

**RESOLUTION NO. 24-\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HERCULES, CALIFORNIA, SUSPENDING ENFORCEMENT OF THE CITY'S ALL-ELECTRIC REACH CODE (HERCULES MUNICIPAL CODE SECTION 9-5.04(b))**

**WHEREAS**, on January 18-20, 2022, the California Building Standards Commission adopted the 2021 International Building Code, 2021 International Residential Code, 2021 California Existing Building Code, 2021 California Historical Building Code, 2021 International Property Maintenance Code, 2021 California Green Building Standards Code, 2021 Uniform Mechanical Code, 2021 Uniform Plumbing Code, 2020 National Electrical Code, and the 2021 International Energy Conservation Code as the 2022 California Building Standards Code collectively; and

**WHEREAS**, State law required local jurisdictions to enforce the 2022 California Building Standards Code beginning January 1, 2023; and

**WHEREAS**, California Health and Safety Codes Sections 13143.5, 17958.5, 17958.7, and 18941.5 allow the City, by ordinance, to make modifications or changes to the California Building Standards Code and other regulations adopted pursuant to Health and Safety Code Section 17922 when such amendments are reasonably necessary because of local climatic, geological, or topographical conditions, and where such amendments establish requirements more stringent than those provided in the state code, which practice is known as adopting a "Reach Code"; and

**WHEREAS**, the City Council held study sessions on September 28, 2021, January 11, 2022, and February 8, 2022 to consider whether to impose all-electric requirements on certain types of new construction projects, subject to certain exemptions ("All-Electric Requirements"); and

**WHEREAS**, after the staff presentation on February 8, 2022, the City Council directed staff to draft recommendations to amend the 2022 California Building Standards Code to impose All-Electric Requirements, and to present a draft ordinance amendment to the Planning Commission for its consideration and recommendations; and

**WHEREAS**, on April 18, 2022, the Planning Commission reviewed and voted to recommend for Council adoption a draft ordinance aligned with Council's direction, but with certain modifications; and

**WHEREAS**, the ordinance amendment was introduced at the May 24, 2022 City Council meeting, and on June 14, 2022, the City Council made all findings required by law and adopted Ordinance No. 539 which included the All-Electric Requirements as amendments to the California Building Standards Code and codified them in the Hercules Municipal Code at Chapter 5 of Title 9 (Electrical Code); and

**WHEREAS**, the City of Berkeley’s natural gas ban ordinance, which similarly prevented new construction projects from including natural gas infrastructure, was challenged in court by the California Restaurant Association which claimed that Berkeley’s ordinance was preempted by federal law, specifically the Energy Policy and Conservation Act or “EPCA”; and

**WHEREAS**, on April 17, 2023, the Ninth Circuit decided *California Restaurant Association v. City of Berkeley* and found that the EPCA preempts states and local governments from regulating the quantity of natural gas used by an appliance at the point of use; and

**WHEREAS**, the All-Electric Requirements, in practice, regulate the use of natural gas because they prohibit such use in new construction projects; and

**WHEREAS**, the City of Berkeley did not appeal the Ninth Circuit decision and it is therefore law; and

**WHEREAS**, given the Ninth Circuit’s decision holding that the City is preempted from enforcing the All-Electric Requirements, the City Council now desires to suspend enforcement of the All-Electric Requirements while staff studies whether there is a way to amend the reach code or otherwise address the potential environmental and other impacts of natural gas.

**NOW, THEREFORE, BE IT RESOLVED**, by the City Council of the City of Hercules as follows:

1. The City Council hereby suspends enforcement of the City’s All-Electric Requirements, which are set forth at Section 9-5.04(b) of the Hercules Municipal Code.
2. This action is exempt from review under the California Environmental Quality Act pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that this action will not result in any environmental impacts; it is an administrative action that does not authorize any construction and is temporary in nature.

The foregoing Resolution was duly and regularly adopted at a regular meeting of the City Council of the City of Hercules held on the 9<sup>th</sup> day of April 2024, by the following vote of the Council:

**AYES:**

**NOES:**

**ABSTAIN:**

**ABSENT:**

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Dan Romero, Mayor

ATTEST:

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Eibleis Melendez  
City Clerk