



City of Emeryville

CALIFORNIA

MEMORANDUM

DATE: September 20, 2022

TO: Adam Politzer, Interim City Manager

FROM: Nancy Humphrey, Environmental Programs Supervisor

SUBJECT: **Requesting The Direction Of The City Council Of The City Of Emeryville On Exemption Of Certain Business (B) Occupancies and New Restaurant Construction (A-2) Occupancies In A Proposed Energy Reach Code Ordinance Amending Chapter 8 (“Green Building Standards Code”) Of Title 8 (“Building Regulations”) Of The Emeryville Municipal Code To Amend The 2022 Edition Of The California Building Standards Code (California Code Of Regulations, Title 24, Part 11); CEQA Determination: Exempt Pursuant to CEQA Guideline 15061(b)(3)**

RECOMMENDATION

The Sustainability Committee and staff request the City Council direct staff on elements of this proposed “reach code” ordinance intended to make amendments to Chapter 8 of Title 8 of the Emeryville Municipal Code to amend the Green Building Standards Code (CALGreen) requirements in Part 11 of the 2022 California Building Code (Title 24).

This report asks Council to provide direction on potential exemptions to this ordinance for certain Business (B) occupancies intended for laboratory use and/or for new restaurant (A-2) occupancies. These exemptions arose as a result of outreach efforts with various stakeholders citywide.

BACKGROUND

The City of Emeryville is among hundreds of municipalities, states, and countries worldwide that have committed to efforts to reduce greenhouse gas (GHG) emissions (which are often expressed in carbon equivalents; the terms GHG and ‘carbon’ both describe these emissions). Emeryville is a signatory to the Global Covenant of Mayors, a group that grew out of the Paris Climate Accords to work together to achieve the goals of those Accords.

In addition, the state of California has a goal of a 40% reduction in GHG emissions over baseline levels by 2030, and a target of an 80% reduction by 2050. The goals in Emeryville’s 2016 Climate Action Plan 2.0 mirror these state goals. In addition, Executive Order B-55-18 goes further, committing California to economy-wide carbon neutrality by 2045¹. Just over a third (34%) of Emeryville’s community-wide emissions come from building operations, and buildings built today will be in use far past the 2045 and 2050 target dates for GHGs.

¹ <https://www.ca.gov/archive/gov39/wp-content/uploads/2018/09/9.10.18-Executive-Order.pdf>

Technology is available and cost-effective to move faster on achieving these climate and health goals. For these reasons and others, many cities have adopted or are considering adopting reach codes similar to the ordinance proposed in this report. Exhibit A is a current list of California cities' reach code efforts and progress.

Every three years, the State of California adopts new building standards that are organized in Title 24 of the California Code of Regulations, referred to as the California Building Standards Code. This regular update is referred to as a "code cycle." Emeryville adopted a reach code for the 2019 code cycle requiring new residential construction to be all-electric and adding requirements to install solar panels on certain new residential buildings. That reach code was subject to California Energy Commission (CEC) approval, as it was an amendment to the Energy Code. The CEC approval process took eight months, and Emeryville's reach code was just approved in July, 2022; it's in effect until December 31, 2022.

The 2022 code includes new requirements for solar panel installation and other measures (See Exhibit B), and as a result, the proposed reach codes for the 2022 code cycle will be limited essentially to a requirement for all new construction to be all-electric, and identifies exemptions to that requirement along with additional measures required for exempted new construction projects.

The 2022 California Building Standards Code will take effect on January 1, 2023, and the Community Development Department plans to bring a proposal to City Council prior to that date to adopt 2022 code. Staff will bring a proposed reach code for adoption separately but in coordination with the adoption of the overall state code. In an administrative change, the proposed reach code ordinance in discussion for the 2022 code cycle will amend the CALGreen provisions instead of the Energy Code provisions of the code, and therefore does not require CEC approval; if adopted, it will go into effect on January 1, 2023 as well.

DISCUSSION

Previous City Council discussions regarding energy reach codes have covered the benefits of phasing out natural gas infrastructure, including improved indoor and outdoor air quality with associated health impacts, economic benefits, resilience benefits, and the need to reduce GHG emissions. The City Council passed Ordinance 21-006 in November 2021 requiring all newly-constructed residential buildings to be all-electric, and staff were directed to bring a broader proposal for all new construction back after further outreach with stakeholders.

The outcome of that outreach and subsequent discussions at the Sustainability Committee has led to the following proposed exemptions from an all-electric requirement for new construction:

- a. Space heating in new construction classified as Laboratory (L), Manufacturing (F), or Hazardous (H) occupancies.

