liability company; partnership of any kind; joint venture; club; private cogeneration facility; Berkeley business; Massachusetts business or common law trust; society; joint power agency, municipal district or municipal corporation (other than the City); municipal district; cooperative; receiver, trustee, guardian or other representative appointed by order of any court; or any natural individual.

B. "City" shall mean the City of Berkeley.

~~C. "Telephone corporation," "electrical corporation," and "gas corporation," shall have the same meanings as defined in Sections 234, 218, and 222 respectively, of the Public Utilities Code of the State of California as said sections existed on January 1, 1983. "Electrical corporation" shall be construed to include any municipality or franchised agency engaged in the selling or supplying of electricity to a service user, but shall not be construed to include any private co-generation facility. "Gas corporation" shall be construed to include any municipality or franchised agency engaged in the selling or supplying of gas power to a service user, but shall not be construed to include any private cogeneration facility.~~

CD. "Exempt Wholesale Generator" shall have the same meaning as set forth in the Federal Power Act (15U.S.C. Section 79z-5a) and regulations thereunder.

DE. "Service supplier" shall mean any entity or person, including the City, that provides or sells telephone communication, electric, gas or cable television video service to a user of such services within the City. The term shall include any entity or person required to collect, or self-collect under Section 7.70.071 of this chapter, and remit a tax imposed by this chapter, including its billing agent in the case of electric, gas or videocable television service suppliers.

EF. "Non-utility service supplier" shall mean:

1. a service supplier, other than a supplier of electric distribution services to all or a significant portion of the City, which generates electricity for sale to others, and shall include but is not limited to any publicly-owned electric utility, investor-owned utility, cogenerator, distributed generation provider, exempt wholesale generator, municipal utility district, federal power marketing agency, electric rural cooperative, or other supplier or seller of electricity;
2. an electric service provider (ESP), electricity broker, marketer, aggregator, pool operator, or other electricity supplier other than a providersupplier of electric distribution services to all or a significant portion of the City, which sells or supplies electricity or supplemental services to electricity users within the City; and
3. a gas service supplier, aggregator, marketer or broker, other than a supplier of gas distribution services to all or a significant portion of the City, which sells or supplies gas or supplemental services to gas users within the City.

FG. "Service user" shall mean a person required to pay a tax imposed by this chapter.

GH. "Month" shall mean a calendar month.

H. "Tax administrator" shall mean the City Manager of the City, or his or her authorized representative.

I. "Gas" shall mean natural or manufactured gas or any alternative hydrocarbon fuel, which may be substituted therefore.

~~K. "Public utility," as used in Section 7.70.070, shall be construed to include "electrical corporations," as defined in Section 218 of the Public Utilities Code, but shall not be construed to include any private cogeneration facility.~~

JL. "Cogenerator" shall mean any corporation or person employing cogeneration (as defined in Section 2168.65 of the Public Utilities Code) for producing power for the generation of electricity for self use or sale to others from a qualified cogeneration facility (as defined in the federal Public Utility Regulatory Policies Act of 1978 and regulations thereunder).

KM. "Video service supplier" shall mean any person, company, or service which provides or sells one or more channels, programs or individual episodes of video programming, or provides or sells the capability to receive one or more channels, programs, or individual episodes of video programming, including any telephone communications that are ancillary, necessary or common to the provision, use or and enjoyment of the video programming, to or from an address in the City, including to or from a business, home, condominium, or apartment, where some fee is paid, whether directly or included in dues or rental charges for that service, whether or not public rights-of-way are utilized in the delivery of the video programming or telephone communications. A "video service supplier" includes, but is not limited to, multi-channel video programming distributors [as defined in 47 U.S.C.A. Section 522(13)], open video



systems (OVS) suppliers, suppliers of cable television or video program delivery of any kind, be it through channel or other subscribers or to individual buyers of programs or unique episodes, master antenna television, satellite master antenna television, multichannel multipoint distribution services, video services using internet protocol (e.g., IP-TV and IP-Video, which provide, among other things, broadcasting and video on demand), direct broadcast satellite (to the extent allowed by federal law, now or in the future), and other suppliers of video ~~services programming or communications~~ (including two-way communications), whatever their technology.

LN. "Video services" shall mean "video programming" and any and all services related to the providing, recording, delivery, use or enjoyment of video programming (including origination programming and programming using Internet Protocol, e.g., IP-TV and IP-Video), using one or more channels by a video service supplier, regardless of the technology used to deliver, store, or provide such services, and regardless of the manner or basis on which such services are calculated or billed, and includes including any communications that are ancillary video services, data services, telephone communications services, or interactive communication services that are functionally integrated with video services., necessary or common to the use and enjoyment of the video programming, regardless of the content of such video programming or communications. "Video services" shall not include services for which a tax is paid under Section 7.70.050 of this chapter.

