



MEMORANDUM

DATE: April 16, 2024
TO: Paul Buddenhagen, City Manager
FROM: John I. Kennedy, City Attorney
Christie Crowl, Special Counsel
Mohamed Alaoui, Public Works Director
SUBJECT: **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)**

RECOMMENDATION

Introduce and waive first reading of an 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.

BACKGROUND

City of Emeryville All-Electric Reach Code

The City generally adopts the California Building Code (CBC) in its entirety every three years for use and application in Emeryville with minor local amendments. At its September 20, 2022 meeting, the City Council discussed and provided direction to staff to prepare a “Reach Code” ordinance which would amend the Green Building Standards Code (CALGreen) requirements in Part 11 of the 2022 CBC. The Reach Code is a local building energy code that “reaches” beyond the state minimum requirements for energy use in building design and construction, creating opportunities for local governments to lead the way on clean air, climate solutions, and the renewable energy economy. The Council directed staff to return with a Reach Code ordinance that accomplished the following:

- Require all new building construction to be all-electric, with the following exceptions:
 - Space heating in new construction classified as Laboratory (L), Manufacturing (F), Hazardous (H), or Business (B) occupancies;
 - Free-standing Accessory Dwelling Units smaller than 400 square feet;
 - Projects that have received a Planning Permit or Zoning Compliance Review prior to the effective date of this code;
 - Projects that do not require planning approval, for which a building permit application has been filed prior to the effective date of this code;
 - Projects demonstrating practical infeasibility, subject to Building Official approval.

The Council approved this all-electric reach code by Ordinance No. 22-013 on November 15, 2022.

Ninth Circuit Decision in California Restaurant Association v. City of Berkeley

In 2020, the City of Berkeley adopted an ordinance prohibiting new building construction from including gas piping, except when not physically feasible and where natural gas would “serve the public interest.” The Restaurant Association (which generally desires the use of natural gas for cooking) sued Berkeley alleging that federal law (the Energy Policy and Conservation Act, or “EPCA”) preempted the ordinance. After the district court initially ruled in Berkeley’s favor, on April 17, 2023, the Ninth Circuit reversed and concluded that EPCA preempts states and local governments from regulating the quantity of natural gas used by an appliance at the point of use. The City of Berkeley did not appeal this decision and it remains the law.

DISCUSSION AND ANALYSIS

The City’s all-electric reach code is similar to Berkeley’s ordinance. The City adopted a true reach code (making the required state law findings to amend the CBC), while Berkeley adopted its all-electric requirements by way of a regular ordinance enacted pursuant to its police powers. But both the City’s reach code and Berkeley’s ordinance regulate the use of natural gas by prohibiting such use in new construction projects. And the Ninth Circuit’s decision in *California Restaurant Association v. City Berkeley* is clear that EPCA preempts cities from regulating natural gas use.

Therefore, staff and the City Attorney’s Office recommend that the City Council repeal the City’s all-electric reach code. Staff can continue to monitor the local trends in addressing the potential environmental and other impacts of natural gas. Staff also notes that since its adoption in late 2022, the City has not received a building permit or other new construction project application that has required enforcement of these all-electric requirements.

FISCAL IMPACT

This repeal has no fiscal impacts.

CONFLICT OF INTEREST

No conflict of interest has been identified.

CONCLUSION

Staff requests the City Council introduce and waive first reading of an Ordinance Repealing and Amending a Portion of Section 10 of Ordinance No. 22-013 Related to All-Electric Building Requirements for New Construction.

PREPARED BY: Christie Crowl, Special Counsel

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



Paul Buddenhagen, City Manager

ATTACHMENTS

- Draft Ordinance