



TOWN OF FAIRFAX

STAFF REPORT

August 4, 2021

TO: Mayor and Town Council

FROM: Ben Berto, Planning and Building Services Director
Janet Coleson, Town Attorney
Adam Politzer, InterimTown Manager

SUBJECT: Introduce by title only an ordinance of the Town of Fairfax adding Chapter 15.05 entitled "All-Electric Construction in Newly Constructed Buildings" to Title 15 of the Fairfax Municipal Code; CEQA exempt pursuant to CEQA Guidelines sections 15378(b)(5), 15061(b)(3), and/or 15307 and 15308

RECOMMENDATION

Introduce, waive first reading, and read by title only "An Ordinance of the Town Council of the Town of Fairfax adding Chapter 15.05 entitled 'All-Electric Construction in Newly Constructed Buildings' to Title 15 of the Fairfax Municipal Code".

BACKGROUND

At its February 3rd meeting, the Council considered a request from the Climate Action Committee ("CAC") to require all-electric in new residential and commercial construction. The two approaches considered for an ordinance adoption were either to adopt it pursuant to the Town's police power or through adoption of energy reach codes.

At its April 21st meeting, the Council considered a white paper prepared by the CAC and directed staff to prepare an all-electric ordinance with the following provisions:

- Adopt an ordinance in Health and Safety Code to require all-electric.
- Apply the ordinance only to new residential and commercial buildings.
- Exempt commercial kitchens.
- Require no other energy requirements for the buildings.

The Council considered the all-electric ordinance for new construction at its July 7 meeting and continued the item to the August 4th meeting.

DISCUSSION

Every three years, cities and counties across the state can adopt local building codes in line with the California Building Standards Code, (Title 24 of the California Code of Regulations). Cities and counties may adopt building codes more advanced than those required by the state, which are known as reach codes. This ordinance differs from the "reach code" approach in that it leverages the City's authority under the California Constitution to prohibit installation of hazardous internal gas piping infrastructure when granting permits for new buildings and, as a result, avoids regulations requiring a cost effectiveness study and California Energy Commission (CEC) approval to amend energy efficiency standards (i.e., via "reach codes").

The Town Attorney recommends that the “all-electric” ordinance be placed in Title 15, Buildings and Construction of the Town Code instead of Title 8, Health and Safety. Several communities such as San Jose, Morgan Hill and Petaluma have placed all-electric requirements in their building codes. The placement of the codified ordinance is purely for ease of locating the requirements and topical relevance and is not related to the authority under which the ordinance is adopted. The ordinance is being adopted under the Town’s police powers and is for the health, safety and welfare of the residents. Under the California Constitution, cities retain police powers to adopt building standards that provide for their community’s health, safety and welfare. The ordinance follows the requirements of California Health & Safety Code section 17958.7, which pertain to local amendments to the California Building Standards Code, and makes a series of climatic, geologic and health and safety findings.

The proposed ordinance applies to building permit applications submitted on or after the effective date of the ordinance for all “Newly Constructed Buildings” proposed to be located in whole or in part within the Town. The ordinance defines “Newly Constructed Building” as “a building that has never before been used or occupied for any purpose”. This reflects a definition used by most jurisdictions (Berkeley, Morgan Hill, San Jose, Santa Cruz) that have adopted this type of ordinance. Under this definition, substantial remodels/rehabilitation of buildings would not be required to be all-electric.

The proposed ordinance includes an exemption for commercial kitchens and certain development projects, as specified in the ordinance. In addition, the Town Attorney recommends including an exemption for natural gas infrastructure in a newly constructed building “if the applicant establishes that it is not physically feasible to construct the building without natural gas infrastructure”. As defined in the ordinance, “physically feasible” to construct the building means either an all-electric prescriptive compliance approach is available for the building under the Energy Code or the building is able to achieve the performance compliance standards under the Energy Code using commercially available technology and an approved calculation method.

The Council may wish to consider additional exemptions and may direct staff accordingly. The addition of other types of exemption would be accomplished by revising the draft ordinance and returning to the September meeting for the first reading. The ordinance is scheduled to take effect July 1, 2022, which allows for a phase-in period, in order for builders to incorporate all-electric appliances into their building plans.