ME. "Service address" shall mean the residential street address or the business street address of the premises of the gas or electricity service user. For a telephone communications or video service user,'s "service address" means either:

1. The location of the service user's telecommunications or video equipment from which the communication originates or terminates, regardless of where the communication is billed or paid; or
2. If the location in (1) of this definition is unknown or mobile (e.g., mobile telecommunications service or VoIP service), the service address shall mean the location of the service user's place of primary use, place of telephone communication service usage.
3. For prepaid telecommunication service, "service address" means the point of sale of the services where the point of sale is within the City, or if unknown, the known address of the service user (e.g., billing address or location associated with the service number), which locations shall be presumed to be the place of primary use.

NP. "Billing address" shall mean the mailing address of the service user where the service supplier submits invoices or bills for payment by the service user customer.

OQ. "Telephone communication services" shall mean ~~and include~~ the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, ~~whether or not such information is transmitted~~

~~through interconnected service with the public switched network, whatever the technology used, and includes broadband service (e.g., digital subscriber line (DSL), fiber optic, coaxial cable, and wireless broadband, including Wi-Fi, WiMAX, and Wireless MESH) to the extent Federal and/or State law permits taxation of such broadband services, now or in the future. whether such transmission, conveyance or routing occurs by wire, cable, fiber-optic, light wave, laser, microwave, radio wave (including, but not limited to, cellular service, commercial mobile service, personal communications service (PCS), specialized mobile radio (SMR), and other types of personal wireless service—see 47 USCA Section 332(c)(7)(C)(i)—regardless of radio spectrum used), switching facilities, satellite or any other technology now existing or developed after the adoption of the ordinance codified in this chapter, and includes, without limitation, fiber optic, coaxial cable, and wireless.~~ The term "telephone communication services" includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether such services are referred to as voice over internet protocol (VoIP) services or are classified by the Federal Communications Commission as enhanced or value added, and includes video and/or data services that are functionally integrated with tele~~phone~~ communications services. "Telephone communication services" include, but are not limited to, the following services, regardless of the manner or basis on which such services are calculated or billed: intrastate, interstate and international telecommunication services; all forms of VoIP service; central office and custom calling features (including but not limited to call waiting, call forwarding, caller identification and three-way calling); local number portability; text messaging; ancillary telecommunication services; prepaid telecommunication service; and post-paid telecommunications services ~~(including but not limited to prepaid calling cards)~~; mobile telecommunications service; private telecommunication service; paging service; 800 service (or any other toll-free numbers designated by the Federal Communications Commission); 900 service (or any other similar numbers designated by the Federal Communications Commission for services whereby subscribers call in to prerecorded or live service; and value-added non-voice data service. For purposes of this section, "private telecommunication service" means any dedicated telephone communications service that entitles the customer a user to exclusive or priority use of a communications channels or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels. A communications channel is a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points (i.e., the location where the customer either inputs or receives the communications). "Telephone communication service" does not include: internet access services to the extent they are exempt from taxation under the Internet Tax Freedom Act, 47 U.S.C. 151 note; video programming services; and digital downloads, such as downloads of books, music, ringtones, games and similar digital products.

R.—Reserved.

**PS.** "Ancillary telecommunications services" shall mean services that are associated with or incidental to the provision, use or enjoyment of telecommunications services including, but not limited to, the following:

1. "Conference bridging service" shall mean an ancillary sServices that links two (2) or more participants of an audio or video conference call and may, includ~~e~~ing the provision of a telephone number. Conference bridging service does not include the telecommunications services used to reach the conference bridge.
2. "Detailed telecommunications billing service" shall mean an ancillary sServices that separately states information pertaining to individual calls on a customer's billing statement.
3. "Directory assistance" shall mean an ancillary sServices that provides telephone number information, and/or address information.
4. "Vertical service" shall mean an ancillary sServices that is offered in connection with one (1) or more telecommunications services, which offer advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging services.
- 5. "Voice mail service" shall mean an ancillary sServices that enables the customers to store, send or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to utilize the voice mail service.

**Q.** "Mobile telecommunications service" shall mean commercial mobile radio service, as defined in Section 20.3 of Title 47 of the Code of Federal Regulations and as set forth in the Mobile Telecommunications Sourcing Act (4 U.S.C. Section 124) and the regulations thereunder, as may be amended from time to time.

**R.** "Paging service" shall mean a "telephone communication service" that provides transmission of coded radio signals for the purpose of activating specific pagers; such transmissions may include messages and/or sounds.

