

August 6, 2024

Honorable Mayor and City Council
City of Long Beach
California

RECOMMENDATION:

Recommendation to adopt a Resolution submitting to the qualified voters of the City of Long Beach on the November 5, 2024 General Municipal Election Ballot a Tax Measure amending Long Beach Municipal Code Section 3.68.040, to repeal the exemption from the Gas Utility Users Tax for charges made for gas to be used in the generation of electrical energy by an electrical corporation or governmental agency; requesting the County of Los Angeles to consolidate said election with the November 5, 2024, Statewide General Election; directing the City Attorney to prepare an impartial analysis of the Tax Measure and setting rules and deadlines for arguments and rebuttal for and against the Tax Measure. (Citywide)

DISCUSSION

The City is facing challenging fiscal realities, with a cumulative five-year projected shortfall of \$61.5 million that needs to be solved. The cost to provide services with quality City employees continues to rise, sales and use tax revenues have reflected slowed performance in major categories, the General Fund's support from oil-related revenue will be reduced, and the General Fund's share of citywide internal services are going up from the cost of doing business. These problems will persist, and it is incumbent on the City to not only maintain good fiscal habits and avoid exacerbating the underlying structural shortfall situation but also to look towards diversifying revenue streams with the upcoming November 2024 ballot.

Over the past year, staff have researched viable potential measures to grow the City's revenue. In May 2024, staff presented 52 strategies as part of the Grow Long Beach Initiative to expand current revenues over the next several years through economic development efforts. These strategies alone, however, will not be enough to prevent expected service reductions over the next three years. The way we are funding services is changing, with oil revenues no longer a revenue source that can or should be relied on in the future.

To help offset declining revenues and maintain general City services, on June 11, 2024, staff presented four potential local tax measures for City Council consideration: eliminating an exemption for power plants from the Gas Utility Users Tax (UUT), increasing the real property transfer tax, increasing the business license tax, and increasing the electric franchise fee. Each of the proposed tax measures would have varying impacts on Long Beach residents; and following City Council input in June, staff recommends moving forward with the proposal that has the least impact on Long Beach taxpayers—expanding the application of the Gas UUT to the generation of electrical energy by an electrical corporation or governmental agency.

The Long Beach Municipal Code Chapter 3.68 imposes a Utility Users Tax for users of electricity, telecommunications, water, and gas. Sections 3.68.040 and 3.68.010 describe the Gas UUT, which is imposed on every person in the City using gas in the City which is delivered through mains or pipes at a rate of 5 percent of the charges made and paid by the person paying for such gas. Subsection C of the Gas UUT ordinance carves out exceptions for certain uses, including charges made for gas to be used in the generation of electrical energy by an electrical corporation or governmental agency.

For at least 30 years and potentially going back as far as the 1960s, two power plants sited within Long Beach City limits have been exempt from paying the City's Gas UUT that residents, businesses, and other organizations in Long Beach pay. During that time, residents of Long Beach have borne the environmental burden and the inconvenience of the two power plants—the Alamitos Energy Center owned by Applied Energy Services Corporation (AES), and the Haynes Plant owned by the Los Angeles Department of Water and Power (LADWP)—with financial compensation limited to several million dollars per year from the SoCal Gas franchise fee on the imputed value of the gas delivered to the plants. The City Auditor has performed significant research in this area and found that Long Beach residents derive only marginal benefit from electricity generated at the Alamitos Energy Center, and little to no benefit from electricity generated by the Haynes plant, but incur a much greater cost in environmental consequences. Other power plants in California do pay the Gas UUT, but they are exempt in Long Beach.

This recommendation would allow voters to consider removing the exemption from the Gas UUT for power plants. Amending the Municipal Code to remove the Gas UUT exemption is a step towards evening out the cost-benefit equation. The estimated \$15 million in annual revenue generated by removing the Gas UUT exemption could be used to fund a variety of general services, including but not limited to maintenance of trees and parks, enhancing library facilities and services, improving marine and beach water quality, expanding homeless outreach and services, strengthening 9-1-1 response for public safety, repairing potholes and streets, improving storm drains, expanding afterschool programs and senior services, and expanding library, parks, and public health programming.

The Resolution presents a ballot question for submission to the qualified voters of the City of Long Beach relating to an ordinance amending the Long Beach Municipal Code section 3.68.040 to repeal the exemption from the Gas Utility Users Tax for charges made for gas to be used in the generation of electrical energy by an electrical corporation or governmental agency. Repealing the exemption would result in the application of the City's existing 5 percent gas utility user tax to said electrical corporations and government agencies as set forth in Long Beach Municipal Code section 3.68.010. The Ballot measure would also amend the language in Long Beach Municipal Code section 3.68.040 to conform with the governing 5 percent rate set forth in Long Beach Municipal Code section 3.68.010 resulting from voter approval of Measure J in 2000.

