

ORDINANCE NO. _____

Ordinance Of The City Council Of The City Of Emeryville Repealing And Amending A Portion Of Section 10 Of Ordinance No. 22-013 Related To All-Electric Building Requirements For New Construction; CEQA Determination: Exempt Pursuant To CEQA Guidelines Sections 15378 And 15061(b)(3)

WHEREAS, on January 18-20, 2022, the California Building Standards Commission adopted the 2021 International Building Code, 2021 International Residential Code, 2021 California Existing Building Code, 2021 California Historical Building Code, 2021 International Property Maintenance Code, 2021 California Green Building Standards Code, 2021 Uniform Mechanical Code, 2021 Uniform Plumbing Code, 2020 National Electrical Code, and the 2021 International Energy Conservation Code as the 2022 California Building Standards Code collectively; and

WHEREAS, State law required local jurisdictions to enforce the 2022 California Building Standards Code beginning January 1, 2023; and

WHEREAS, California Health and Safety Codes Sections 13143.5, 17958.5, 17958.7, and 18941.5 allow the City, by ordinance, to make modifications or changes to the California Building Standards Code and other regulations adopted pursuant to Health and Safety Code Section 17922 when such amendments are reasonably necessary because of local climatic, geological, or topographical conditions, and where such amendments establish requirements more stringent than those provided in the state code, which practice is known as adopting a “Reach Code”; and

WHEREAS, the City Council held a study session on September 20, 2022 to consider whether to impose all-electric requirements on certain types of new construction projects and directed staff to prepare an ordinance amending the California Building Standards Code to require new construction, with certain exemptions, to be all-electric (the “All-Electric Requirements”); and

WHEREAS, on November 15, 2022, the City Council made all findings required by law and specifically found that the All-Electric Requirements were necessary because of the climatic, geographical or topographical conditions unique to the City of Emeryville and adopted Ordinance No. 22-13 which, among other things, included the All-Electric Requirements as amendments to the California Building Standards Code and codified them in the Emeryville Municipal Code at Chapter 8 of Title 8 (Green Building Standards Code); and

WHEREAS, the City of Berkeley’s natural gas ban ordinance, which similarly prevented new construction projects from including natural gas infrastructure, was challenged in court by the California Restaurant Association which claimed that Berkeley’s ordinance was preempted by federal law, specifically the Energy Policy and Conservation Act or “EPCA”; and

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WHEREAS, on April 17, 2023, the Ninth Circuit decided *California Restaurant Association v. City of Berkeley* and found that the EPCA preempts states and local governments from regulating the quantity of natural gas used by an appliance at the point of use; and

WHEREAS, the All-Electric Requirements, in practice, regulate the use of natural gas because they prohibit such use in new construction projects; and

WHEREAS, the City of Berkeley did not appeal the Ninth Circuit decision and it is therefore law; and

WHEREAS, the City Council now desires to repeal the All-Electric Requirements given that the Ninth Circuit has held that the City is preempted from enforcing them.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EMERYVILLE DOES HEREBY ORDAIN AS FOLLOWS:

SECTION ONE. PURPOSE AND FINDINGS.

The above recitals being true and correct and incorporated by reference, the purpose and intent of this Ordinance is to repeal a portion of Section 10 of Ordinance No. 22-13 which codified amendments to the California Building Standards Code at Chapter 8 of Title 8 of the Emeryville Municipal Code related to all-electric requirements for new construction.

SECTION TWO. REPEALING AND AMENDING A PORTION OF SECTION 10 OF ORDINANCE NO. 22-13 AND SECTIONS 8-8.03(e) and 8-8.03(f) OF THE EMERYVILLE MUNICIPAL CODE

The portion of Section 10 of Ordinance No. 22-13 pertaining to all-electric requirements for new construction and the corresponding codified sections of Chapter 8 of Title 8 of the Emeryville Municipal Code are hereby repealed as follows (additions shown in double underline and deletions shown in ~~strikeout~~):

~~(e) Section 5.106 is added to read~~

~~Section 5.106 — All Electric Buildings. New construction buildings and qualifying alteration projects shall comply with Section 5.106.13.1 or 5.106.13.2 so that they do not use combustion equipment or are ready to facilitate future electrification.~~

~~(f) Section 5.106.13.1 is added to read:~~

~~5.106.13.1. New construction and qualifying alteration projects. All newly constructed buildings shall be all-electric buildings. Alterations that include replacement of over~~

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~~50 percent of the existing foundation for purposes other than a repair or reinforcement as defined in California Existing Building Code Section 202; or where over 50 percent of the existing framing above the sill plate is removed or replaced for purposes other than repair, shall be all-electric buildings. If either of these criteria are met within a three-year period, measured from the date of the most recent previously obtained permit final date, the project shall be subject to the all-electric buildings requirements. Tenant improvements shall not be considered new construction. The final determination whether a project meets the definition of substantial reconstruction/alteration shall be made by the local enforcing agency.~~