- b. Free-standing Accessory Dwelling Units smaller than 400 square feet.
- c. Projects that have been received a Planning Permit, or Zoning Compliance Review prior to the effective date of the ordinance adopting reach codes. Projects which do not require planning approval, and for which a building permit application has been filed prior to the effective date of the ordinance adopting reach codes.
- d. Projects demonstrating practical infeasibility, subject to Building Official approval.

Two additional potential categories of exemption were referred by the Sustainability Committee to City Council for decision:

- e. Should the same exemption for space heating listed in (a.) above apply to Business (B) occupancies “intended for lab use?”
- f. Should cooking applications in restaurants/food service establishments (A-2) occupancies be exempted?

The inclusion of B occupancies in the category of potential exemptions listed above in (a.) came from a request from stakeholders, who noted that many buildings used for life sciences are built for future lease, and thus not built as laboratory occupancies initially. The inclusion of B occupancies intended for lab use would allow the continued development of life sciences spaces in this way.

The question of whether to include restaurant and food service (A-2) occupancies in a reach code for new construction came up at the Sustainability Committee meeting of March 14, 2022, and the motion was made to bring the issue to City Council for consideration. Currently, 31 cities in California have enacted all-electric reach codes that include food service/restaurants, including Oakland, Berkeley, San Francisco, Sacramento, San Jose, and many smaller cities in the Bay Area and beyond. Since the current proposal only applies to new construction, existing restaurants and restaurant spaces would not be affected.

Where exemptions apply, wiring or conduit would be required to enable future electrification. These all-electric readiness requirements are designed to enable buildings initially equipped with natural gas appliances to replace them with electric appliances at a later time without having to make electrical capacity upgrades or make other changes to the building. The all-electric readiness requirements are based on findings in studies funded by the California Public Utilities Commission that all-electric buildings cause fewer GHG emissions. Including these is prudent as they are relatively inexpensive at the time of initial construction while enabling buildings to avoid much higher conversion costs in the future.

ENVIRONMENTAL REVIEW

This proposed ordinance is exempt from CEQA under 15061(b)(3) on the grounds that these proposed standards are more stringent than the State standards and would result in reduced GHG emissions with no new environmental impacts. There are no reasonably foreseeable adverse environmental impacts from these proposals as compared to existing code and practice.

FISCAL IMPACT

The energy performance amendments parallel the structure and terms of the State code and as such any incremental plan check and inspection time should be minimal. The electric readiness provisions will require plan checkers and inspectors to apply additional check lists to mixed-fuel buildings. These items are relatively simple and are not expected to require very much additional staff time. Any incremental costs of administering these requirements will be covered through existing permit fees.

STAFF COMMUNICATION WITH THE PUBLIC

Versions of these proposals have been discussed at meetings of the Sustainability Committee including on November 9, 2020, April 12, 2021, May 10, 2021, July 12, 2021, November 18, 2021, and March 14, 2022; in a City Council Study Session on November 18, 2019, and in a City Council Meeting on March 2, 2021. An all-electric reach code for new construction of residential occupancies was passed on second reading on September 13, 2021. In addition, widely publicized informational webinars were held on October 19, 2020 and April 21, 2021.

Elements of this proposal were developed in response to and in cooperation with stakeholders who participated in the public meetings and webinars. In particular, stakeholders' input led to the proposed exemptions for occupancy types F, H, and L, and the consideration of an exemption for certain B occupancy types intended for lab use.

In addition, in August 2022, staff notified the California Restaurant Association of this discussion, but have not received any response. Staff also met with representatives of CenterCal Properties, LLC to discuss whether/how this proposal would affect their current and planned development.

CONCLUSION

In response to the climate crisis and with an awareness of the long lifespan of the built environment, the Sustainability Committee and staff recommend the proposed ordinance as a prudent approach to addressing operational GHG emissions of newly constructed buildings.

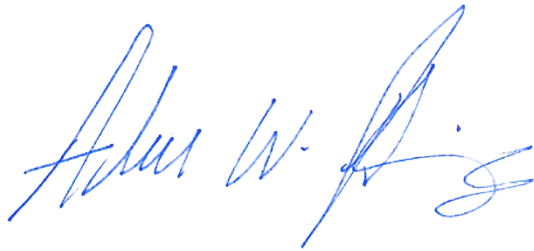
Direction is requested on two specific issues:

1. Should newly constructed Business (B) occupancies intended for lab use be included in the exemptions listed for F, H, and L occupancies?

2. Should newly constructed restaurant/food service (A-2) occupancies be exempted from the all-electric requirements proposed?

PREPARED BY: Nancy Humphrey, Environmental Programs Supervisor

**APPROVED AND FORWARDED TO THE
CITY COUNCIL OF THE CITY OF EMERYVILLE:**



Adam Politzer, Interim City Manager

ATTACHMENTS

- Exhibit A: List of Cities' Reach Codes
- Exhibit B: Summary of Energy-Related Provisions in California 2022 Building Code