

NOTICE OF INTENT TO CIRCULATE PETITION

Notice is hereby given by the person whose name appears hereon of his intention to circulate the petition within the City of Richmond for the purpose of qualifying the "City of Richmond Utility Users Tax Reform Act" for the ballot. A statement of the reasons for the proposed action contemplated in the petition is as follows:

The current City of Richmond Utility Users Tax is the highest in Contra Costa County. Richmond citizens are having a difficult time in this economy and the current high utility users tax imposes an additional burden on Richmond citizens.

This measure would cut in half for all Richmond residents the City of Richmond Utility Users Tax for electricity, gas and telecommunications services, which includes cable and satellite television, Internet services, cell phone and landline telephone.

This measure exempts low income residents from paying any Utility Users Tax imposed by the City of Richmond to ensure their basic needs are met particularly during difficult economic times. This measure exempts all seniors who are 60 years of age or older from paying any Utility Users Tax imposed by the City of Richmond so that Richmond residents living on fixed incomes are not squeezed during difficult economic times.

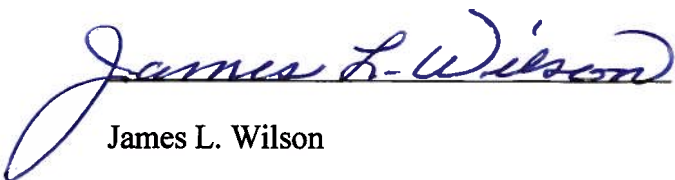
This measure will help attract green jobs and businesses to Richmond by exempting businesses and residents who produce their own energy from alternative sources such as solar, wind and bio-fuels from paying any Utility Users Tax on the electricity they generate.

This measure allows any utility user who wishes to protect confidential, proprietary information to guarantee a \$20,000,000 annual tax payment with yearly adjustments for inflation to help protect public safety and other community services from being reduced or eliminated due to State budget cutbacks.

This measure assures large manufacturers in Richmond pays their fair share of local taxes. This measure would force large manufacturers to pay million in taxes to the City of Richmond.

This measure also adds and amends various definitions including "cogenerator", "gas", "gas used for non-utility purposes", "natural gas", "natural person", and "self-produced gas" to clarify how new and existing statutory provisions should be construed.

Finally, the provisions of this measure cannot be changed without a subsequent vote of the voters of Richmond.


James L. Wilson

April 1, 2010
Date

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CITY OF RICHMOND UTILITY USERS TAX REFORM ACT

The people of the City of Richmond do ordain as follows:

SECTION 1. Title.

This Act shall be known and may be cited as the "City of Richmond Utility Users Tax Reform Act."

SECTION 2. Findings and Purposes.

The people of the City of Richmond hereby make the following findings and declare their purpose in enacting this Act is as follows:

(a) The current City of Richmond Utility Users Tax is the highest in Contra Costa County. Richmond citizens are having a difficult time in this economy and the current high Utility Users Tax imposes an additional burden on Richmond citizens.

(b) This measure would cut in half for all Richmond residents the City of Richmond Utility Users Tax for electricity, gas and telecommunications services, which includes cable and satellite television, Internet services, cell phone and landline telephone.

(c) This measure exempts low income residents from paying any Utility User Tax imposed by the City of Richmond to ensure their basic needs are met particularly during difficult economic times.

(d) This measure exempts all seniors who are 60 years of age or older from paying any Utility User Tax imposed by the City of Richmond so that Richmond residents living on fixed incomes are not squeezed during difficult economic times.

(e) This measure will help attract green jobs and businesses to Richmond by exempting businesses and residents who produce their own energy from alternative sources such as solar, wind and bio-fuels from paying any Utility Users Tax on the electricity they generate.

(f) This measure allows any utility user who wishes to protect confidential, proprietary information to guarantee a \$20,000,000 annual tax payment with yearly adjustments for inflation to help protect public safety and other community services from being reduced or eliminated due to State budget cutbacks.

