

1 [Initiative Ordinance - Business and Tax Regulations Code - Additional Utility Users Tax on
2 Gas and Electricity]

3 **Motion ordering submitted to the voters an Ordinance amending the Business and Tax**
4 **Regulations Code to impose an additional utility users tax on electricity equal to 2.5%**
5 **of the charges incurred, subject to certain exemptions including an exemption for**
6 **electricity from certain renewable energy resources, and an additional utility users tax**
7 **on gas equal to 2.5% of the charges incurred, subject to certain exemptions, to fund**
8 **affordable housing and programs that reduce carbon emissions at an election to be**
9 **held on November 3, 2015.**

10
11 MOVED, That the Board of Supervisors hereby submits the following ordinance to the
12 voters of the City and County of San Francisco, at an election to be held on November 3,
13 2015.

14
15 **Ordinance amending the Business and Tax Regulations Code to impose an additional**
16 **utility users tax on electricity equal to 2.5% of the charges incurred, subject to certain**
17 **exemptions including an exemption for electricity from certain renewable energy**
18 **resources, and an additional utility users tax on gas equal to 2.5% of the charges**
19 **incurred, subject to certain exemptions, to fund affordable housing and programs that**
20 **reduce carbon emissions.**

21
22 NOTE: **Unchanged Code text and uncodified text** are in plain font.
23 **Additions to Codes** are in *single-underline italics Times New Roman font*.
24 **Deletions to Codes** are in ~~italics Times New Roman font~~.
25 **Asterisks (* * * *)** indicate the omission of unchanged Code subsections or parts of tables.

1 Be it ordained by the People of the City and County of San Francisco:

2
3 Section 1. Pursuant to Article XIII C of the Constitution of the State of California, this
4 ordinance shall be submitted to the qualified electors of the City and County of San Francisco,
5 at the November 3, 2015 election.
6

7 Section 2. Legislative Findings. The People of the City and County of San Francisco
8 find that:

9 (a) The Intergovernmental Panel on Climate Change (IPCC), a scientific body under
10 the auspices of the United Nations that currently consists of 195 member countries, issued the
11 Synthesis Report of its Fifth Assessment Report in November 2014, which stated that:

12 (1) "Warming of the climate system is unequivocal, and since the 1950s,
13 many of the observed changes are unprecedented over decades to millennia. The
14 atmosphere and ocean have warmed, the amounts of snow and ice have diminished, and sea
15 level has risen."

16 (2) "Continued emission of greenhouse gases will cause further warming and
17 long-lasting changes in all components of the climate system, increasing the likelihood of
18 severe, pervasive and irreversible impacts for people and ecosystems."

19 (3) "Climate change will amplify existing risks and create new risks for natural
20 and human systems. Risks are unevenly distributed and are generally greater for
21 disadvantaged people and communities in countries at all levels of development."

22 (b) The 2004 "Climate Action Plan for San Francisco" published by the
23 San Francisco Department of the Environment and the San Francisco Public Utilities
24 Commission found that continued warming of the atmosphere would cause San Francisco to
25 experience flooding; threats to City infrastructure, the sewage system, Bay wetlands, and

1 marine life; increased asthma and respiratory illness due to higher ozone levels; increased
2 insurance and mitigation costs; and negative impacts to the fishing and tourism industries.

3 (c) Conservative estimates by the world's climate scientists state that to achieve
4 climate stabilization and avoid cataclysmic climate change, emissions of greenhouse gases
5 must be brought to 80% below 1990 levels by 2050.

6 (d) The California Global Warming Solutions Act of 2006, Division 25.5 of the
7 California Health and Safety Code, commits the State of California to reduce greenhouse gas
8 emissions to 1990 levels by 2020, and the Governor's Executive Order S-3-05 further
9 establishes as State policy the reduction of greenhouse gas emissions to 80% below 1990
10 levels by 2050.

11 (e) The failure of the world's nations to ratify the Kyoto Protocol or any other
12 meaningful climate regulations combined with escalating impacts of climate change
13 demonstrate that broader, more powerful policies are needed to supplement local and
14 regional efforts to reduce emissions.

15 (f) Presently the environmental, health, and social costs of carbon emissions are
16 not included in prices paid for fossil fuels, but rather these externalized costs are borne
17 directly and indirectly by all United States and global citizens.

18 (g) To begin to correct this market failure, the City can enact an additional utility
19 users tax on gas and electricity.

