



## City Council AGENDA REPORT

**DATE:** 11/10/2023

**AGENDA OF:** 11/14/2023

**DEPARTMENT:** Planning and Community Development/City Manager's Office

**SUBJECT:** Amendments to Title 18 of the Municipal Code Creating an Energy Reach Code for Newly Constructed Buildings with the Intent to Provide Developers with a Range of Options that will Meet Goals to Reduce Greenhouse Gas Emissions Associated with Fossil Fuel Citywide (PL/CM)

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**RECOMMENDATION:** Motion to introduce for publication an ordinance amending Municipal Code Title 18 – Buildings and Construction, amending Section 18.04.030 and adding Chapter 18.15 to adopt local amendments to Title 24, Part 6 of the California Code of Regulations (California Energy Code) implementing an energy reach code with an intent to provide developers with a range of options that will also meet goals to reduce greenhouse gas emissions associated with fossil fuel use citywide. CEQA determination: These amendments are consistent with the Negative Declaration approved for the City of Santa Cruz 2030 Climate Action Plan adopted by City Council on September 13, 2022. The ordinance is also exempt from CEQA under the general rule, 15061(b)(3) and per CEQA Guidelines Section 15308, Class 8, Actions by Regulatory Agencies for Protection of Natural Resources.

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**BACKGROUND:** On April 14, 2020, City Council unanimously adopted the Natural Gas Prohibition Ordinance, adding Chapter 6.100 to the Santa Cruz Municipal Code (SCMC) which prohibits natural gas infrastructure in new buildings. The Ordinance was adopted as part of the City's ongoing efforts to improve building energy efficiency, support renewable energy sources, and accelerate decarbonization. The ordinance is similar to that adopted by the City of Berkeley and other cities in California. Santa Cruz's ordinance did provide exceptions that the Berkeley ordinance did not, including an exception for restaurants (for cooking purposes only).

The City's Community Climate Action Plan 2030 (CAP 2030) was adopted in September 2022, and CAP 2030 measure BE-1 specifies enforcement of the City's new construction natural gas prohibition in order for the City to reach its legal greenhouse gas (GHG) emissions target of a 40% reduction in GHG emissions from 1990 levels by 2030. The successful implementation of the ordinance resulted in over 1,000 all-electric housing units being submitted for permits.

On April 17, 2023, the California Ninth Circuit Court of Appeals struck down the City of Berkeley's natural gas prohibition as part of the ruling in *California Restaurant Association v. City of Berkeley*. The Ninth Circuit held that the Energy Policy and Conservation Act (EPCA) preempts the City of Berkeley's ordinance because EPCA does not allow State and local

governments to prohibit an end-user from using natural gas products. Berkeley has appealed this ruling and is awaiting an en banc rehearing to determine the permanent fate of the ordinance. Because Berkeley is a party to the case, Berkeley is under no obligation to act on the Ninth Circuit's opinion until the district court issues a stay or injunction prohibiting enforcement of its ordinance. Accordingly, Berkeley has continued implementing the ordinance. However, the Ninth Circuit opinion is binding authority on other municipalities with similar ordinances. The City of Santa Cruz would therefore incur legal risk if it continued to enforce its own Natural Gas Prohibition Ordinance, given the similarities between its ordinance and the Berkeley ordinance.

Because of this ruling, on June 13, 2023, City Council adopted Resolution NS-30,156 temporarily suspending enforcement of the City's Natural Gas Prohibition Ordinance. However, the City of Santa Cruz will be unable to reach its legal GHG emissions reduction target without addressing building energy performance as modeled during the CAP 2030 development. Staff has therefore drafted a new ordinance consistent with state and federal law in the form of a source energy reach code for new buildings to provide developers with a range of options with regard to the type of equipment and energy that will be supplied to new buildings and that will help to meet the CAP 2030 GHG emissions target.

## **DISCUSSION:**

### *Proposed Regulations*

The ordinance changes propose local modifications to the California Energy Code. The "reach code" triggers more stringent source energy (underlying fuel sources such as coal, natural gas, or solar used to power building systems and equipment) requirements for single-family residential, multi-family residential, and non-residential uses. The ordinance also requires that for non-residential and multi-family residential buildings with central water heating where a gas appliance is installed, physical space and ventilation paths for future all-electric equipment must be provided, as well as sufficient electrical panel and transformer capacity for the future change. A full discussion of the proposed energy reach code can be found in the attached agenda report for the October 19, 2023 Planning Commission meeting.

### *California Energy Commission Approval*

After adoption by City Council, the proposed local amendments to the California Energy Code must be approved by the California Energy Commission prior to becoming effective. Public Resources Code Section 25402.1(h)(2) and Section 10-106 of the Building Energy Efficiency Standards establish a process that allows local adoption of energy standards that are more stringent than the statewide standards. Under this process, the California Energy Commission requires any local amendments to the California Energy Code that affect energy use in regulated buildings to be cost effective and use less energy than the standard requirements contained in Title 24, Part 6. The attached cost-effectiveness studies published by the California Energy Codes and Standards Statewide Utility Program, which includes the State's Investor-Owned Utilities (PG& E, SDG&E, and SCE, under the auspices of the California Public Utilities Commission) show that reach codes such as the one proposed are cost-effective.