(g) This measure would assure large manufacturers in Richmond pay their fair share by requiring them to pay millions in taxes to the City of Richmond.

(h) This measure also adds and amends various definitions including "cogenerator", "gas", "gas used for non-utility purposes", "natural gas", "natural person", and "self-produced gas" to clarify how new and existing statutory provisions should be construed.

SECTION 3. City of Richmond Municipal Code Amendments.

The City of Richmond Municipal Code is hereby amended as set forth below. Text to be inserted into the Municipal Code is indicated in underscore type while text to be deleted is indicated in ~~strikeout~~ type.

(a) Section 13.52.020 of Chapter 13.52 of the Richmond Municipal Code is hereby amended as follows:

13.52.020 Definitions.

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

- (a) "Person" means, without limitation, any natural individual, firm, trust, common law trust, estate, partnership of every kind, association, society, syndicate, club, joint stock company, joint venture, limited liability company, corporation (foreign or domestic), cooperative, or receiver, trustee, guardian or other representative appointed by order of any court, or other entity.
- (b) "City" means the City of Richmond, California.
- (c) "Cogenerator" means any person employing cogeneration (as defined in Section ~~216.68.5~~ of the California Public Utilities Code or 18 CFR §292 at the time the cogeneration was installed) to generate 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).~~
- (d) "Electrical corporation" means a corporation or person as defined in Public Utilities Code Section 218.
- (e) "Exempt wholesale generator" shall have the same meaning as set forth in the Federal Power Act (15 U.S.C. § 79z-5-a) and regulations thereunder.
- (f) "Gas" means natural or manufactured gas or and does not include any self-produced gas or gas used for non-utility purposes. ~~alternate hydrocarbon fuel which may be substituted therefor.~~
- (g) "Franchised video services providers" means any video services provider enfranchised by the City pursuant to a franchise agreement to provide video services in the City.
- (h) "Gas corporation" means a corporation or person as defined in Public Utilities Code Section 222.

(i) “Gas used for non-utility purposes” shall mean gas used as raw material in a manufactured product but shall not mean gas used to produce light, heat or power.

(ij) "Intrastate telecommunication" means all telecommunications regardless of routing that either originate in the City and terminate in the State, or (ii) originate in the State and terminate in the City, where, in either instance, a billing address for the telecommunication Service User is in the City.

(jk) "Interstate telecommunication" means all telecommunications that either (i) originate in the City and terminate in another state, or (ii) originate in another state and terminate in the City, where, in either instance, a billing address for the telecommunication service user is in the City.

(kl) "International telecommunication" means all telecommunications that either (i) originate in the City and terminate outside the United States, or (ii) originate outside of the United States and terminate in the City, where, in either instance, a billing address for the telecommunication service user is in the City.

(lm) "Month" means a calendar month.

(n) “Natural gas” means naturally occurring gas produced from the ground through a well.

(o) “Natural person” means any individual, and shall not include a corporation, partnership (whether or not composed entirely of individuals), a trust, or an estate.

(p) “Self-produced gas” means gas that is (i) not naturally occurring, (ii) results from a manufacturing or refining process and includes, but is not limited to, gas produced from anaerobic digestion.

(mq) "Nonutility supplier" means: (1) a service supplier, other than an electrical corporation franchised to serve within the City, which generates electricity in capacities of 50 kilowatts, or more, for its own use or for sale to others, and shall include but is not limited to any publicly-owned electric utility, investor-owned utility, municipal utility district, federal power marketing agency, electric rural cooperative, or other supplier or seller of electricity; or, (2) a gas supplier other than a gas corporation franchised to serve within the City, which sells or supplies gas to users within the City.

(nr) "Service supplier" means any person required to collect or to self-collect and to remit a tax as imposed by this chapter.

(es) "Service user" means a person required to pay a tax imposed under the provisions of this chapter.

(pt) "State" means the State of California.

(qu) "Tax administrator" means the Finance Director of the City.

(fv) "Tax year" means the twelve-month period commencing July 1st and ending June 30th of the next succeeding calendar year.

