

INTRODUCED BY COUNCILMEMBER KALB, MAYOR SCHAAF
AND COUNCILMEMBER BAS

City Attorney's Office

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

**ORDINANCE AMENDING THE OAKLAND MUNICIPAL CODE (O.M.C.)
TO ADD BUILDING AND CONSTRUCTION CODE CHAPTER 15.37
ENTITLED "ALL-ELECTRIC CONSTRUCTION IN NEWLY
CONSTRUCTED BUILDINGS"; AND ADOPTING CEQA EXEMPTION
FINDINGS**

WHEREAS, Health and Safety Code Section 18941.5, with reference to Section 17958.7, allows for more restrictive local amendments to the current California Building Standards Code ("Building Code") that are reasonably necessary because of local climatic, geological, or topographical conditions; and

WHEREAS, the Oakland City Council expressly declares that these proposed amendments to the Building Code are reasonably necessary because of local climatic, topographical, and geological conditions; and

WHEREAS, failure to address and significantly reduce greenhouse gas emissions could result in rises in sea level that could put at risk Oakland homes and businesses, public facilities, and portions of major local and regional transportation infrastructure; and

WHEREAS, due to changes in rainfall patterns expected with climate change, the City of Oakland is likely to be subject to more severe weather events, including droughts as well as more intense storms that increase the risks of, and have actually resulted in, extreme wildfires, erosion, overland local flooding and landslides; and

WHEREAS, it is expected that climate change will result in further severe and frequent extreme heat events, intensifying local heat islands and putting vulnerable populations at health risk, which has already occurred at unprecedented levels with sea level/bay rise and widespread wildfires in the area; and

WHEREAS, the City of Oakland is committed to reducing greenhouse gas emissions in accordance with the United States' original commitment to the Paris Climate Accord; and

WHEREAS, the City of Oakland is a signatory to the Under2 Memorandum of Understanding and the Global Covenant of Mayors, and has therefore declared its commitment to reducing its greenhouse gas emissions to levels consistent with the targets established in the 2015 Paris Agreement, with the goal of limiting global warming to under 2°C by the end of this century; and

WHEREAS, in 2016, the State of California enacted Senate Bill (SB) 32 to require greenhouse gas emissions to be reduced to 40 percent below 1990 levels by 2030; and

WHEREAS, per the City's 2030 Equitable Climate Action Plan (ECAP), the City of Oakland has adopted greenhouse gas emissions reductions targets, relative to 2005 levels, of 83 percent by 2050 and 56 percent by 2030; and

WHEREAS, in 2017, 25.8 percent of Oakland's local greenhouse gas emissions came from buildings, with 71 percent of that total coming from onsite natural gas combustion; and

WHEREAS, Oakland's 2017 CURB analysis indicated that the City would not achieve its greenhouse gas reduction targets without eliminating natural gas combustion in buildings; and

WHEREAS, Oakland's 2017 CURB analysis listed electrifying building space heating as one of the top five strategies necessary and critical to achieving the City's 2030 and 2050 greenhouse gas reduction targets; and

WHEREAS, Oakland primarily receives electricity from East Bay Community Energy, whose electricity generation is a minimum of 85 percent renewable in 2019, and likely to be 100 percent renewable and carbon free by 2030 at the latest, while prioritizing local renewable generation and local green jobs development; and

WHEREAS, any increase in electricity consumption in Oakland would be drawing from East Bay Community Energy's clean and equitable electric grid; and

WHEREAS, onsite natural gas combustion is known to lead to elevated levels of harmful indoor air pollutants that disproportionately affect frontline communities, including people of color, immigrants, indigenous communities, low-income people, those with disabilities, and the unhoused; and

WHEREAS, the indoor air pollutants that arise from onsite natural gas combustion have been shown to contribute to respiratory ailments such as asthma, such that children living in homes with gas cooking are 42 percent more likely to have asthma; and

WHEREAS, natural gas infrastructure and pipelines contribute to the risk of fires and explosions such as the 2010 San Bruno pipeline explosion, with the risk magnified in cases of major earthquakes; and

WHEREAS, highly efficient buildings enhance Oakland’s public health, welfare, and resiliency by promoting environmental and economic health and safety through the design, construction, maintenance, and operation of buildings; and

WHEREAS, it is reasonably necessary to require buildings to produce renewable, low-carbon electricity and to reduce energy consumption through efficient design in order to reduce the effects of climate change (which have already been experienced locally through sea/bay level rise and wildfires), reduce regional pollution, improve overall safety, and improve resilience to climate change; and

WHEREAS, costs for all-electric new construction have been shown to be on par with or less than those for mixed-fuel construction in Oakland’s climate zone; and

WHEREAS, the requirements specified in this Ordinance were the subject of stakeholder outreach from June through September 2019, including public meetings and individual stakeholder interviews; and