### *Community Outreach*

In addition to extensive outreach conducted between 2019 and 2022 during the development of the 2020 ordinance prohibiting natural gas in new buildings and the CAP 2030, on October 11, 2023, staff conducted a virtual outreach meeting for builders, designers, developers, and

contractors who do business in the City of Santa Cruz. Approximately 14 individuals participated in the meeting. Staff also conducted outreach with the Mayor’s Community Climate Action Task Force on October 12, 2023, where 10 individuals participated. Staff presented the draft ordinance and discussed questions and comments from participants. Feedback included questions related to how gas cooking appliances and electric vehicle chargers factored into the ordinance, whether the ordinance applies to accessory dwelling units (ADUs), the scale of single family and multi-family development expected, available rebates, how source energy compliance margin points and percentages were determined, whether both heating and cooling were modeled, and heat pumps with central water heating. Staff also prepared newspaper and online noticing of the October 19, 2023 Planning Commission meeting to give the community an opportunity to provide feedback.

#### *Planning Commission Feedback*

The proposed ordinance was brought to the October 19, 2023 Planning Commission meeting to seek feedback and suggestions from commissioners as well as interested members of the community. With the Municipal Code changes occurring outside of the Zoning Ordinance, the Commission meeting was a courtesy referral only, intended to garner additional input from Commissioners, and was not a required meeting for the proposed changes. Three Planning Commissioners attended the meeting (Pete Kennedy, Julie Conway, and Timerie Gordon) as well as one member of the public, a representative from Central Coast Community Energy. Commissioners and the public commenter all expressed support for the proposed changes. Questions and comments from Commissioners included whether bonus points would be included for trainings, the possibility of public-private partnerships, whether the compliance margins could be increased further, consistency among local jurisdictions with regard to energy reach code regulations, and clarification on how the square footage threshold for ADUs was determined.

#### *Minor Clarifying Edits Made Since Planning Commission*

Since the Planning Commission meeting, minor, non-substantive changes were made to section 18.15.040, Energy Code modification section 160.9(e) of the proposed ordinance to clarify the intent of this section. These changes are shown in blue in the ~~strikeout~~/underline ordinance.

#### *Health in All Policies (HiAP)*

HiAP is a collaborative approach to improving the health of all people by incorporating health considerations into decision-making across sectors and policy areas. HiAP is based on three pillars: equity, public health, and sustainability. The goal of HiAP is to ensure that all decision-makers are informed about the health, equity, and sustainability impacts of various policy options during the policy development process. The municipal code amendments support the pillars of equity and public health by ensuring all buildings are safe and healthy while remaining cost effective. The amendments support sustainability by reducing GHG emissions and fossil fuel dependence citywide consistent with the CAP 2030. Therefore, the proposed code amendments are considered consistent with the three pillars of HiAP.

#### *Environmental Review*

The municipal code amendments are consistent with the Negative Declaration approved for the City of Santa Cruz 2030 Climate Action Plan adopted by City Council on September 13, 2022. Therefore, no further environmental review under the California Environmental Quality Act (CEQA) is required. The ordinance is also exempt from CEQA under the general rule, 15061(b)(3), because it can be seen with certainty that the provisions contained herein would not have the potential for causing a significant effect on the environment. Further, this ordinance

is exempt per CEQA Guidelines Section 15308, Class 8, Actions by Regulatory Agencies for Protection of Natural Resources, since the proposed ordinance would institute regulatory requirements intended to protect the environment and natural resources.

*Next Steps*

If the City Council approves the first reading of the ordinance on November 14, 2023, it will then come back for a second reading on November 28, 2023. After approval by City Council, the ordinance will be submitted to the California Energy Commission (CEC) for approval as local modifications to the California Energy Code. Approval by the CEC is expected in February, 2024 and the ordinance is expected to go into effect by March 1, 2024.

**FISCAL IMPACT:** As the proposed ordinance provides more flexibility in building design than the currently-suspended natural gas prohibitions but less flexibility than the standard California Energy Code regulations, it could be argued that the policy could lead to an increase in development applications compared to those received during the natural gas prohibition and a decrease in applications compared to those received prior to implementation of any additional regulations beyond the standard state energy code. An increase in development applications will result in increased revenue for the City in the short term and increased tax basis over the longer term as redeveloped properties are reassessed. A decrease in development applications will result in decreased revenue for the City in the short term and decreased tax basis over the longer term as redeveloped properties are reassessed. Increased revenues would be offset by the fact that new development (housing especially) typically increases the need for City services. Overall, however, the implementation of this ordinance is unlikely to create cost shifts of a magnitude that would influence whether an applicant decides to move forward with a project or not, so the overall fiscal impact of the proposed ordinance is likely neutral.

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**ATTACHMENTS:**

1. Proposed Ordinance - Clean
2. Proposed Ordinance – Track changes
3. Agenda report for October 19, 2023 Planning Commission meeting
4. 2022 Cost-Effectiveness Study: Single Family New Construction Study and associated cost-effectiveness data
5. 2022 Cost-Effectiveness Study: Multifamily New Construction Study and associated cost-effectiveness data
6. 2022 Code: Non-residential New Construction Reach Code Cost-effectiveness Study and associated cost-effectiveness data