20 (h) A utility users tax on gas and electricity will generate revenues that the City can
21 use to fund projects to further reduce greenhouse gas emissions.

22 (i) The revenues from a tax on gas and electricity may also be used for programs
23 that are eligible for potential matching funds from state, federal, or other sources, such as the
24 California Cap-and-Trade auction proceeds, which matching funds the City can also use to
25 fund projects to further reduce greenhouse gas emissions.

1 Section 3. The Business and Tax Regulations Code is hereby amended by adding
2 Sections 704.1, 705.1, and 720.1 of Article 10, to read as follows:

3 **SECTION 704.1. ADDITIONAL ELECTRICITY USERS TAX.**

4 (a) In addition to the tax imposed by Section 704, there is hereby imposed a tax upon every
5 person, other than an electrical corporation or a gas corporation, using electrical energy in San
6 Francisco. The tax imposed by this Section 704.1 shall be 2.5% of the charges made for such energy
7 and shall be paid by the person paying for such energy. "Charges" as used in this Section 704.1 shall
8 include charges made for (1) metered energy, and (2) minimum charges for service, including customer
9 charges, service charges, demand charges, standby charges and annual and monthly charges.

10 (b) As used in this Section 704.1, the term "using electrical energy" shall not be construed
11 to mean the storage of such energy by a person in a battery owned or possessed by him for use in an
12 automobile or other machinery or device apart from the premises on which the energy was received;
13 provided, however, that the term shall include the receiving of such energy for the purpose of using it in
14 the charging of batteries.

15 (c) As used in this Section 704.1, the words "using electrical energy" shall not be construed
16 to mean the receiving of such energy by an electrical corporation or a government agency at a point
17 within San Francisco for resale, or electrical energy used by a water corporation to pump water.

18 (d) The following persons shall be exempt from the tax imposed by this Section 704.1:

19 (1) Persons that voluntarily elect to receive and receive at least 50% of their
20 electrical energy, measured by kilowatt-hour, from eligible renewable energy resources or that receive
21 any amount of their electrical energy from on-site solar systems. For purposes of this subsection
22 (d)(1), "eligible renewable energy resources" shall have the same meaning as in section 399.12(e) of
23 the California Public Utilities Code, as amended from time to time.

24 (2) Persons that receive their electrical energy from a Community Choice
25 Aggregator.

1 (3) Persons that qualify for the California Alternative Rates for Energy (“CARE”)
2 program under sections 739.1 through 739.4 of the California Public Utilities Code, as amended from
3 time to time.

4 (4) Persons that qualify for the Family Electric Rate Assistance Program (“FERA”)
5 authorized by California Public Utilities Commission Decision 04-02-057.

6 (e) The exemption in Section 707 shall apply to the tax imposed by this Section 704.1.

7 (f) The exemption in Section 707.1 shall not apply to the tax imposed by this Section 704.1.

8 (g) The tax imposed by this Section 704.1 shall be collected from the service user by the
9 person supplying such electrical energy. The amount of tax collected in one month shall be remitted to
10 the Tax Collector on or before the last day of the following month.

11 **SECTION 705.1. ADDITIONAL GAS USERS TAX.**

12 (a) In addition to the tax imposed by Section 705, there is hereby imposed a tax upon every
13 person, other than a gas corporation or an electrical corporation, using gas which is delivered through
14 mains or pipes in San Francisco by a gas corporation. The tax imposed by this Section 705.1 shall be
15 2.5% of the charges made for such gas, including minimum charges for services, and shall be paid by
16 the person paying for such gas.

17 (b) As used in this Section 705.1, the word “charges” shall not include charges made for
18 gas used in the generation of electrical energy by a public utility or a governmental agency.

19 (c) As used in this Section 705.1, the words “using gas” shall not be construed to mean the
20 receiving of such gas by a gas corporation or governmental agency at a point within San Francisco for
21 resale and delivery through pipes and mains or gas used by a water corporation to pump water or gas
22 used by a steam corporation to generate steam.

23 (d) Persons that qualify for the California Alternative Rates for Energy (“CARE”) program
24 under sections 739.1 through 739.4 of the California Public Utilities Code, as amended from time to
25 time, shall be exempt from the tax imposed by this Section 705.1.

1 (e) The exemption in Section 707 shall apply to the tax imposed under this Section 705.1.

