Hagan, Lindsay

From: Lucky, Rebecca
Sent: Thursday, May 30, 2024 7:18 AM
To: Hagan, Lindsay
Subject: FW: comments for tonight's meeting

From: Robert Mayo [redacted]
Sent: Wednesday, May 29, 2024 4:10 PM
To: Abe-Koga, Margaret [redacted]; Hicks, Alison [redacted]; Showalter, Pat [redacted]
Cc: Sustainability <sustainability@mountainview.gov>
Subject: comments for tonight's meeting

Dear Council Sustainability Committee members Margaret Abe-Koga, Pat Showalter, and Chair Alison Hicks,

I have comments on natural gas and building codes for tonight's meeting.

The climate crisis is urgent. Just this week we saw news of record heat in India [1], and Mexico City running out of water [2].

The city has a climate action plan, and the State of California is also committed to achieving carbon neutrality by 2045 [3].

Cities are laboratories where policy is developed. When Mountain View and other cities adopt strong climate policies it helps not only local residents, but helps to enable state-level policies, and even builds support for federal policies. We should be doing everything we can to lead.

The proposal presented seems weaker than the suspended code, by avoiding the air pollution approach, and by deferring increased energy performance requirements until the 2025 code cycle.

Likely only an air pollution requirement, in conjunction with other policies, would achieve the same strength as the suspended code.

The proposal could be read to infer that the Berkeley ruling, a ruling related to appliance energy use and connected pipes, concludes that EPCA requires consumer choice, as if that is a new principle that applies in general. However, the proposal does not discuss alternate authorities such as those under the Clean Air Act and the pollution-related health and safety police powers of cities. The proposal also did not discuss whether EPCA preempts those alternate authorities. I have not heard of any analysis to that effect.

Our city should lead in the strongest possible way. I would like the city to start immediate work on developing all three of the proposed options, with the intention of adopting all of them as soon as possible as a multi-layered fail-safe approach.

1. An ordinance to require extensive pre-wiring.

2. An ordinance taking the air quality approach, so the ordinance is as strong as the one before. Explore whether this should be put into the building code, or if it works better as an unrelated ordinance.
3. An energy performance ordinance, to be put into effect as soon as possible, not waiting until the 2025 code cycle.

If this degree of action is not possible, please defer and monitor the air pollution approach until more cities adopt it. It also may be worthwhile to exempt commercial kitchens from some requirements. Furthermore, I hope you can consider building code "carrots" for all-electric buildings. For example, allow larger floor areas, or relaxation of certain code sections or planning requirements.

--Bob

Robert "Bob" Mayo
[redacted]

[1] "Indian capital of Delhi breaks all-time heat record, as authorities impose water rationing", https://amp.cnn.com/cnn/2024/05/29/weather/india-heat-record-water-rationing-intl

[2] "Mexico City and millions of its residents could run out of water in weeks", https://www.washingtonpost.com/climate-environment/2024/05/25/mexico-city-water-day-zero/

[3] "Carbon Neutrality by 2045", https://opr.ca.gov/climate/carbon-neutrality.html

MENLO SPARK *Climate Neutral for a Healthy, Prosperous Menlo Park*

A Dual-Coverage Approach to New Reach Code Alternatives

Menlo Spark is proposing a new, combined approach in response to the Ninth Circuit decision, *CRA v. City of Berkeley*. This court ruling reinterpreted federal energy efficiency laws to restrict local government's ability to protect against the use of gas equipment in some circumstances. We agree with the dissenting judges that the decision was wrong, but for now at least the court has put existing reach codes in doubt in the western United States.

Organizations have generally proposed two different responses to this decision. One, often called an "energy performance standard," follows a seven-part exemption process under federal energy law that disincentivizes but does not prohibit gas equipment. This standard is the most clearly compliant of the two with federal energy efficiency law but it is more complex to explain to the public. It is also more complex to administer, not as potentially comprehensive, and would be very difficult to use to take the next step of a "burnout ordinance" that requires replacement gas equipment when it becomes defective with non-polluting electric equipment.

The other main alternative to current reach codes is variously called an "air quality standard," zero-NOx, or ultra-low NOx standard. It prohibits or sets limits on air emissions from either newly-installed equipment and/or new buildings and major renovations. While gas equipment would be allowed if it complied with the standards, the likely effect is that electric equipment would be used instead. The advantage of this approach is its ease of administration and ability to be more comprehensive, especially in application to burnout of gas equipment. It is not as clearly free of legal restriction under federal energy law as the energy standard, although we also believe that the wrongly-decided Berkeley decision is highly unlikely to be extended even further against local governments exercising their normal authority.

These two alternatives each have their own advantages. Menlo Spark has noted an incipient division among groups working to address the climate crisis as they line up behind either alternative, often with criticizing the other approach. This increases the possibility that nothing will happen or that the outcome will not be as effective as when climate advocates work in unison. We have further observed that there is no inherent conflict between the approaches.

Menlo Spark proposes a dual-coverage approach by local governments (a technique sometimes called "belt and suspenders"), enacting both an air quality/zero-NOx standard and an energy performance standard while requiring compliance with the most restrictive standard in legal effect. With dual, zero-NOx and energy performance standards, this would effectively require compliance with the zero-NOx standard. The energy-performance functions as a backup in case future litigation results in the unlikely-but-not-impossible outcome of stopping enforcement of zero-NOx.

Examples exist for both zero-NOx and energy performance standards, including at bayareareachcodes.org, with more to come. These examples do not have to be followed exactly and could potentially be improved upon, especially to eliminate exemptions for certain types of gas equipment. The possibility is also there to build upon past work and to include the zero-NOx requirement for burnout replacement of gas equipment when that equipment stops working.

The only truly new component to this dual-coverage is ordinance language that specifies how the two approaches work in practice, and it would not need to be complicated. Because we want the more restrictive approach to be applicable, then one method would be language saying first that the zero-NOx and energy performance standards are “severable” from each other, which means that the jurisdiction intends to keep either approach valid if one is found legally invalid. Then another provision would say that where both approaches are applicable, the more restrictive provision applies.

An alternative method for how dual coverage could work would be to phrase the energy performance standard negatively - instead of saying that new buildings and major renovations “must” be constructed according to energy performance standards, the standard would say they cannot be constructed if they fail to comply with energy performance standards. This prohibition on construction is not in conflict with other prohibitions like that from a zero-NOx standard. Severability language could be added under this method, if desired.

Lawyers and planners experienced with ordinances could further refine these methods or suggest different ones.

The opportunity to achieve maximum climate protection, easy explainability, and maximum legal protection should be carefully considered via a dual-coverage approach. Menlo Spark believes that if only one approach is to be considered, there is too much at risk for the climate to do less than a zero-NOx approach. Dual-coverage eliminates a potentially-unnecessary and divisive approach and gives an opportunity for the best outcome.