

1 [Initiative Ordinance - Business and Tax Regulations Code - Additional Utility Users Tax on
2 Gas and Non-Renewable 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 persons using electrical**
5 **energy in the City equal to 2.5% of the charges incurred, subject to certain exemptions**
6 **including an exemption for persons using electrical energy from certain renewable**
7 **energy resources, and an additional utility users tax on persons using gas in the City**
8 **equal to 2.5% of the charges incurred, subject to certain exemptions; and increasing**
9 **the City's appropriations limit by the amount of the additional tax for four years from**
10 **November 8, 2016, at an election to be held on November 8, 2016.**

11
12 MOVED, That the Board of Supervisors hereby submits the following ordinance to the
13 voters of the City and County of San Francisco, at an election to be held on November 8,
14 2016.

15
16 **Ordinance amending the Business and Tax Regulations Code to impose an additional**
17 **utility users tax on persons using electrical energy in the City equal to 2.5% of the**
18 **charges incurred, subject to certain exemptions including an exemption for persons**
19 **using electrical energy from certain renewable energy resources, and an additional**
20 **utility users tax on persons using gas in the City equal to 2.5% of the charges incurred,**
21 **subject to certain exemptions; and increasing the City's appropriations limit by the**
22 **amount of the additional tax for four years from November 8, 2016.**

1 NOTE: **Unchanged Code text and uncodified text** are in plain font.
2 **Additions to Codes** are in *single-underline italics Times New Roman font*.
3 **Deletions to Codes** are in ~~italics Times New Roman font~~.
4 **Asterisks (* * * *)** indicate the omission of unchanged Code subsections or
5 parts of tables.

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

7 Section 1. Pursuant to Article XIII C of the Constitution of the State of California, this
8 ordinance shall be submitted to the qualified electors of the City and County of San Francisco,
9 at the November 8, 2016, consolidated general election.

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

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

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

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

21 (3) "Without additional mitigation efforts beyond those in place today, and even
22 with adaptation, warming by the end of the 21st century will lead to high to very high risk of
23 severe, widespread and irreversible impacts globally."

24 (b) The California Global Warming Solutions Act of 2006, Division 25.5 of the
25 California Health and Safety Code, commits the State of California to reduce greenhouse gas

1 emissions to 1990 levels by 2020, and the Governor’s Executive Order S-3-05, issued on
2 June 1, 2005, further establishes as State policy the reduction of greenhouse gas emissions
3 to 80% below 1990 levels by 2050.

4 (c) The 2013 “San Francisco Climate Action Strategy” published by the Department of
5 the Environment found that:

6 (1) “San Francisco must face the reality that climate change is already
7 happening. Sea level rise, a reduced snowpack in the Sierra Nevada mountains, and extreme
8 weather events are some of the challenges already affecting the Bay Area.”

9 (2) “The slow pace of regulatory action at international and national levels
10 leaves cities in the best position to address GHG [greenhouse gas] emissions.”

11 (3) “Moving to 100% renewable electricity is the single biggest step the City can
12 take to reduce GHG emissions.”

13 (d) Presently the environmental, health, and social costs of carbon emissions are not
14 included in prices paid for fossil fuels, but rather these externalized costs are borne directly
15 and indirectly by all United States and global citizens. To begin to correct this market failure,
16 the City can enact an additional utility users tax on gas and non-renewable electricity.

17
18 Section 3. The Business and Tax Regulations Code is hereby amended by adding
19 Sections 704.1 and 705.1 to Article 10, to read as follows:

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

21 (a) In addition to the tax imposed by Section 704, there is hereby imposed a tax upon every
22 person, other than an electrical corporation or a gas corporation, using electrical energy in
23 San Francisco. The tax imposed by this Section 704.1 shall be 2.5% of the charges made for such
24 energy and shall be paid by the person paying for such energy.

1 (b) As used in this Section 704.1, the term “charges” shall include (1) charges made for
2 metered energy, and (2) minimum charges for service, including customer charges, service charges,
3 demand charges, standby charges, and annual and monthly charges.

4 (c) As used in this Section 704.1, the term “using electrical energy” shall not be construed to
5 mean the storage of such energy by a person in a battery owned or possessed by such person for use in
6 an automobile or other machinery or device apart from the premises on which the energy was received;
7 provided, however, that the term shall include the receiving of such energy for the purpose of using it in
8 the charging of batteries.

9 (d) As used in this Section 704.1, the term “using electrical energy” shall not be construed to
10 mean the receiving of such energy by an electrical corporation or a government agency at a point
11 within San Francisco for resale, or electrical energy used by a water corporation to pump water.

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

13 (1) Persons that voluntarily elect to receive, and actually receive, at least 50% of their
14 electrical energy, measured by kilowatt-hour, from eligible renewable energy resources, or that receive
15 any amount of their electrical energy from on-site solar systems. For purposes of this subsection
16 (e)(1), “eligible renewable energy resources” shall have the same meaning as in section 399.12(e) of
17 the California Public Utilities Code, as amended from time to time.

18 (2) Persons that participate in a shared renewables program implemented pursuant to
19 the California Public Utilities Code Sections 2831 et seq., or a similar program implemented by a
20 publicly-owned utility or a Community Choice Aggregator, as defined in California Public Utilities
21 Code Section 331.1, as amended from time to time.

22 (3) Persons that receive the electrical energy from a Community Choice Aggregator, as
23 defined in California Public Utilities Code Section 331.1, as amended from time to time.

1 (4) 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 (5) Persons that qualify for the Family Electric Rate Assistance Program (“FERA”)
5 authorized by California Public Utilities Commission Decision 04-02-057.

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

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

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

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

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

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

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

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

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

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

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

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

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

14 (a) No tax shall be levied upon residential telephone communications service or upon
15 the use in the City and County of San Francisco by residential customers of electrical energy
16 or gas, water or steam which is delivered through mains or pipes or of any other utility service
17 after June 30, 1988; provided, however, that notwithstanding this subsection (a), the taxes specified
18 in Sections 704.1 and 705.1 of this Article 10 shall be imposed on residential customers of electrical
19 energy and gas.

20 (b) For the purposes of this Section 707.1, “residential customer” shall mean any
21 customer paying for the utility service at a residential or domestic rate consistent with the rate
22 schedule set by the California Public Utilities Commission or any other rate-making authority.

23 (c) This Section 707.1 was adopted by the voters of San Francisco at the November 3,
24 1987 election and may be amended only by the vote of the electorate.

1 Section 5. Appropriations Limit Increase. Pursuant to California Constitution Article
2 XIII B and applicable laws, for four years from November 8, 2016, the appropriations limit for
3 the City shall be increased by the aggregate sum collected by the levy of the additional tax
4 imposed by this ordinance.

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

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13 Section 7. Effective and Operative Dates. The effective date of this ordinance shall be
14 ten days after the date the official vote count is declared by the Board of Supervisors. This
15 ordinance shall become operative on July 1, 2017.

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17 Section 8. Severability. If any section, subsection, sentence, clause, phrase, or word
18 of this ordinance, or any application thereof to any person or circumstance, is held to be
19 invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision
20 shall not affect the validity of the remaining portions or applications of the ordinance. The
21 People of the City and County of San Francisco hereby declare that they would have passed
22 this ordinance and each and every section, subsection, sentence, clause, phrase, and word
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1 not declared invalid or unconstitutional without regard to whether any other portion of this
2 ordinance or application thereof would be subsequently declared invalid or unconstitutional.

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

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

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