CEQA Determination

This Ordinance was assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the Town. The Town Council hereby finds that pursuant to CEQA Guidelines section 15378(b)(5), action on this item is not a project subject to CEQA because it is an administrative governmental activity which will not cause a direct or indirect physical change in the environment. The Town Council also finds that, alternatively, under CEQA Guidelines section 15061(b)(3), this Ordinance is exempt from the requirements of

CEQA 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, and in the alternative, the Town Council finds that the Ordinance is exempt from the requirements of CEQA pursuant to CEQA Guidelines sections 15307 and 15308 as an action by a regulatory agency taken to protect the environment and natural resources.

FISCAL IMPACT

n/a

ATTACHMENT

Ordinance

ORDINANCE NO. _____

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX
ADDING CHAPTER 15.05 ENTITLED “ALL-ELECTRIC CONSTRUCTION IN NEWLY
CONSTRUCTED BUILDINGS” TO TITLE 15 OF THE FAIRFAX MUNICIPAL CODE**

THE TOWN COUNCIL OF THE TOWN OF FAIRFAX DOES ORDAIN AS
FOLLOWS:

SECTION 1. Chapter 15.05 entitled “All-Electric Construction in Newly Constructed Buildings” is hereby added to Title 15 of the Fairfax Municipal Code as follows:

**CHAPTER 15.05: ALL-ELECTRIC CONSTRUCTION IN NEWLY CONSTRUCTED
BUILDINGS**

Section

- 15.05.010 Findings and Purpose.
- 15.05.020 Applicability.
- 15.05.030 Definitions.
- 15.05.040 Requirement for All-Electric Construction in Newly Constructed Buildings.
- 15.05.050 Public Interest Exemption.
- 15.05.060 Revocable Building and Infrastructure Exemptions.
- 15.05.070 Revocation of Natural Gas Infrastructure Exemption.
- 15.05.080 Appeals.
- 15.05.090 Periodic Review.

§ 15.05.010 FINDINGS AND PURPOSE.

The Fairfax Town Council finds and expressly declares as follows:

(A) Scientific evidence has established that natural gas combustion as well as leakage occurring during natural gas procurement, transportation, storage, and distribution produce significant greenhouse gas emissions that contribute to global warming and climate change.

(B) The following addition to the Fairfax Municipal Code is reasonably necessary because of local climatic, geologic, and topographical conditions as listed below:

(1) The Town is situated along a wildland-urban interface and is extremely vulnerable to wildfires and firestorms, and human activities releasing greenhouse gases into the atmosphere cause increases in worldwide average temperature, drought conditions, vegetative fuel, and length of fire seasons.

- (2) Structures in the Town are located in close proximity to the San Andreas and Hayward seismic faults, which collectively and individually, maintain the potential to produce serious damage, fires, and/or explosions as a result of damage to natural gas infrastructure in buildings due to unforeseeable seismic activity.
- (3) The Town has a history of significant flooding from the Fairfax and San Anselmo Creeks and their tributaries. Extreme weather conditions resulting from climate change may result in sudden, prolonged rainfall leading to further flooding events.
- (C) The following addition to the Fairfax Municipal Code is also reasonably necessary because of health and safety concerns as Fairfax residents suffer from asthma and other health conditions associated with poor indoor and outdoor air quality exacerbated by the combustion of natural gas.
- (D) As described in the Town of Fairfax Climate Action Plan and Fairfax Climate Emergency Declaration (Resolution No. 19-04) rapid, far-reaching and unprecedented changes in all aspects of society are required to limit global warming and the resulting environmental threat posed by climate change, including the prompt phasing out of natural gas as a fuel for heating and cooling infrastructure in new buildings.
- (E) Substitute electric heating and cooling infrastructure in new buildings fueled by less greenhouse gas intensive electricity is linked to significantly lower greenhouse gas emissions and is cost competitive because of the aggregate cost savings associated with all electric designs that avoid new gas infrastructure and increasing natural gas fuel prices.
- (F) All-electric building design benefits the health, welfare, and resiliency of Fairfax and its residents.
- (G) The most cost-effective time to integrate electrical infrastructure is in the design phase of a building project because building systems and spaces can be designed to optimize the performance of electrical systems inasmuch as projects can take full advantage of avoided costs and space requirements from the elimination of natural gas piping and equipment venting systems.
- (H) The intent of this chapter is to eliminate natural gas infrastructure and associated greenhouse gas emissions in new buildings where all-electric infrastructure can be

most practicably integrated, thereby reducing the environmental and health hazards produced by the consumption and transportation of natural gas.