**S.** "Place of primary use" shall mean the street address representative of where the customer's use of the telephone communications service primarily occurs, which must be the residential street address or the primary business street address of the customer.

**T.** "Post-paid telecommunication service" shall mean the telephone communication service obtained by making a payment on a communication-by-communication basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a service number which is not associated with the origination or termination of the telephone communication service.

U. "Prepaid telecommunication service" (including prepaid mobile telecommunication service) shall mean the right to access telephone communication services, which must be paid for in advance and which enables the origination of communications using an access number or authorization code, whether manually or electronically dialed.

V. "VoIP" or "Voice Over Internet Protocol" shall mean the digital process of making and receiving real-time voice transmissions over any Internet Protocol network.

W. "800 Service" shall mean a "telephone communications service" that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the name "800," "855," "866," "877," and "888" toll-free calling, and any subsequent numbers designated by the Federal Communications Commission.

X. "900 Service" shall mean an inbound toll "telephone communications service" purchased by a subscriber that allows the subscriber's customers to call in to the subscriber's prerecorded announcement or live service. "900 service" does not include the charge for: collection services provided by the seller of the "telephone communications services" to the subscriber, or service or product sold by the subscriber to the subscriber's customer. The service is typically marketed under the name "900" service, and any subsequent numbers designated by the Federal Communications Commission.

Y. "Video programming" shall mean those programming services commonly provided to subscribers by a "video service supplier", including, but not limited to, basic services, premium services, audio services, video games, pay-per-view services, video on demand, origination programming, or any other similar services, regardless of the content of such video programming, or the technology used to deliver such services, and regardless of the manner or basis on which such services are calculated or billed.

Z. "Ancillary video services" shall mean services that are associated with or incidental to the provision or delivery of video services, including but not limited to electronic program guide services, search functions, recording services, interactive services or other communications services that are associated with or incidental to the provision, use or enjoyment of video services.

Section 3. Code Amendment. Berkeley Municipal Code Chapter 7.70 Utility Users Tax, Section 7.70.050 is hereby amended to read as follows:

#### **7.70.050 Telephone users tax.**

A. There is hereby imposed a tax upon every person in the City who uses any international, interstate and/or intrastate telephone communication services in the City, other than a telephone corporation. Interstate calls shall include calls to and from the District of Columbia or any U.S. territory. The tax imposed by this section shall be at the rate of ~~seven and one-half ten~~ percent (7.510%) of the charges made for such telephone communication services. The tax shall be collected from the service user by the telephone communication services supplier or its billing agent, or as otherwise provided by law. To

the extent allowed by federal and state law, the tax on telephone communication services is intended to, and does, apply to all charges within the city's tax jurisdiction, such as charges billed to a telephone account having a situs in the city as permitted by the Mobile Telecommunications Sourcing Act of 2000, 4 U.S.C. Section 116 et seq. There is a rebuttable presumption that telephone communication services billed to a billing or service address in the city are used, in whole or in part, within the city's boundaries, and that such services are subject to taxation under this Chapter. There is also a rebuttable presumption that prepaid telephone communication services sold within the city are primarily used, in whole or in part, within the City and are therefore subject to taxation under this Chapter. that are not billed to a billing address or provided to a primary physical location are used, in whole or in part, within the city's boundaries and that such services are subject to taxation under this chapter. If the billing address of the service user is different from the service address, the service address of the service user shall be used for purposes of imposing the tax.

B. The following shall be exempt from the tax imposed by this Section, if any:

1. Service paid for by inserting coins in coin-operated telephones with respect to local telephone service, or with respect to toll telephone service if the charge for such toll telephone service is less than 25 cents; except that where such coin-operated telephone service is furnished for a guaranteed amount, the amounts paid under such guarantee plus any fixed monthly or other periodic charge shall be subject to the tax.
2. Payment received from any person for services used in the collection of news for the public press, or a news ticker service furnishing a general news service similar to that of the public press, or radio broadcasting, or in the dissemination of news through the public press, or a news ticker service furnishing a general news service similar to that of the public press, or by means of radio broadcasting, if the charge for such service is billed in writing to such person.
3. Payment received for services furnished to an international organization designated under the International Organizations Immunities Act and defined in 22 USCA § 288, or to the American National Red Cross.
4. Payment received for any toll telephone service which originates within a combat zone from a member of the Armed Forces of the United States performing service in such combat zone, as determined under such section, provided a certificate, setting forth such facts as the Secretary may by regulations prescribe, is furnished to the person receiving such payment.
5. The amount paid for any toll telephone service to the extent that the amount so paid is for use by a common carrier, telephone or telegraph company, or radio broadcasting station or network in the conduct of its business as such.
6. The amount paid by a nonprofit hospital for services furnished to such organization. For purposes of this subsection, the term "nonprofit hospital" means a

hospital which is exempt from federal and state income tax under section 501(a) of the Internal Revenue Code.