(sw) "Telecommunication services" include, in addition to the meaning ordinarily and popularly ascribed to it, without limitation, the transmission of messages or information (including but not limited to voice, data, facsimile, video, text) through the use of the local, toll, or wide area telephone service; telegraph or teletypewriter services; cellular telephone services; or any other transmission of messages or information by electronic or similar means through "interconnected service" with the "public switched network" [as those terms are commonly used in the Federal Communications Act and the regulations of the Federal Communications Commission (see 47 U.S.C.A. § 322(d))] by wire, cable, fiber-optics, light waves, laser, microwaves, radio waves, switching facilities, satellite or similar facilities, whether such service is provided by a telephone corporation, competitive access provider, private communication service provider, or any other person. "Telecommunication services" shall include "basic telecommunication services" and "directly related services," as those terms are defined and interpreted by the Federal Communications Commission in its regulations and decisions. "Telecommunication services" shall not include private communication services, land mobile services or maritime mobile services, which are not interconnected with the public switched network.

(tx) "Telephone corporation" means a corporation or person as defined in Public Utilities Code Section 234.

(uy) "Video services franchise fee" means the franchise fee billed by a franchised video services provider to its customers and paid by the customers to the franchised video services provider and, in turn, paid by the franchised video services provider to the City in accordance with the franchise agreement between the City and the franchised video services provider.

(vz) "Video services" means any and all services related to the providing of video programming (including origination programming), or communications (including two-way communications), regardless of the content of the video programming or communications, and shall include the leasing of channel access, but shall not include services for which a tax is paid under Section 13.52.030.

(waa) "Video services provider" means any person who provides one or more channels of video programming or communications (including the leasing of channel access to provide such video programming or communications) to an address in the City, including to a business, home, condominium or apartment, where some fee is paid, whether directly or as 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 provider" includes, but is not limited to, multichannel video programming distributors [as defined in 47 U.S.C. § 522(12)], providers of cable television, master antenna television, satellite master antenna television, direct broadcast satellite, multichannel multipoint distribution services, and other providers of video programming or communications (including two-way communications), whatever their technology.

(b) Section 13.52.070 of Chapter 13.52 of the Richmond Municipal Code is hereby amended as follows:

13.52.070 Collection of tax from service users receiving direct purchase of gas or electricity.

(a) Any service user subject to the tax imposed by Section 13.52.040, 13.52.050 or 13.52.060 of this chapter, which produces gas or electricity for self-use, or which receives gas or electricity directly from a nonutility supplier not under the jurisdiction of this chapter, or which otherwise does not have the full tax due on the use of electricity in the City directly billed and collected by the service supplier, shall report the fact to the Tax Administrator and shall remit the tax due directly to the Tax Administrator within thirty (30) days of such use. In lieu of paying said actual tax, the service user may, at its option, remit to the Tax Administrator within thirty (30) days of such use an estimated amount of tax measured by the tax billed in the previous month, or upon the pattern payment of similar customers of the Service Supplier using similar amounts of electricity, 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.

(b) The Tax Administrator may require the service user to identify its nonutility supplier and provide, subject to audit, invoices, books of account, or other satisfactory evidence documenting the quantity of electricity used and the cost or price thereof. If the service user is unable to provide such satisfactory evidence, or, if the administrative cost of calculating the tax, in the opinion of the City, is excessive, the City may determine the tax by applying the tax rate to the equivalent charges the service user would have incurred if the electricity or gas used had been provided by the service supplier which is the primary provider of electricity or gas within the City. Rate schedules for this purpose shall be available from the City.

(c) Notwithstanding subsections (a) and (b) above, electricity produced for self-use by (i) solar photovoltaic or thermal systems, (ii) biomass combustion, (iii) fuel cell technology based on an electrochemical process, (iv) geothermal power plant or (v) wind turbine shall be exempted from the tax imposed by this Chapter.