§ 15.05.020 APPLICABILITY.

- (A) The requirements of this chapter shall apply to building permit applications submitted on or after the effective date of this chapter for all Newly Constructed Buildings proposed to be located in whole or in part within the Town.
- (B) The requirements of this chapter shall not apply to portable propane appliances for outdoor cooking and heating.
- (C) This chapter shall in no way be construed as amending Energy Code requirements under Title 24 of the California Code of Regulations, Part 6 or Part 1, nor as requiring the use or installation of any specific appliance or system as a condition of approval.

§ 15.05.030 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ALL-ELECTRIC BUILDING. A building that uses a permanent supply of electricity as the source of energy for all space heating, water heating (including pools and spas), cooking appliances, and clothes drying appliances, and has no natural gas or propane plumbing installed in the building.

APPLICANT. An applicant for a building permit.

COMMERCIAL KITCHEN. A non-retail food facility devoted to the commercial preparation, production, and cooking of food and beverages for off-site consumption.

COOKING EQUIPMENT. Equipment intended for commercial use, including ovens, ranges, and cooking appliances for use in a Commercial Kitchen, restaurant, or other business establishment where food is dispensed.

ENERGY CODE. The California Energy Code as adopted in Fairfax Municipal Code section 15.04.10.

FOOD SERVICE ESTABLISHMENT. Any Newly Constructed Building with construction plans for a Commercial Kitchen or Cooking Equipment.

GREENHOUSE GAS EMISSIONS. Gases that trap heat in the atmosphere.

NATURAL GAS. The same meaning as “Fuel Gas” as defined in the California Plumbing Code and Mechanical Code.

NATURAL GAS INFRASTRUCTURE. Fuel gas piping, other than service pipe, in or in connection with a building, structure or within the property lines of premises, extending from the point of delivery at the meter, service meter assembly, outlet of the service regulator, service shutoff valve, or final pressure regulator, whichever is applicable, as specified in the California Mechanical Code and Plumbing Code.

NEWLY CONSTRUCTED BUILDING. A building that has never before been used or occupied for any purpose.

§ 15.05.040 REQUIREMENT FOR ALL-ELECTRIC CONSTRUCTION IN NEWLY CONSTRUCTED BUILDINGS.

(A) Newly Constructed Buildings shall be All-Electric Buildings as defined in section 15.05.030.

(1) Exception: Natural Gas Infrastructure may be permitted in a Newly Constructed Building if the Applicant establishes that it is not physically feasible to construct the building without Natural Gas Infrastructure. For purposes of this exception, "physically feasible" to construct the building means either an all-electric prescriptive compliance approach is available for the building under the Energy Code or the building is able to achieve the performance compliance standards under the Energy Code using commercially available technology and an approved calculation method.

(2) Exception: The requirements of this chapter shall not apply to development projects that have obtained vested rights prior to the effective date of this chapter pursuant to a preliminary affordable housing project application in accordance with Government Code section 65589.5(o), a development agreement in accordance with Government Code section 65866, a vesting tentative map in accordance with Government Code Section 66998.1, or pursuant to the ruling in *Avco Community Developers Inc. v. South Coast Regional Communication* (1976) 17 Cal.3d 785, or pursuant to other applicable statutory or case law.

(B) To the extent that Natural Gas Infrastructure is permitted, it shall be permitted to extend to any system, device, or appliance within a building for which an equivalent all-electric system or design is not available.

(C) Newly Constructed Buildings shall nonetheless be required at a minimum to have sufficient electric capacity, wiring and conduit to facilitate future full building electrification.

(D) The requirements of this chapter shall be deemed objective planning standards under Government Code section 65913.4 and objective development standards under Government Code section 65589.5.

§ 15.05.050 PUBLIC INTEREST EXEMPTION.

