



Environment and Climate Commission

[CONSENT OR ACTION]

CALENDAR

[Meeting Date (MM dd, yyyy)]

To: Honorable Mayor and Members of the City Council

From: Environment and Climate Commission

Submitted by: [Name of Commission Chairperson], Chairperson, Environment and Climate Commission

Subject: Fossil Free and Just Transition Overlay

RECOMMENDATION

Refer to the Planning Commission and the City Manager to prepare an ordinance making the following changes to the Zoning Ordinance:

- 1) Create a new citywide Fossil Free and Just Transition (FFJT) Overlay across all zoning districts
- 2) Apply a Fossil Free and Just Transition Density Bonus to proposed projects within the FFJT Overlay which would replace the following qualified existing uses:
  - a. Gasoline stations,
  - b. Alternative fuel stations, not including hydrogen fuel stations or electric vehicle charging stations,
  - c. Automobile repair shops which do not exclusively service zero-emission vehicles,
  - d. Automobile dealerships, for automobile dealers or manufacturers which have not committed to selling 100% zero-emission vehicles by 2030, or which, on January 1<sup>st</sup>, 2030, are still selling internal combustion engine vehicles.
- 3) Set the FFJT Density Bonus to be 100% of the underlying zoning for permitted height, floor to area ratio (FAR), and units per acre, with a subsequent 50% reduction in lot area per unit requirements.

- 4) Establish that the FFJT Density Bonus is considered underlying zoning for any proposed project, and applies when evaluating a base project prior to any additional state or local affordable housing density bonuses.
- 5) Require that FFJT Density Bonus Projects achieve all of the following:
  - a. LEED Gold (or equivalent), or better
  - b. Zero emissions (direct or indirect) from building energy use or activities (no natural gas permitted, 100% of residents or occupants defaulted to carbon-free electricity supply such as EBCE Renewable 100)
  - c. 100% sustainable transportation by residents or building occupants (no on-site automobile parking for ICE vehicles permitted)
- 6) Authorize the City to collect a Just Transition Fee from FFJT Density Bonus Projects upon approval, at a level that shall set by the City Council. The Just Transition Fee shall be used to fund worker education, training, and job placement programs either directly to impacted workers or for the general public at local public or nonprofit educational institutions (such as Berkeley City College, UC Berkeley, or Berkeley Adult School).

#### SUMMARY

This proposal would grant a local density bonus to new construction projects which propose to replace existing land uses which are incompatible with a Fossil Free City, and recapture some of the increased value in the form of a Just Transition Fee, which shall be used to support worker education and job training for workers impacted by the transition to a fossil free economy.

#### FISCAL IMPACTS OF RECOMMENDATION

Some staff time required to develop updated ordinance language. If adopted, the zoning ordinance is likely to increase City revenues due to property tax assessments on new projects built with the density bonus. The Just Transition Fee shall be fully paid out through programs supporting a just transition, and be revenue neutral.

#### BACKGROUND

Berkeley has permitted, and even encouraged, the sale of fossil fuels for decades. Numerous Berkeley businesses are known to promote the use of these dangerous chemicals, which pollute our air, water, and soil; pose major fire risks; contribute to the risk of cancer; and are either themselves potent greenhouse gases or, upon combustion, leading contributors to climate change.

These fossil fuel dealerships – colloquially known as gasoline stations – cause significant traffic and congestion, generate elevated levels of carcinogenic air pollutants

in their local neighborhoods, and are frequently found to have leaked toxic chemicals into the ground, contaminating our soil and groundwater.

Gasoline, diesel, and other carbon-based transportation fuels are also known to be harmful chemicals, posing a variety of risks to human health, public safety, and the environment, both of their own virtue and as a result of their combustion or oxidation for powering transportation<sup>1,2,3</sup>.

In recent years, the cumulative climate and health impacts of these chemicals has become untenable. In July 2018, the City Council declared a Climate Emergency and adopted a Fossil Fuel Free Berkeley resolution, setting the goal of eliminating fossil fuels in Berkeley. On September 15<sup>th</sup>, 2020, City Council adopted a goal of 100% sustainable trips by 2040, with a 50% improvement by 2030, and referred to the Environmental, Energy, and Transportation commissions to develop relevant proposals and recommendations. As the successor commission to the Environmental and Energy Commissions, the Environment and Climate Commission is now tasked with developing proposals and recommendations to achieve 100% sustainable transportation and a Fossil Free City.

#### CURRENT SITUATION AND ITS EFFECTS

In 2019, over 21 million gallons of gasoline were sold in Berkeley, according to California Energy Commission data, at roughly 15 gas stations throughout the city. Ten of these gas stations had unresolved CalEPA violations as of October 2019.

Berkeley's Electric Mobility Roadmap sets forth the City vision for our transportation future: an all-electric fleet of bikes, buses, BART trains, and cars to transport residents, workers, and visitors across our city. Gasoline and other hydrocarbon-based fuels play no role in this future.