2 (f) The exemption in Section 707.1 shall not apply to the tax imposed under this Section
3 705.1.

4 (g) The tax imposed by this Section 705.1 shall be collected from the service user by the
5 person selling the gas. The amount collected in one month shall be remitted to the Tax Collector on or
6 before the last day of the following month.

7 **SECTION 720.1. DEPOSIT AND EXPENDITURE OF PROCEEDS.**

8 (a) All monies collected pursuant to the taxes imposed under Sections 704.1 and 705.1 of
9 this Article 10 shall be deposited to the credit of the Environment Greenhouse Gas Emission Reduction
10 Fund (the “Fund”), which shall be a category four fund under Chapter 10, Article XIII, Section
11 10.100-1 of the Administrative Code. The Fund shall be maintained separate and apart from all other
12 City funds and shall be appropriated by annual or supplemental appropriation.

13 (b) Subject to the budgetary and fiscal provisions of the City Charter, monies in the Fund
14 shall be used exclusively for the following purposes:

15 (1) Administration of the tax imposed under Sections 704.1 and 705.1 of this Article
16 10, and administration of the Fund.

17 (2) Refunds of any overpayments of the taxes imposed under Sections 704.1 and
18 705.1 of this Article 10.

19 (3) Funding of programs operated by Departments as described in subsections (A)
20 through (D) below that further the purposes recited in Section 2 of the initiative ordinance adopted at
21 the November 3, 2015 election establishing this Section 720.1 and the goals recited in subsection (e) of
22 this Section 720.1 (“Eligible Programs”).

23 (A) Affordable housing development in areas well served by public transit
24 that will reduce greenhouse gas emissions by decreasing vehicle miles traveled. This program shall be
25 administered by the Mayor’s Office of Housing and Community Development, or its successor.

1 (B) Development or acquisition of renewable energy resources in San
2 Francisco or on real property owned or leased by the City. This program shall be administered by the
3 San Francisco Public Utilities Commission.

4 (C) Energy efficiency projects that benefit disadvantaged residents and small
5 business owners. This program shall be administered by the Department of the Environment.

6 (D) Urban forest projects that increase carbon sequestration through tree
7 planting and maintenance. This program shall be administered by any combination of one or both of
8 the Department of the Environment and the Department of Public Works, as determined by the
9 Department of the Environment.

10 (c) Based on budget proposals from the Departments described in Section 720.1(b)(3), the
11 Department of the Environment shall recommend to the Board of Supervisors the Eligible Programs
12 and Departments in Section 720.1(b)(3) to which monies in the Fund shall be appropriated. In
13 recommending the Eligible Programs to which monies in the Fund shall be appropriated, the
14 Department of the Environment shall give priority to programs that are eligible for potential matching
15 funds from state, federal, or other sources.

16 (d) Any balance remaining in the Fund at the close of any fiscal year shall be deemed to
17 have been provided for a specified purpose within the meaning of Section 9.113(a) of the Charter and
18 shall be carried forward and accumulated in the Fund for the purposes recited in Section 2 of the
19 initiative ordinance adopted at the November 3, 2015 election establishing this Section 720.1 and the
20 goals recited in subsection (e) of this Section 720.1.

21 (e) Goals. The goals of expenditures from the Fund shall be to:

22 (1) Reduce greenhouse gas emissions in San Francisco;

23 (2) Fund projects with measurable, long-term reductions in greenhouse gas
24 emissions that can qualify as carbon offset projects; and

1 (3) Prioritize projects that offer benefits to disadvantaged communities and residents
2 in San Francisco.

3 (f) Commencing with a report filed no later than January 1, 2018, the Department of the
4 Environment, shall file annually with the Mayor, the Board of Supervisors, and the Controller, by
5 January 1, a written report containing the following:

6 (1) The amount deposited into the Fund, the amount expended from the Fund, the
7 amount of any remaining unexpended balances by Eligible Program and Department, as well as the
8 allocation of all prior expenditures from the Fund, by Eligible Program, Department, and fiscal year.

9 (2) The status of any Eligible Programs funded by the Fund, including an estimate of
10 the greenhouse gas emission reductions achieved.

11 (3) Such other information as the Department of the Environment, in its sole
12 discretion, shall deem relevant to the operation of this Section 720.1.