(c) Section 13.52.100 of Chapter 13.52 of the Richmond Municipal Code is hereby amended as follows:

13.52.100 ~~Maximum—Aggregate Tax Payment Limitation/Guaranteed Payment Election/Natural Person and other exemptions tax payable.~~

(a) ~~The maximum total aggregate tax payable each tax year by any service user under the cumulative application of Sections 13.52.030, 13.52.040, 13.52.050, 13.54.040, 13.54.050, 13.52.060, 13.52.070 and 13.52.080 and this section shall be not exceed the base amount of \$1,148,137.54 for each percent of tax imposed for any tax year, which base amount shall be adjusted annually by that percentage which is ninety (90%) percent of the total percentage of change in the United States Department of Labor, Bureau of Labor Statistics' Gas (piped) and Electric Consumer Price Index For All Consumers Urban for the San Francisco/Oakland/San~~

~~Jose Area calculated on the basis of the two consecutive and most recent completed years for which data is available from the United States Department of Labor. \$20,000,000 adjusted annually by the total percentage change in the United States Department of Labor, Bureau of Labor Statistics' Quarterly Census of Employment and Wages for justice, public order and safety activity employees for Contra Costa County, California calculated on the basis of the two consecutive and most recent completed years for which data is available from the United States Department of Labor.~~

(b) A service user may elect to pay a guaranteed amount of in lieu of separately calculating the cumulative application of Sections 13.52.030, 13.52.040, 13.52.050, 13.54.040, 13.54.050, 13.52.060, 13.52.070 and 13.52.080. The guaranteed payment election shall be effective only if the service user elects to avail itself of such guaranteed payment provisions prior to the commencement of the tax year. No portion of a guaranteed payment shall be refundable in the event the service user subsequently determines that its tax liability would have been less than the guaranteed payment amount. The guaranteed payment amount shall be \$20,000,000 adjusted annually by the total percentage change in the United States Department of Labor, Bureau of Labor Statistics' Quarterly Census of Employment and Wages for justice, public order and safety activity employees for Contra Costa County, California calculated on the basis of the two consecutive and most recent completed years for which data is available from the United States Department of Labor.

(c) All natural persons that are service users paying taxes pursuant to this chapter shall be entitled to an annual exemption equal to 50% of the total taxes due under this article in each tax year. Such exemption will be administered pursuant to procedures established by the city.

~~This maximum tax liability shall be effective only if the service user elects to avail itself of such maximum tax liability provision and enters into an agreement with the Tax Administrator prior to the commencement of the tax year to pay the maximum tax liability directly to the City during the tax year. No portion of the sum shall be refundable in the event the service user subsequently determines that its tax liability under this chapter would have been less than the maximum tax liability. Upon execution of the agreement between the Tax Administrator and the service user, the Tax Administrator shall notify all relevant service suppliers of the names and locations of all service users making payments directly to the City.~~

(d) The taxes imposed by this chapter shall not apply to a natural person that is 60 years of age or older.

(e) The taxes imposed by this chapter shall not apply to any natural person's household that qualifies, and has been accepted, for the California Alternate Rates for Energy (CARE) Program pursuant to California Public Utilities Code Sections 327 and 739.1 et. seq., and as it may be amended from time to time.

SECTION 4. Amendments.

This Act may only be changed by a subsequent vote of the voters at a City election.

SECTION 5. Conflicting Measures.

The provisions of this Act shall be deemed to conflict with any other measure that appears on the same ballot that deals with the subject of the City of Richmond Utility Users Taxes. In the event that this Act and another measure that deals with the subject of the City of Richmond Utility Users Taxes are adopted on the same ballot, the measure receiving the greater number of affirmative votes shall prevail in its entirety, and no provision of the measure receiving the fewer number of affirmative votes shall be given any force or effect.

SECTION 6. Effective Date.

The provisions of this Act shall become effective upon the approval by the voters of the City of Richmond pursuant to California Elections Code section 9217.

SECTION 7. Severability.

If any provision of this Act or the application thereof to any person or circumstances is held invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this Act, and to this end the provisions of this Act are severable.