

Polluters Must Pay Initiated Ordinance

The Climate Crisis disproportionately affects BIPOC (Black, Indigenous, and People of Color) and low-income people. It is imperative that money be directed to frontline communities that will experience the harshest conditions due to the Climate Crisis. This bill is to ensure that polluters pay for their current and historical burdens on BIPOC and low-income communities and that the money raised goes directly back into those communities harmed by pollution.

Be it enacted by the City and County of Denver:

Section 1. Chapter 2, D.R.M.C., concerning the Office of Climate Action, Sustainability, and Resiliency, is amended by the addition of new sections, to read as follows:

Sec. 2-406. - Permitted Uses of Revenue in the Climate Protection Fund

(a) All monies derived from the Polluters Must Pay tax in the Climate Protection Fund (“Fund”) must be expended on:

- (1) Job creation through local workforce training and new careers for under-resourced individuals in renewable and clean energy technology and management of natural resources;
- (2) Increased investments in solar power, battery storage and other renewable energy technology;
- (3) Neighborhood-based environmental and climate justice programs;
- (4) Adaptation and resiliency programs that help frontline communities prepare for a changing climate;
- (5) Programs and services that provide affordable, clean, safe and reliable transportation choices, like walking, biking, transit, electric vehicles, and neighborhood-scale transit; and
- (6) Upgrade the energy efficiency of homes, offices and industry to reduce their carbon footprint, utility bills, and indoor air pollution.

(b) Cap on administrative costs. Monies in the Fund may be expended to pay the costs incurred by the city associated directly with the administration of the funds; except that, in no event may the amount expended from the funds for administrative expenses in any year exceed eight percent (8%) of the amount of revenue received in the fund in that year. Payment of board members and full time employees needed to execute Sec. 53-434(h) shall not be considered an administrative cost.

(c) Fund earnings. Any interest earned on the balance of the Fund accrues to the Fund.

(d) Administration of funds. The Climate Justice Board will manage the Fund.

(e) Collaboration. The Climate Justice Board shall work collaboratively with the Office of Climate Action, Sustainability, and Resiliency.

(f) Permanency. If the monies in the Fund are not expended at the end of the fiscal year, such monies must remain in the fund to be expended in subsequent fiscal years.

(g) Maintenance of Effort. All monies in the Fund must be used in accordance with this section and may not replace nor supplant any general fund appropriations allocated each year to the Office of Climate Action, Sustainability, and Resiliency.

(h) Rulemaking. The Climate Justice Board may promulgate any rules necessary for the proper administration of the Climate Justice Fund.

(h) Reporting. A report of Fund expenditures and performance plan must be submitted annually to the mayor, city council, city auditor, and the Sustainability Advisory Council, or any successor body.

(i) Planning. Within one year of the adoption of these amendments and every five years thereafter, the Climate Justice Board shall submit a five-year plan to city council and the Sustainability Advisory Council on the planned revenue uses in the Climate Justice Fund.

Sec. 2-407. - Advisory Board - Created.

The Climate Justice Board is hereby created.

Sec. 2-408. - Advisory board – Nominating Committee and Appointments

(a) Members of each board created in Sec. 2-407 shall be appointed by a three (3) person nominating committee.

(b) The nominating committee shall be appointed as follows and in this order:

(1) The Mayor shall appoint one (1) member;

(2) City Council shall appoint one (1) member; and

(3) One (1) member shall be appointed jointly by the Mayor and City Council.

(c) In appointing members to the nominating committee, the Mayor and City Council shall make equity a priority and will not choose any city employees.

Sec. 2-409. - Advisory Board – Duties and Terms.

(a) The Climate Justice Board will oversee the Climate Justice Fund and make recommendations for how the Climate Justice Funds are distributed.

(1) The Climate Justice Board will consist of nine (9) members, to be composed of, but not limited to, community members drawn from diverse sectors, whose input and support are critical to combating climate change and ensuring marginalized and low-income populations are not adversely impacted.

(2) The Climate Justice Board will be made up of diverse and representative individuals that reflect the demographic and socioeconomic makeup of Denver, including youth leaders and will not include any city employees.

(b) The members shall serve with compensation for all board meetings attended, funded by the Climate Justice Fund at an hourly rate equivalent to 100% current Denver AMI.

(c) Each appointment will be made alternately first by the City Council appointee, then by the Mayoral appointee, then by the joint appointee in succession until all appointees are selected.

(d) The terms of the advisory board members shall be three (3) years.

(e) The terms shall be staggered so that one-third of the members are appointed each year. In the event of the death or resignation of any member, a successor shall be appointed to serve for the unexpired portion of the term for which such member has been appointed.

(f) The Climate Justice Board shall nominate a member to serve as chairperson who, upon acceptance of the nomination, and subject to the Charter, and the Advisory Board's bylaws, shall serve as chair for a period of one (1) year. No Advisory Board member elected chairperson may serve more than two (2) consecutive terms as chairperson. The Climate Justice Board, with a majority vote, has the right to remove the chairperson from this position for cause.

Section 2. The Fund Plan, Section 20-18, D.R.M.C., is amended to add a new fund to read as follows:

Sec. 20-18. Fund Plan.

Fund No. XXXXXX

Name of fund: Climate Justice fund.

Source of funds: Electricity and natural gas excise taxes collected and awaiting apportionment, and earnings thereon.