13
14 Section 4. The Business and Tax Regulations Code is hereby amended by revising
15 Sections 707.1 and 720 of Article 10, to read as follows:

16 **SECTION 707.1. UTILITY USERS TAX EXEMPTION.**

17 (a) No tax shall be levied upon residential telephone communications service or
18 upon the use in the City and County of San Francisco by residential customers of electrical
19 energy or gas (other than the taxes imposed under Sections 704.1 and 705.1 of this Article 10), water
20 or steam which is delivered through mains or pipes or of any other utility service after June 30,
21 1988.

22 (b) For the purposes of this Section, “residential customer” shall mean any
23 customer paying for the utility service at a residential or domestic rate consistent with the rate
24 schedule set by the California Public Utilities Commission or any other rate-making authority.

1 (c) This Section was adopted by the voters of San Francisco at the November 3,
2 1987 election and may be amended only by the vote of the electorate.

3 **SECTION 720. PURPOSE.**

4 The taxes imposed and levied by the provisions of this Article 10, other than the taxes
5 imposed under Sections 704.1 and 705.1, are solely for the purpose of providing revenue for the
6 usual current expenses of the City. The provisions of this Article, including the taxes imposed
7 under Sections 704.1 and 705.1, are not enacted for regulatory purposes.

8
9 Section. 5. The Administrative Code is hereby amended by adding Section 10.100-73
10 to Article XIII, Chapter 10, to read as follows:

11 **SECTION 10.100-73. ENVIRONMENT GREENHOUSE GAS EMISSION REDUCTION FUND.**

12 (a) **Establishment of Fund.** The Environment Greenhouse Gas Emission Reduction Fund
13 (“Fund”) is established as a category four fund as defined in Section 10.100-1 of Article XIII of
14 Chapter 10 of the Administrative Code, and shall receive all taxes, penalties, interest, and fees
15 collected from the taxes imposed under Sections 704.1 and 705.1 of Article 10 of the Business and Tax
16 Regulations Code.

17 (b) **Use of Fund.** Subject to the budgetary and fiscal provisions of the City Charter, monies
18 in the Fund shall be used exclusively for the purposes described in Section 720.1(b) of Article 10 of the
19 Business and Tax Regulations Code. The goals of expenditures from the Fund shall be to:

20 (1) Reduce greenhouse gas emissions in San Francisco;

21 (2) Fund projects with measurable, long-term reductions in greenhouse gas
22 emissions that can qualify as carbon offset projects; and

23 (3) Prioritize projects that offer benefits to disadvantaged communities and residents
24 in San Francisco.

1 (c) Administration of Fund. Commencing with a report filed no later than January 1,
2 2018, the Department of the Environment shall file annually with the Mayor, the Board of Supervisors,
3 and the Controller, by January 1, a written report containing the following:

4 (1) The amount deposited into the Fund, the amount expended from the Fund, the
5 amount of any remaining unexpended balances by Eligible Program (as defined in Section 720.1(b)(3)
6 of the Business and Tax Regulations Code) and Department, as well as the allocation of all prior
7 expenditures from the Fund, by Eligible Program, Department, and fiscal year.

8 (2) The status of any Eligible Programs funded by the Fund, including an estimate of
9 the greenhouse gas emission reductions achieved.

10 (3) Such other information as the Department of the Environment, in its sole
11 discretion, shall deem relevant to the operation of Section 720.1 of the Business and Tax Regulations
12 Code.

13
14 Section 6. Scope of Ordinance. In enacting this ordinance, the People of the City and
15 County of San Francisco intend to amend only those words, phrases, paragraphs,
16 subsections, sections, articles, numbers, punctuation marks, charts, diagrams, or any other
17 constituent parts of the Municipal Code that are explicitly shown in this ordinance as additions
18 or deletions, in accordance with the “Note” that appears under the official title of the
19 ordinance.

20
21 Section 7. Undertaking for the General Welfare. In enacting and implementing this
22 ordinance, the City is assuming an undertaking only to promote the general welfare. It is not
23 assuming, nor is it imposing on its officers and employees, an obligation for breach of which it
24 is liable in money damages to any person who claims that such breach proximately caused
25 injury.

1 Section 8. Effective and Operative Dates. The effective date of this ordinance shall be
2 ten days after the date the official vote count is declared by the Board of Supervisors. This
3 ordinance shall become operative on July 1, 2016.

4
5 APPROVED AS TO FORM:
6 DENNIS J. HERRERA, City Attorney

7
8 By: _____
9 Scott M. Reiber
 Deputy City Attorney

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