At the same time, however, the end of gasoline will have repercussions beyond just gas stations. Nationally, most gas stations are actually owned independently, run as franchises by local owners who may also be longtime community members. In addition, as Berkeley transitions to greater use of electric vehicles, and more towards non-automotive modes of transport overall (as envisioned by the Bicycle and Pedestrian Master Plans), sales and maintenance of internal combustion engine (ICE) vehicles will also decline. These shifts may pose challenging for business owners whose livelihoods

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<sup>1</sup> Material Safety Data Sheet: Gasoline, All Grades, Vermillion County, IL: <https://www.vercounty.org/MSDS/EMA/9950allgradesgasoline.pdf> (accessed September 2019)

<sup>2</sup> Safety Data Sheet: Diesel Fuels, Valero: [https://www.valero.com/en-us/Documents/OSHA\\_GHS\\_SDS/SDS%20US%20-%20102-GHS%20DIESEL%20FUELS%20rev2%205-14.pdf](https://www.valero.com/en-us/Documents/OSHA_GHS_SDS/SDS%20US%20-%20102-GHS%20DIESEL%20FUELS%20rev2%205-14.pdf) (accessed September 2019)

<sup>3</sup> Safety Data Sheet: Natural Gas Odorized, Hess Corporation: <https://www.hess.com/docs/us-safety-data-sheets/natural-gas.pdf?sfvrsn=2> (accessed September 2019)

have depended upon their now-defunct business models, as well as workers who have years or decades of experience in dying industries.

While macroeconomic and societal shifts always result in some businesses closing as others take their place, Berkeley's ambitious climate goals necessitate an accelerated timeline for shifting our physical and economic infrastructure away from supporting gasoline-powered vehicles. In addition, while business owners or landlords can sell the property and cash out, workers in these industries risk being left behind. This proposal would establish a density bonus overlay to encourage an accelerated transition away from fossil fuels and associated industries, while also recapturing some of the value add from the overlay to dedicate to worker transition efforts.

This would advance the City's strategic goals to foster a dynamic, sustainable, and locally-based economy; and be a global leader in addressing climate change, advancing environmental justice, and protecting the environment.

#### ENVIRONMENTAL SUSTAINABILITY

Encouraging a shift away from gasoline dependency will reduce greenhouse gas emissions and improve environmental sustainability.

#### CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The FFJT Overlay is likely to be considered a project under CEQA. However, because the permissible land *uses* remain unchanged, and only the potential *height* would change, any potential impacts may already be evaluated through the Housing Element or other General Plan EIRs. The City Attorney should review any draft FFJT Overlay ordinance for CEQA considerations prior to adoption.

#### RATIONALE FOR RECOMMENDATION

This item supports the goal of a Fossil Free Berkeley and 100% sustainable trips by accelerating the phase out of fossil fuels. Gas stations, gas car dealerships, and gas car repair shops are all inconsistent with a fossil-free city that uses 100% sustainable transportation modes. A density bonus to replace these sites with alternative uses will reduce the availability of these facilities, discouraging ICE vehicle ownership.

A fee to recapture some of the value added from the additional height is an effective way to ensure workers employed in fossil fuel-centric industries are able to receive benefits and support for a just transition.

#### ALTERNATIVE ACTIONS CONSIDERED

ECC considered taking no action, but determined that a Fossil Free city with 100% sustainable transportation was unlikely to be achieved by 2040, much less 2030, without significant and aggressive action to both discourage ICE ownership and encourage alternative transportation and EVs.

ECC considered applying the FFJT only to gas stations, but determined that a range of industries and workers were likely to be affected by the transition to sustainable transportation and would benefit from assistance in transitioning to alternative careers.

ECC considered expanding the FFJT to include asphalt plants, but determined that the asphalt industry was independent of achieving sustainable transportation. Asphalt is still incompatible with a fossil free city, but it is not directly affected by sustainable transportation, and it is unclear whether low- or no-carbon alternatives to asphalt are readily available and affordable at scale.

ECC considered recommending a different density bonus level, but determined that a 100% density bonus was likely adequate to encourage the qualified uses as priority development spots. The ECC believes that the City Council and Planning Commission are better equipped to evaluate and weigh priorities and considerations around achieving a rapid decarbonization effort—which would shift our economy away from fossil fuels, raise revenue for a just transition for workers, address environmental justice, and help to stabilize the climate to ensure a habitable planet for future generations—versus the fact that some people just don't like tall buildings.

#### CITY MANAGER

The City Manager [TYPE ONE] concurs with / takes no position on the content and recommendations of the Commission's Report. [OR] Refer to the budget process.

**Note: If the City Manager does not (a) concur, (b) takes any other position, or (c) refer to the budget process, a council action report must be prepared. Indicate under the CITY MANAGER heading, "See companion report."**

#### CONTACT PERSON

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Environment and Climate Commission