It is the City's position that revenues generated through this proposal will not be paid for by the vast majority of taxpayers in our City, as the LADWP plant does not serve Long Beach at all and the AES plant has a power purchase agreement (PPA) that serves 15 million residents in Southern California Edison's service area. Under the current PPA, Edison has received approval from the California Energy Commission to spread the cost of the AES power to all ratepayers

and not just Long Beach ratepayers. Therefore, any increase in the cost of the power will be paid for by all Edison ratepayers. It is not possible to calculate the exact amount of increase since the Edison/AES power purchase agreement is confidential, but if it is assumed that half of the \$15 million is from AES, then the extra cost per person would be \$0.50 per year.

Neighboring cities have also sought to amend their municipal code to eliminate Gas UUT exemptions for electrical corporations. The City of Huntington Beach considered a ballot measure in 2002, and the City of Redondo Beach also brought a ballot measure in 2009, to remove an exemption for electrical plants owned by AES from paying UUT for AES' natural gas-fired generating units. Both measures were ultimately unsuccessful. In both cases, AES argued that removing the exemption would result in the tax being passed along to the consumer and that it would be double taxation on residents, as they would pay tax on the gas used to generate the electricity and on their consumption of electricity. This argument is not reasonable, however, as energy generated is supplied to the grid, which in turn supplies electricity to the entire region and state, not a specific locale. In fact, this very issue was determined by a court in 2002 in the Huntington Beach example, when a judge ruled that the ballot measure could state that costs associated with the tax would be passed on primarily to people outside Huntington Beach.

Summary of Feedback Received

The City has received input from LADWP, AES, and Southern California Edison on their concerns with this proposed tax measure. LADWP expressed initial concerns about a government entity taxing another governmental entity. AES has contended that they are opposed, contending that increased production costs will be passed onto Long Beach and the region, Long Beach residents would be double taxed in their opinion, and imposing a UUT on gas is not a sustainable revenue source. Edison has relayed to the City that they will seek the California Public Utilities Commission's (CPUC) approval to pass the cost along to ratepayers, and will make a specific request if this passes to pass those costs onto Long Beach accounts only, even though the Power agreement benefits all 15 million of their customers.

The City disagrees with this assessment and would strongly oppose this at the CPUC, as taxes on power plants are assessed by various jurisdictions and those costs are currently passed on to all customers, including Long Beach customers. In fact, if this argument is played to its logical conclusion, then Long Beach customers should be receiving a credit for providing this exemption for nearly 60 years, since they are exempted from taxes that other users of natural gas must pay. Long Beach residents continue to bear the environmental burden of the AES plant without adequate compensation from SCE, while all 15 million of their customers benefit from the plant in our City.

Specific information on how SCE would propose to pass on the cost is not available, but staff have tried to estimate it for transparency purposes, even though we disagree with the premise. City staff can only assume that the projected \$15 million of new revenue from removing the Gas UUT exemption would be split evenly between SCE and LADWP, or \$7.5 million apiece. If SCE were to follow through on its claim and persuade the CPUC to allow SCE to charge all \$7.5 million only to its estimated 150,000 Long Beach customers, then the average SCE electricity bill in Long Beach would increase by \$50 per year, or about \$4 per month. Commercial and industrial customers in Long Beach, who use more electricity than residential customers, would

Honorable Mayor and City Council

August 6, 2024

Page 4

see their monthly electricity bill increase by more than \$4, while the typical residential customer in Long Beach would see their monthly electricity bill increase by somewhat less than \$4.

This matter was reviewed by Financial Management Director Kevin Riper on July 15, 2024, and by Revenue Management Officer Geraldine Alejo and Principal Deputy City Attorney Erin Weesner-McKinley on July 23, 2024.

TIMING CONSIDERATIONS

City Council action is requested on August 6, 2024, to ensure the measure can appear on the November 5, 2024, ballot.

FISCAL IMPACT

As detailed above, it is the City's position that the ratepayer impact from removing the tax exemption for the 5 percent Utility Users Tax for gas should fall upon California electricity customers generally, in the case of the Alamos Energy Center, whose power AES sends to the grid; and upon Los Angeles Department of Water and Power customers, none of whom are Long Beach residents. This would only change if the CPUC is successfully convinced it should not be a spread cost. As a result, the impact on Long Beach residents, businesses, and other ratepayers would be negligible.

Also as noted above, removing the exemption is projected to add \$15 million to the structural General Fund revenue base beginning in FY 26, following approximately \$7.5 million for the second half of FY 25. Annual revenue will depend on utility prices and usage. This recommendation has no staffing impact beyond the normal budgeted scope of duties and is consistent with existing City Council priorities. There is no local job impact associated with this recommendation

SUGGESTED ACTION:

Approve recommendation.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'T. B. Modica'.

Thomas B. Modica
City Manager