7. Any payment received for services or facilities furnished to the government of any State, or any political subdivision thereof, or the District of Columbia.

8. Any amount paid by a nonprofit educational organization for services or facilities furnished to such organization. For purposes of this subsection, the term "nonprofit educational organization" means an educational organization which is exempt from income tax under section 501(a) of the Internal Revenue Code. The term also includes a school operated as an activity of an organization which is exempt from income tax under section 501(a) if such school normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on.

9. Private mobile radio service. For purposes of this chapter "private mobile radio service" is a radio communication service which is not a commercial mobile service. A "mobile service" means a radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, and includes (A) both one-way and two-way radio communication services, (B) a mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations (whether licensed on an individual, cooperative, or multiple basis) for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation, and (C) any service for which a license is required in a personal communications service established pursuant to the proceeding entitled "Amendment to the Commission's Rules to Establish New Personal Communications Services" (GEN Docket No. 90-314; ET Docket No. 92-100), or any successor proceeding. A "commercial mobile service" is a "mobile service" that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public.

C. The tax administrator may, from time to time, issue and disseminate to telecommunication service suppliers, which are subject to the tax collection requirements of this Chapter, administrative rulings identifying those ~~telecommunication~~-telephone services that are subject to the tax of subsection (A) above. The administrative rulings shall implement the intent of the City Council that the telephone users tax be imposed on any person who initiates or receives high-quality voice communications without regard to the type or kind of transmission media or technology that exists on the date the amendments to this section became effective or which may be developed in the future. Such administrative rulings shall be consistent with legal nexus and laws pertaining to telephone communications services and shall not impose a new tax, revise an existing tax methodology, or increase an existing tax, except as allowed by California Government Code §§ 53750(h)(2) and (h)(3) or other law. The tax administrator may consider state-wide interpretive rules and guidelines promulgated by any government agency or association of government agencies as a factor in determining the intent of voters adopting this section. To the extent that the tax administrator determines that the tax

imposed under this section shall not be collected in full for any period of time, such an administrative ruling falls within the tax administrator's discretion to settle disputes. The tax administrator's exercise of prosecutorial forbearance under this chapter does not constitute a change in taxing methodology for purposes of Government Code § 53750(h), and the city does not waive or abrogate its ability to impose the telephone users' tax in full as a result of issuing such administrative rulings and may suspend such rulings and recommence collection of the tax without additional voter approval. The administrative ruling shall be consistent with and shall not impose a new tax or increase an existing tax without voter approval.

D. As used in this section, the term "charges" shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the telephone communication services. If a non-taxable service and a taxable service are billed together under a single charge, the entire charge shall be deemed taxable unless the service supplier identifies, by verifiable data, non-taxable charges based upon its books and records that are kept in the regular course of business, which shall be consistent with generally accepted accounting principles. The service supplier has the burden of proving the proper apportionment of taxable and non-taxable charges.

E. As used in this section, the term "charges" shall not include charges for any type of service or equipment furnished by a service supplier subject to public utility regulation during any period in which the same or similar services or equipment are also available for sale or lease from persons other than a service supplier subject to public utility regulation.

F. To prevent actual multi-jurisdictional taxation of telephone communication services subject to tax under this section, any service user, upon proof to the tax administrator that the service user has previously paid the same tax in another American state or city on such telephone communication services, shall be allowed a credit against the tax imposed to the extent of the amount of such tax legally imposed in such other state or city; provided, however, the amount of credit shall not exceed the tax owed to the City under this section.

G. The tax on telephone communication services imposed by this section shall be collected from the service user by the service supplier. The amount of tax collected in one (1) month shall be remitted to the tax administrator on or before the last day of the following month; and must be received by the tax administrator on or before the last day of the following month.