Disposition of funds: As provided in Sec. 2-406 of the D.R.M.C.

Section 3. Chapter 53 of the D.R.M.C. is amended by the addition of a new Article IX, to read as follows:

ARTICLE IX. - POLLUTERS MUST PAY TAX

Sec. 53-431. - Name of tax.

This article shall be known and cited as the Polluters Must Pay tax article.

Sec. 53-432. - Commencement of tax

This tax shall commence June 1, 2022.

Sec. 53-433. - Purpose of tax.

The purpose of the levy of the tax imposed by this article is for the raising of funds for payment of the expense of operating the Office of Climate Action, Sustainability, and Resiliency as specified in Article XIX of the Code; in accordance with this purpose, half the proceeds of the tax shall be placed in the Climate Protection Fund, and the other half of the proceeds of the tax shall be placed in the Climate Justice Fund, section 20-18 of the Code from which shall be allocated, apportioned, and transferred as therein provided such sums to the respective funds and accounts as are indicated and for the purposes that may be therein stated.

Sec. 53-434. - Imposition of the tax.

(a) *Electricity Tax.* The tax shall be imposed upon the basis of each residential, commercial, and industrial customer's consumption of electricity above their allowance measured in kilowatt-hours (kWh), at a set rate of:

- (1) \$0.02 per kWh for all residential customers receiving electricity from a public utility for all electricity usage
- (2) \$0.04 per kWh for all commercial customers receiving electricity from a public utility for all electricity usage
- (3) \$0.05 per kWh for all industrial customers receiving electricity from a public utility for all electricity usage

(b) *Natural Gas Tax.* The tax shall be imposed upon the basis of each residential, commercial, and industrial customer's consumption above their allowance of natural gas measured in thermal units (therms), at a set rate of:

- (1) \$0.20 per therm for all residential customers receiving natural gas from a public utility or natural gas transport provider for all natural gas until January 1, 2027, after which the tax will increase ten percent annually.
- (2) \$0.40 per therm for all commercial customers receiving natural gas from a public utility or natural gas transport provider for all natural gas usage until January 1, 2027, after which the tax will increase ten percent annually.
- (3) \$0.50 per therm for all industrial customers receiving natural gas from a public utility or natural gas transport provider for all natural gas usage until January 1, 2027, after which the tax will increase ten percent annually.

(c) *Monthly Allowance.* A seasonal monthly allowance shall be given for both kWh and therms for all residential customers and a singular monthly allowance shall be given for both kWh and therms for all commercial and industrial customers as follows:

- (1) Residential summer monthly allowance is equal to 1,500 kWh and 50 therms. Residential winter monthly allowance is equal to 500 kWh and 150 therms.
- (2) Commercial monthly allowance is equal to 6,500 kWh and 300 therms.

(3) Industrial monthly allowance is equal to 11,000 kWh and 1000 therms.

(4) Summer shall mean May through September and winter shall mean October through April.

(d) *Billing.* The city shall coordinate billing directly with Xcel Energy and any other natural gas transport providers that transport natural gas to customers in Denver.

(e) *Expiration.* The electricity portion of the tax expires when Xcel Energy's grid reaches eighty percent renewable energy generated from a combination of solar, wind, geothermal, and/or hydrogen. The natural gas portion of the tax shall not expire and when the electricity portion of the tax expires, the natural gas monthly allowances reduce annually at a rate of 10% of the original allowance, until the monthly allowances reach zero.

(f) *Low income exemptions.* Any customer enrolled in any low-income program, such as SNAP, LEAP, or similar is not subject to the taxes contained in this article.

(g) *Green exemptions.* Any customer enrolled in a renewable energy program, community solar, individual solar serving at least 50% of peak load, certifiably green, or equivalent program, are exempt from the electricity tax contained in this article.

(h) *Exemption Responsibility.* The Office of Climate Action, Sustainability, and Resiliency is responsible for identification of exempt customers and is required to coordinate directly with Xcel Energy and any other natural gas transport providers that transport natural gas to customers in Denver.

Sec. 53-435. - Payment and reporting of tax.

(a) An incumbent electricity or natural gas provider operating within the city pursuant to franchise or otherwise shall bill and collect the Polluters Must Pay tax and shall remit the tax to the treasurer in accordance with the schedule in subsection (b) of this section. The tax must be expressly identified on a consumer's bill as the "Polluters Must Pay Tax."

(b) For the Polluters Must Pay Tax amounts billed in accordance with this chapter, the provider shall pay in monthly installments not more than thirty days following the close of the month for which payment is to be made. Initial and final payments shall be prorated for the portions of the months at the beginning and end of the term of the excise tax.

(c) The provider shall also submit electronically monthly reports to the city supporting the amount of the Polluters Must Pay Tax remitted for that month including electricity and natural gas use and amounts remitted by sector and wind source or other electricity purchases exempted by sector.

(d) The provider shall keep and preserve, for a period of three years, suitable records and other books or accounts, including, without limitation, original sales and purchase records, as may be necessary to determine the amount of the Polluters Must Pay Tax for the collection of which the provider is liable under this chapter. The treasurer is entitled at any reasonable time, upon adequate notice, to examine the books and records of the provider and to make copies of the entries or contents.

Section 4. If any section, paragraph, clause, or other portion of this ordinance is held to be invalid or unenforceable for any reason, the validity of the remaining portions of this ordinance shall not be affected.