(A) Notwithstanding the requirements of this chapter and the Greenhouse Gas Emissions and other public health and safety hazards associated with Natural Gas Infrastructure, minimally necessary and specifically tailored Natural Gas Infrastructure may be allowed in a Newly Constructed Building provided that the entitling or permitting body establishes that the use serves the public interest. In determining whether the construction of Natural Gas Infrastructure is in the public interest, the Town may consider:

(1) The availability of alternative technologies or systems that do not use Natural Gas;

(2) Any other impacts that the decision to allow Natural Gas Infrastructure may have on the health, safety, or welfare of the public.

(B) If the installation of Natural Gas Infrastructure is granted under a public interest exemption, the Newly Constructed Buildings shall nonetheless be required at the minimum to have sufficient electric capacity, wiring and conduit to facilitate future full building electrification.

§ 15.05.060 REVOCABLE BUILDING AND INFRASTRUCTURE EXEMPTION.

Notwithstanding the requirements of this chapter and the Greenhouse Gas Emissions and other public health and safety hazards associated with Natural Gas Infrastructure, minimally necessary and specifically tailored Natural Gas Infrastructure shall be allowed in a Newly Constructed Building on a revocable basis limited to the duration of time during for which the conditions set forth below are satisfied and the building continues occupancy as the original design specified in the construction drawings permitted by the Town as a Newly Constructed Building:

(A) Food Service Establishment. A Newly Constructed Building meeting the definition of Food Service Establishment in section 15.05.030. The scope of the exemption extends to the preparation of food only, not HVAC, or water heating appliances.

§ 15.05.070 REVOCATION OF NATURAL GAS INFRASTRUCTURE EXEMPTION.

At such time as the conditions of the Revocable Building and Infrastructure Exemption of section 15.05.060 cease to be satisfied, the Natural Gas delivery infrastructure shall either be capped, otherwise terminated, or removed by the entity previously entitled to the exemption, in a manner pursuant to all applicable codes.

§ 15.05.080 APPEALS.

Any decision made by the Building Official under this chapter may be appealed to the Town Council. Appeals shall be addressed to the Town Council, in writing, and shall state the basis of the appeal. Appeals shall be filed in the office of the Clerk not later than 5:00 p.m. on the tenth calendar day following the date of the action from which an appeal is taken. Appeals shall be accompanied by the applicable filing fee as specified by resolution adopted by the Town Council.

§ 15.05.090 PERIODIC REVIEW.

The Town shall review the requirements of this chapter every eighteen months for consistency with the California Energy Code and the Energy Commission's mid-cycle amendments and triennial code adoption cycle as applicable.

SECTION 2. This Ordinance shall be submitted to the California Building Standards Commission following adoption as consistent with state law.

SECTION 3. Compliance with CEQA. This Ordinance was assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the Town. The Town Council hereby finds that pursuant to CEQA Guidelines section 15378(b)(5), action on this item is not a project subject to CEQA because it is an administrative governmental activity which will not cause a direct or indirect physical change in the environment. The Town Council also finds that, alternately, under CEQA Guidelines section 15061(b)(3), this Ordinance is exempt from the requirements of CEQA 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, alternately, the Town Council finds that the Ordinance is exempt from the requirements of CEQA pursuant to CEQA Guidelines sections 15307 and 15308 as an action by a regulatory agency taken to protect the environment and natural resources.

SECTION 4. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remainder of this Ordinance. The Town Council hereby declares that it would have adopted this Ordinance, and each and every section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 5. Effective Date and Posting. This Ordinance shall take effect on July 1, 2022. Copies of this Ordinance shall, within fifteen days after its passage and adoption, be posted in three public places in the Town of Fairfax, to wit: 1. Bulletin Board, Town Hall Offices; 2. Bulletin Board, Fairfax Post Office; and 3. Bulletin Board, Fairfax Women's Club Building, located at 46 Park Road.

The foregoing Ordinance was introduced at a regular meeting of the Town Council on the ___ day of _____, 2021, and duly adopted at the next regular meeting of the Town Council on the ___ day of _____, 2021, by the following vote, to wit:

AYES:
NOES:
ABSENT:
ABSTAIN:

Bruce Ackerman, Mayor

Attest:

Michele Gardner, Town Clerk

Date