H. For purposes of imposing a tax or establishing a duty to collect and remit a tax under this Section, "substantial nexus" and "minimum contacts" shall be construed broadly in favor of the imposition, collection and/or remittance of the utility users tax to the fullest extent permitted by state and federal law, and as that law may change from time to time. Any telephone communication service (including VoIP) used by a person with a service address in the city, which service is capable of terminating a call to another person on the general telephone network, shall be subject to a rebuttable presumption that "substantial

nexus/minimum contacts” exists for purposes of imposing a tax, or establishing a duty to collect and remit a tax, under this chapter. A service supplier shall be deemed to have sufficient activity in the city to be obligated to collect and remit the tax imposed by this chapter if it does any of the following: maintains or has within the city, directly or through an agent or subsidiary, a place of business of any nature; solicits business in the city by employees, independent contractors, resellers, agents or other representatives; solicits business in the city by means of advertising that is broadcast or relayed from a transmitter within the city or distributed from a location within the city; or advertises in newspapers or other periodicals printed and published within the city or through materials distributed in the city by means other than the United States mail; or if there are activities performed in the City on behalf of the service supplier that are significantly associated with the service supplier’s ability to establish and maintain a market in the City for the provision of utility services that are subject to a tax under this Chapter (e.g., an affiliated person engaging in activities in the City that inure to the benefit of the service supplier in its development or maintenance of a market for its services in the City).

I. The tax imposed by this Section shall not apply to any person whose total personal income, from all sources, for the previous calendar year, does not exceed that level which shall constitute “very low-income,” as may be established by resolution of the City Council. Any taxpayer claiming the exemption under this Section shall be required to demonstrate his or her entitlement thereto annually by submitting a claim for a refund, with supporting documentation, to the Finance Director in the manner and at the time established in regulations and/or guidelines hereafter promulgated by the City Manager. Such applications shall be on forms provided by the Finance Director, or their designee, and shall provide and/or be accompanied by such information as the Finance Director shall require, including but not limited to federal income tax returns and W-2 forms. Upon timely receipt and verification of the required claim and supporting documentation, the Finance Director shall promptly refund the tax paid for the prior 12 months. Any person or entity claiming an exemption from the tax imposed by this Chapter shall file a verified statement of exemption on a form prescribed by the City Manager prior to June 30th of the first fiscal year for which the exemption is sought.

J. "Mobile telecommunications service" shall be sourced in accordance with the sourcing rules set forth in the Mobile Telecommunications Sourcing Act (4 U.S.C. Section 124). The tax administrator may issue and disseminate to telephone communication service suppliers, which are subject to the tax collection requirements of this section, sourcing rules for the taxation of other telephone communication services, including but not limited to post-paid telecommunication services, prepaid telecommunication services, and private telecommunication services, provided that such rules are based upon custom and common practice that further administrative efficiency and minimize multi-jurisdictional taxation.

K. As used in this section, the term “telephone communication services” shall include, but is not limited to, charges for: connection, reconnection, termination, movement, or change of telephone communication services; late payment fees; detailed billing; central office and custom calling features (including but not limited to call waiting, call forwarding, caller identification and three-way calling); voice mail and other messaging services;



directory assistance; access and line charges; universal service charges; regulatory or administrative fees, charges or surcharges; charges or surcharges for programs imposed by state or federal law (whether such charges or surcharges are imposed on the service supplier or the customer); local number portability charges; and text and instant messaging. "Telephone communication services" shall not include digital downloads that are not "ancillary telecommunication services," such as music, ringtones, games, and similar digital products.

Section 4. Code Amendment. Berkeley Municipal Code Chapter 7.70 Utility Users Tax, Section 7.70.060 is hereby amended to read as follows:

**7.70.060 Electricity users tax.**

A. There is hereby imposed a tax upon every person ~~other than an electrical or gas corporation,~~ using electricity in the City, except individuals that have been accepted into the California Alternate Rates for Energy Program ("CARE"). The tax imposed by this section shall be at the rate of ~~seven and one-half ten~~ percent (~~7.510~~%) of the charges made for such electricity, and for any supplemental services or other associated activities directly related to and/or necessary for the provision of electricity to the service user, which are provided by a service supplier or non-utility service supplier to a service user. The tax shall be collected from the service user by the service supplier or non-utility service supplier, or its billing agent. There is a presumption that electricity services, which are billed to a service address in the City or have electricity meter(s) located in the City, are used within the City's boundaries, and such services are subject to taxation under this section.

B. The tax administrator may, from time to time, survey the electric service suppliers to identify the various unbundled billing components of electric retail service that they commonly provide to residential and commercial/industrial customers in the City, and the charges therefore, including those items that are mandated by state or federal regulatory agencies as a condition of providing such electric service. The tax administrator may, thereafter, issue and disseminate to such electric service suppliers an administrative ruling identifying those components and items which are: i) necessary or ~~the various unbundled billing components of electric retail service that they commonly provide to~~ common to the receipt, use and enjoyment of electric service; or, ii) currently, or historically have been, included in a single or bundled rate for electric service by a local distribution company to a class of retail customers. ~~Unbundled eCharges~~ for such components and items shall be subject to the tax of subsection (A) above.