~~Exceptions:~~

~~(1) Nonresidential buildings containing kitchens located in a place of public accommodation, as defined in the California Building Code Chapter 2, may apply to the local enforcing agency for a modification to install commercial food heat processing equipment served by fuel gas. The local enforcing agency may grant the modification if they find:~~

~~(a) A business-related need to cook with combustion equipment; and~~

~~(b) The need cannot be achieved equivalently with an electric heating appliance; and~~

~~(c) The applicant has employed reasonable methods to mitigate the greenhouse gas emissions of the combustion equipment.~~

~~(d) The applicant shall comply with Section 5.106.13.2.~~

~~(2) Hotels and motels with eighty or more guestrooms may utilize fuel gas in onsite commercial clothes drying equipment. The applicant shall comply with Section 5.106.13.2.~~

~~(3) If the applicant establishes that there is not an all-electric prescriptive compliance pathway for the building under the California Building Energy Efficiency Standards, and that the building is not able to achieve the performance compliance standard applicable to the building under the Energy Efficiency Standards using commercially available technology and an approved calculation method, then the local enforcing agency may grant a modification. The applicant shall comply with Section 5.106.13.2.~~

~~(4) B; F; H; and L occupancies, as defined in the California Building Code, in nonresidential buildings may utilize fuel gas in on-site space heating equipment. Laboratories classified as B occupancy may also utilize fuel gas in on-site space heating equipment. The applicant shall comply with Section 5.106.13.2.~~

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~~(5) Non-residential occupancy projects that have been approved for a Planning Permit as defined in the Planning Regulations at Section 9-8.216(y) of Title 9 of the Emeryville Municipal Code, or a Zoning Compliance Review as defined in the Planning Regulations at Section 9-8.226(e) of Title 9 of the Emeryville Municipal Code, prior to January 1, 2023, shall be exempt from the All-Electric Building local amendments. Non-residential occupancy projects which do not require planning approval, and for which a building permit application has been filed prior to January 1, 2023 are also exempt.~~

~~(6) Alternative materials, design and methods of construction or equipment may be considered per California Building Code Section 104 and approved by the Building Official.~~

~~(g)~~ (e) Section 5.106.13.2. is added to read:

Section 5.106.13.2 Requirements for combustion equipment. Where combustion equipment is allowed per exceptions under Section 5.106.13.1, the construction drawings shall indicate electrical infrastructure and physical space accommodating the future installation of an electrical heating appliance in the following ways, as certified by a registered design professional or licensed electrical contractor:

SECTION THREE. SEVERABILITY

The City Council of the City of Emeryville declares that each section, sub-section, paragraph, sub-paragraph, sentence, clause and phrase of this ordinance is severable and independent of every other section, sub-section, paragraph, sub-paragraph, sentence, clause and phrase of this ordinance. If any section, sub-section, paragraph, sub-paragraph, sentence, clause or phrase of this ordinance is held invalid, the City declares that it would have adopted the remaining provisions of this ordinance irrespective of the portion held invalid, and further declares its express intent that the remaining portions of this ordinance should remain in effect after the invalid portion has been eliminated.

SECTION FOUR. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION

This ordinance is exempt from the California Environmental Quality Act pursuant to CEQA Guidelines section 15378 because it is not a “project” because it has no potential for resulting in a direct or indirect physical change in the environment; it is merely an administrative action repealing existing local amendments to the California Building

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Standards Code and involves no authorization of any construction or other activities that could impact the environment. Further, this ordinance is exempt pursuant to CEQA Guidelines section 15061(b)(3) because it can be seen with certainty that there is no possibility that adoption of this Ordinance will have a significant effect on the environment.

SECTION FIVE. EFFECTIVE DATE

This Ordinance shall take effect 30 days following its final passage. The City Clerk is directed to cause copies of this Ordinance to be posted or published as required by Government Code section 36933.

SECTION SIX. CODIFICATION

Section Two of this Ordinance shall be codified in the Emeryville Municipal Code. Sections One, Three, Four, Five, and Six shall NOT be so codified.

This Ordinance was **INTRODUCED AND FIRST READ** by the City Council of the City of Emeryville at a regular meeting held Tuesday, April 16, 2024, and **PASSED AND ADOPTED** by the City Council of the City of Emeryville at a regular meeting held Tuesday, May 7, 2024, by the following vote:

AYES: _____
NOES: _____
ABSTAIN: _____
ABSENT: _____

ATTEST:

CITY CLERK

MAYOR

APPROVED AS TO FORM:

DocuSigned by:
John Kennedy
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CITY ATTORNEY