



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