C. As used in this section, the term "charges" shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the electricity or services related to the provision of such electricity. If a non-taxable service and a taxable service are billed together under a single charge, the entire charge shall be deemed taxable unless the service supplier can reasonably identify charges not subject to the utility users tax based upon its books and records that are kept in the regular course of business, which shall be consistent with

generally accepted accounting principles. If a non-taxable service and a taxable service are billed together under a single charge, the entire charge shall be deemed taxable.

D. As used in this section, the term “using electricity” shall not be construed to mean:

1. The use of an electricity product of which a significant portion is derived from high-quality, new renewable resources. The tax administrator shall adopt rules and regulations not inconsistent with this section to establish definitions and criteria for electricity products that qualify under this paragraph. This paragraph shall become inoperative and be deemed repealed five years after its effective date, unless extended by an ordinance adopted by the City Council.

2. The mere receiving of such electricity by an electric public utility or governmental agency at a point within the City for resale; or the use of such electricity in the production or distribution of water by a public utility or a government agency.

3. The use of “self-generated electricity” from sources other than a conventional power source as defined in Public Utilities Code Section 2805. “Self-generated electricity” shall mean electricity which is generated by the end user of the electricity within the City and is delivered to the end user on a dedicated set of conductors that are owned by or operated exclusively on behalf of the producer/consumer. This paragraph shall become inoperative and be deemed repealed five years after its effective date, unless extended by an ordinance adopted by the City Council.

E. The tax on electricity provided by self-production or by a non-utility service supplier not under the jurisdiction of this chapter shall be collected and remitted in the manner set forth in Section 7.70.071 of this chapter. All other taxes on charges for electricity imposed in this section shall be collected from the service user by the service supplier or its billing agent. The amount of tax collected in one (1) month shall be remitted to the tax administrator, and must be received by the tax administrator on or before the last day of the following month; or, at the option of the person required to collect and/or remit the tax, such person shall remit an estimated amount of tax measured by the tax billed in the previous month or upon the payment pattern of the service user, which must be received by the tax administrator on or before the last day of the following month, provided that the service user shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the tax administrator, may be applied against any subsequent tax bill that becomes due.

F. As used in this section, the term "charges" shall apply to all services, components and items that are: i) necessary or common to the receipt, use and enjoyment of electric service; or, ii) currently, or historically have been, included in a single or bundled rate for electric service by a local distribution company to a class of retail customers. The term "charges" shall include, but is not limited to, the following charges:

1. Energy charges;

2. Distribution or transmission charges;

3. Metering charges;

4. Standby, reserves, firming, voltage support, regulation, emergency, or other similar charges for supplemental services to self-generation service users;

5. Customer charges, late charges, service establishment or reestablishment charges, demand charges, fuel or other cost adjustments, power exchange charges, independent system operator (ISO) charges, stranded investment or competitive transition charges (CTC), public purpose program charges, nuclear decommissioning charges, trust transfer amounts (bond financing charges), franchise fees, franchise surcharges, annual and monthly charges, and other charges, fees and surcharges which are necessary to or common for the receipt, use and enjoyment of electric service; and

6. Charges, fees, or surcharges for electricity services or programs, which are mandated by the California Public Utilities Commission or the Federal Energy Regulatory Commission, or by any state or federal law, whether or not such charges, fees, or surcharges appear on a bundled or line item basis on the customer billing, or whether they are imposed on the service provider or the customer.

Section 5. Code Amendment. Berkeley Municipal Code Chapter 7.70 Utility Users Tax, Section 7.70.070 is hereby amended to read as follows:

**7.70.070 Gas users tax.**

A. There is hereby imposed a tax upon every person ~~other than a gas corporation or electrical corporation,~~ using gas within the City, which is delivered through a pipeline distribution system ~~or by mobile transport.~~ The tax imposed by this section shall be at the rate of ~~seven and one-half ten~~ percent (~~7.510~~%) of the charges made for such gas, including all services related to the storage, transportation and delivery of such gas. The City Council may by ordinance further increase the tax by up to an additional two and one-half percent (2.5%) from 10% up to 12.5%. The tax shall be collected from the service user by the service supplier or non-utility service supplier, or its billing agent, and shall apply to all uses of gas, including, but not limited to, heating and the use of gas as a component of a manufactured product. There is a presumption that gas services, which are billed to a service address in the City or have gas meter(s) located in the City, are used within the City's boundaries, and such services are subject to taxation under this section. Individuals that have been accepted into the California Alternate Rates for Energy Program ("CARE") are exempt from this tax.

