



COUNCIL REPORT

DATE: April 9, 2024
CATEGORY: Consent
DEPT.: Community Development, City Attorney
TITLE: **Suspension of All-Electric Building Requirements**

RECOMMENDATION

Adopt a Resolution of the City Council of the City of Mountain View Suspending Enforcement of All City of Mountain View Local Laws and Regulations Imposing All-Electric Requirements for New Construction or Otherwise Prohibiting Use or Installation of Gas Appliances, Including, But Not Limited to, City of Mountain View Code Sections 8.20.8, 8.20.9, 8.20.10, 8.20.12 and 8.20.14, to be read in title only, further reading waived (Attachment 1 to the Council report).

BACKGROUND

Mountain View All-Electric Code Requirements

On November 12, 2019, the City Council adopted Ordinance No. 17.19 which, among other things, established the City's first all-electric requirements for new construction. Specifically, Ordinance No. 17.19 enacted Mountain View Code Sections 8.20.8, 8.20.9, 8.20.10, 8.20.12 and 8.20.14, which impose all-electric requirements on new construction of single-family residences, duplexes, multi-family residences, hotels, motels, and other non-residential buildings, and expressly prohibits the following natural gas appliances in these structures: space-conditioning (heat/cooling) equipment, clothes dryers, cooking appliances, fireplaces, fire pits, and water heaters. Pursuant to Mountain View Code section 8.10.20, "new construction" for purposes of the all-electric building requirements includes major renovations to non-residential¹ and residential structures². Pursuant to Mountain View Code sections 8.20.10 and 8.20.12, for-profit

¹For non-residential structures, new construction includes "additions or improvements to existing structures where greater than fifty (50) percent of the sum total of the following structural elements are added, removed, replaced or relocated: (1) footings and foundation; (2) roof-framing; and (3) exterior walls. If either of these criteria are met within a three (3) year period, the project shall be subject to the all-electric building requirements."

²For residential structures, new construction includes "additions or improvements to existing structures where greater than fifty (50) percent of the sum total of the following structural elements are added, removed, replaced or relocated: (1) footings and foundation; (2) roof-framing; and (3) exterior walls."

restaurants are exempt from the all-electric cooking appliance requirement if the style of cooking cannot be achieved with an electric fuel source. The City began enforcing these all-electric building requirements on January 1, 2020.

Council adopted these all-electric building requirements for new construction in accordance with the City's sustainability goals and policy plans, including the City's fourth Environmental Sustainability Action Plan (ESAP, adopted in 2019) and the City's Climate Protection Road Map for reducing greenhouse gas (GHG) emissions from new construction (adopted in 2015). City staff drafted these Code sections in coordination with a working group led by Silicon Valley Clean Energy, which resulted in the adoption of similar all-electric code requirements by neighboring cities, such as Sunnyvale, Cupertino, and Santa Clara.

The City's all-electric building code requirements remain in full force and effect to date, and since enforcement of these code requirements began on January 1, 2020, the City has issued approximately 660 permits which were subject to the all-electric code requirements.

Legal Challenges to Electric Building Requirements

In July 2019, the City of Berkeley City Council adopted Ordinance No. 7,672—Prohibition of Natural Gas Infrastructure in New Buildings, which, subject to some exceptions, prohibited natural gas infrastructure in newly constructed buildings in the City of Berkeley. By its own terms, the ordinance sought to “eliminate obsolete natural gas infrastructure and associated greenhouse gas emissions in new buildings thereby reducing the environmental and health hazards produced by the consumption and transportation of natural gas.” In November 2019, the California Restaurant Association (CRA), an association of restaurant owners and chefs, filed a lawsuit in the United States District Court for the Northern District of California (“District Court”) against the City of Berkeley alleging that Berkeley's ordinance banning natural gas infrastructure in new buildings is unenforceable because it is preempted by the Federal Energy Policy and Conservation Act (EPCA).³

The District Court dismissed the lawsuit based on its finding that the EPCA did not preempt Berkeley's ordinance banning natural gas infrastructure in new buildings because the ordinance did not directly regulate or mandate any particular type of product or appliance and its impact on consumer products was at best indirect. The CRA appealed the District Court's ruling to the United States Court of Appeals for the Ninth Circuit, and the Ninth Circuit Court of Appeals reversed the District Court's ruling and held that Berkeley's ordinance is preempted by the EPCA.

³According to information on the U.S. Department of Energy website, the Energy Policy and Conservation Act was enacted in 1975 and established a federal program consisting of test procedures, labeling, and energy targets for consumer products.

In its decision, the Ninth Circuit Court of Appeals concluded that the EPCA expressly preempts state and local regulations, including building codes, concerning the energy use of covered natural gas appliances, and that the EPCA preemption applies to regulations addressing the appliances themselves and building codes that concern the use of natural gas.⁴ The Ninth Circuit Court of Appeals stated further that “by enacting [the] EPCA, Congress ensured that states and localities could not prevent consumers from using covered products in their homes, kitchens, and businesses.”⁵

As a result of the Ninth Circuit Court of Appeals’ decision, the City of Berkeley settled the lawsuit, has (or will be) rescinding their gas ban ordinance, and has decided not to seek further review of the decision by the U.S. Supreme Court.

ANALYSIS

Mountain View Code Sections 8.20.8, 8.20.9, 8.20.10, 8.20.12 and 8.20.14 directly regulate the use of gas appliances covered⁶ by the EPCA in homes, kitchens, and businesses by expressly prohibiting several covered gas appliances in newly constructed and renovated single-family residences, duplexes, multi-family residences, hotels, motels, and other non-residential buildings. Therefore, under the Ninth Circuit Court of Appeals decision in the Berkeley case, these Code sections as currently drafted are preempted by the EPCA.

NEXT STEPS

City staff will continue to communicate with other cities and regional groups, such as Silicon Valley Clean Energy, on pathways to reduce greenhouse gas emissions in new construction, as well as monitor any new state code requirements as part of the 2025 Triennial California Building Code update next year.

FISCAL IMPACT—None.

ALTERNATIVE

1. Do not adopt a resolution suspending enforcement of Mountain View’s all-electric building requirements.

⁴See *California Rest. Ass’n v. City of Berkeley*, 89 F.4th 1094, 1098-1103 (9th Cir. 2024)

⁵*Id.* at 1103.

⁶Pursuant to 42 U.S.C § 6292(a) covered appliances include room and central air conditioners, water heaters, clothes dryers, kitchen ranges and ovens, furnaces, and direct heating equipment.

PUBLIC NOTICING—Agenda posting.

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- Attachment: 1. Resolution of the City Council of the City of Mountain View Suspending Enforcement of All City of Mountain View Local Laws and Regulations Imposing All-Electric Requirements for New Construction or Otherwise Prohibiting Use or Installation of Gas Appliances, Including, But Not Limited to, City of Mountain View Code Sections 8.20.8, 8.20.9, 8.20.10, 8.20.12 and 8.20.14