B. The tax administrator, from time to time, may survey the gas service suppliers to identify the various unbundled billing components of gas retail service that they commonly provide to residential and commercial/industrial customers in the City, and the charges therefor, including those items that are mandated by state or federal regulatory agencies as a condition of providing such gas service. The tax administrator may, thereafter, issue

and disseminate to such gas service suppliers an administrative ruling identifying those components and items which are: i) necessary or common to the receipt, use and enjoyment of gas service; or, ii) currently, or historically have been, included in a single or bundled rate for gas service by a local distribution company to a class of retail customers. ~~Unbundled eC~~charges for such components and items shall be subject to the tax of subsection (A) above.

C. As used in this section, the term "charges" shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the gas or services related to the delivery of such gas. If a non-taxable service and a taxable service are billed together under a single charge, the entire charge shall be deemed taxable unless the service supplier can reasonably identify charges not subject to the utility users tax based upon its books and records that are kept in the regular course of business, which shall be consistent with generally accepted accounting principles.

D. There shall be excluded from the calculation of the tax imposed in this section:

1. Charges made for gas which is to be resold and delivered through mains, pipes, by mobile transport, or other means~~a pipeline distribution system by a public utility or governmental agency.~~

~~2. Charges made for gas used in the production of electricity by a public utility, or for the production or distribution of water by a public utility or governmental agency.~~

E. The tax ~~on that is calculated on charges for~~ gas provided by self-production or by a non-utility service supplier not under the jurisdiction of this chapter shall be collected and remitted in the manner set forth in Section 7.70.071 of this chapter. All other taxes on charges for gas imposed ~~in~~by this section shall be collected from the service user by the gas service supplier or its billing agent. The amount collected in one (1) month shall be remitted to the tax administrator, and must be received by the tax administrator on or before the last day of the following month; or at the option of the person required to collect and/or remit the tax, such person shall remit an estimated amount of tax measured by the tax billed in the previous month, or upon the payment pattern of the service user, which must be received by the tax administrator on or before the last day of the following month, provided that the service user shall submit an adjusted payment or request for credit, as appropriate, within sixty (60) days following each calendar quarter. The credit, if approved by the tax administrator, may be applied against any subsequent tax bill that becomes due.

F. As used in this section, the term "charges" shall apply to all services, components and items for gas service that are: i) necessary or common to the receipt, use and enjoyment of gas service; or, ii) currently, or historically have been, included in a single or bundled rate for gas service by a local distribution company to a class of retail customers. The term "charges" shall include, but is not limited to, the following charges:

1. The commodity charges for purchased gas, or the cost of gas owned by the service user (including the actual costs attributed to drilling, production, lifting, storage, gathering, trunkline, pipeline, and other operating costs associated with the production and delivery of such gas), which is delivered through a gas pipeline distribution system;
2. Gas transportation charges (including interstate charges to the extent not included in commodity charges);
3. Storage charges; provided, however, that the service provider shall not be required to apply the tax to any charges for gas storage services when the service providers cannot, as a practical matter, determine the jurisdiction where such stored gas is ultimately used; but it shall be the obligation of the service user to self-collect the amount of tax not applied to any charge for gas storage by the service supplier and to remit the tax to the appropriate jurisdiction;
4. Capacity or demand charges, late charges, service establishment or reestablishment charges, marketing charges, administrative charges, transition charges, customer charges, minimum charges, annual and monthly charges, and any other charges which are necessary or common to the receipt, use and enjoyment of gas service; and,
5. Charges, fees, or surcharges for gas services or programs, which are mandated by the California Public Utilities Commission or the Federal Energy Regulatory Commission, whether or not such charges, fees, or surcharges appear on a bundled or line item basis on the customer billing, or whether they are imposed on the service provider or the customer.

Section 6. Code Amendment. Berkeley Municipal Code Chapter 7.70 Utility Users Tax, Section 7.70.075 is hereby amended to read as follows:

**7.70.075 Video service tax.**

A. There is hereby imposed a tax upon every person in the City using video services ~~in the City from a video service supplier~~. The tax imposed by this section shall be at the rate of ~~seven and one-half ten~~ percent (~~7.510~~%) of the charges made for such video services. The tax shall be collected from the service user by the video service supplier or its billing agent. There is a rebuttable presumption that video services which are billed to a billing or service address in the City are used, in whole or in part, within the City's boundaries, and such services are subject to taxation under this section. If the billing address of the service user is different from the service address, the service address of the service user shall be used for purposes of imposing the tax.

B. The tax administrator, from time to time, may survey the video service suppliers in the City to identify the various components of video service that are being offered to customers within the City, and the charges therefor. The tax administrator may, thereafter,

issue and disseminate to such video service suppliers an administrative ruling identifying those components that are: i) necessary or common to the receipt, use and enjoyment of video service; or, ii) which currently are, or historically have been, included in a bundled rate for video service by a ~~local~~ distribution company. Charges for such components shall be subject to the tax of subsection (A) above.

C. As used in this section, the term “charges” shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the video services. If a non-taxable service and a taxable service are billed together under a single charge, the entire charge shall be deemed taxable unless the service supplier can reasonably identify charges not subject to the utility users tax based upon its books and records that are kept in the regular course of business, which shall be consistent with generally accepted accounting principles.

D. The tax imposed in this section shall be collected from the service user by the video service supplier, its billing agent, or a reseller of such services. In the case of video service, the service user shall be deemed to be the purchaser of the bulk video service (e.g., an apartment owner), unless such service is resold to individual users, in which case the service user shall be the ultimate purchaser of the video service. The amount collected in one month shall be remitted to the tax administrator on or before the last day of the following month and must be received by the tax administrator on or before the last day of the following month.

E. The tax imposed by this section shall not apply to any person whose total personal income, from all sources, for the previous calendar year, does not exceed that level which shall constitute “very low income” as may be established by resolution of the City Council. Any taxpayer claiming the exemption under this section shall be required to demonstrate their entitlement thereto annually by submitting an application and supporting documentation to the City Manager, or their designee in the manner and at the time established in regulations and/or guidelines hereafter promulgated by the City Manager subject to review by the City Council in its discretion. Such applications shall be on forms provided by the City Manager, or their designee, and shall provide and/or be accompanied by such information as the City Manager shall require, including but not limited to, federal income tax returns and W-2 forms.

F. Once annually (July), the City Manager, or their designee shall receive all applications and certify as exempt those subscribers whose gross annual income constitutes “very low income” as may be established by resolution of the City Council. Upon completion of the verification process, the City Manager, or their designee shall process within thirty days refunds to qualified applicants. All exemptions shall continue and be renewed automatically by the City Manager or their designee so long as the prerequisite facts supporting the initial qualification for the exemption continue. It shall be a misdemeanor for any person to knowingly receive the benefits of the exemption provided by this section when the basis for such exemption either does not exist or ceases.

G. As used in this section, the term “charges” shall include, but is not limited to, charges for the following:

1. Regulatory fees and surcharges, franchise fees and access fees (PEG);
2. Initial installation of equipment necessary for provision and receipt of video services;
3. Late fees, collection fees, bad debt recoveries, and return check fees;
4. Activation fees, reactivation fees, and reconnection fees;
5. Video programming and video services;
6. Ancillary video services (e.g., electronic program guide services, search functions, recording functions, or other interactive services or communications that are ancillary, necessary or common to the use or enjoyment of the video services);
7. Equipment leases (e.g., remote, recording and/or search devices; converters); and
8. Service calls, service protection plans, name changes, changes of services, and special services.

Section 7. Berkeley Municipal Code Chapter 7.70 Utility Users Tax, Section 7.70.073 is hereby added to read as follows:

**7.70.073 Climate Equity Action Fund**

The Climate Equity Action Fund is hereby established. Revenues received from the user tax imposed on electricity and gas above 7.5% and any other funds designated by the City Council may be placed in the fund, and the Energy Commission shall provide non-binding recommendations to the City Council on how these proceeds could be spent to address climate equity issues. At the City Council’s discretion, the proceeds may be spent to reduce local greenhouse gas emissions or air pollution or for any other municipal purpose.

Section 8. **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 section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional.

Section 9. Increase appropriations limit. Pursuant to California Constitution Article XIII B, the appropriation limit for the City of Berkeley is hereby increased by the aggregate sum authorized to be levied by this special tax for each of the four fiscal years from 2021 through 2024.

Section 10. Amendment, repeal, and reenactment. The City Council may amend this ordinance in any manner, including reducing any applicable tax rates or adding or modifying exemptions that does not result in an increase in the tax imposed herein without further voter approval. If the City Council repeals this ordinance, it may subsequently reenact it without voter approval, as long as the reenacted ordinance does not result in an increase in the tax imposed herein.

Section 11. California Environmental Quality Act Requirements. This Ordinance is exempt from the California Environmental Quality Act, Public Resources Code section 21000 et seq., under, including without limitation, Public Resources Code section 21065 and CEQA Guidelines sections 15378(b)(4) and 15061(b)(3), as it can be seen with certainty that there is no possibility that the activity authorized herein may have a significant effect on the environment and pursuant to Public Resources Code section 21080, subdivision (b)(8), and CEQA Guidelines section 15273 as the approval of government revenues to fund existing services.

Section 12. General Tax; Majority Vote Requirement. This Ordinance imposes a general tax for general revenue purposes and shall be effective only if approved by a majority of the voters voting thereon.