WHEREAS, in July 2020, the City of Oakland adopted a 2030 Equitable Climate Action Plan (ECAP), a comprehensive plan responsive to the City’s 2018 Climate Emergency and Just Transition Resolution and the adopted 2030 GHG emissions reduction target, which includes targets for eliminating natural gas in new construction by 2023, developing a plan by 2022 to ensure that all existing buildings in the city are all-electric by 2040, and requiring all major retrofits of City facilities to be all-electric effective immediately; and

WHEREAS, in July 2020, alongside adoption of the 2030 ECAP, Oakland City Council also adopted a carbon neutrality target of 2045, the attainment of which will require all buildings in the City to be fully electric; and

WHEREAS, this Ordinance is exempt from the California Environmental Quality Act (“CEQA”) under CEQA Guidelines sections 15061(b)(3) and 15308 on the grounds that the regulatory standards contained therein are more stringent than those set forth in the State Building Standards Code, and as a result there are no reasonably foreseeable adverse impacts or possibility that the activity in question may have a significant effect on the environment.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. Recitals. The City Council finds and determines the foregoing recitals are true and correct and are hereby incorporated herein as findings and determinations of the City Council.

SECTION 2. Addition of Chapter 15.37 of the Oakland Municipal Code. Oakland Municipal Code (“O.M.C.”) Chapter 15.37 is hereby added to read as follows:

Chapter 15.37

ALL-ELECTRIC CONSTRUCTION IN NEWLY CONSTRUCTED BUILDINGS

15.37.010 Applicability.

- A. The requirements of this Chapter shall apply at the time of building permit application for all Newly Constructed Buildings, as defined in Section 15.37.020.
- B. The requirements of this Chapter shall not apply to the use of portable propane appliances for use outside of the building envelope, such as outdoor cooking and outdoor heating appliances.

15.37.020 Definitions.

- A. "Accessory Dwelling Unit" shall have the same meaning as specified in Section 65852.2 of the California Government Code.
- B. "All-Electric Building" or "All-Electric Design" is a building or building design 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.
- C. "Greenhouse Gas Emissions" means the six molecules of heat-trapping gases identified and described in the Intergovernmental Panel on Climate Change (IPCC) report Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change (2013).
- D. "Mixed-Fuel Building" means a building that uses natural gas or propane as fuel for space heating or cooling, exterior heating, decorative uses and lighting, water heating (including pools and spas), cooking appliances or clothes drying appliances, onsite generation of electricity (except where primarily fueled by onsite digestion of organic material), or contains fixtures, piping systems, or infrastructure for natural gas or propane equipment for such uses.
- E. "Natural Gas" shall have the same meaning as "Fuel Gas" as defined in the California Plumbing Code Section 208.0 and the California Mechanical Code Section 208.0.
- F. "Newly Constructed Buildings" shall mean any building that: (1) has obtained a valid land use entitlement from the City on or after the effective date of this Chapter and has never before been used or occupied for any purpose, (2) has

obtained a valid land use entitlement from the City before the effective date of this Chapter but has failed to file for a development related permit within six (6) months of said entitlement and has never before been used or occupied for any purpose.

15.37.030 Requirement for All-Electric Construction in Newly Constructed Buildings.

- A. Newly Constructed Buildings shall meet the definition of an All-Electric Building and contain an All-Electric Design.
- B. Conversion to Mixed-Fuel Buildings. The Building Official shall not issue permits that would convert an All-Electric Building or Project into a Mixed-Fuel Building where the application was submitted on or after the effective date of this Chapter.
- C. The requirements of this Section shall be deemed objective planning standards under Government Code section 65913.4 and objective development standards under Government Code section 65589.5.

15.37.040 Exceptions.

The requirements of this Chapter shall not apply to the following:

- A. Accessory Dwelling Units that are physically attached and located within the original primary building footprint and located entirely within a single-family or multi-family dwelling.
- B. Buildings that are not deemed to be Newly Constructed Buildings or are not deemed conversions from existing All-Electric Buildings to Mixed-Fuel Buildings.

15.37.050 Infeasibility Waiver.

- A. Waiver. If an applicant for a Newly Constructed Building believes that circumstances exist that makes it infeasible to meet the requirements of this Chapter, the applicant may request an exemption as set forth below. In applying for an exemption, the burden is on the Applicant to show infeasibility.
- B. Application. If an applicant for a Newly Constructed Building believes such circumstances exist, the applicant may apply for an exemption at the time of application submittal in accordance with the Planning and Development Services administrative guidelines. The applicant shall indicate the maximum threshold of compliance they believe is feasible for the project and the circumstances that make it infeasible to fully comply with this Chapter. Circumstances that constitute infeasibility include, but are not limited to the following:

1. There is conflict with any other City regulations, such as those requiring historic preservation;
 2. There is a lack of commercially available materials and technologies to comply with the requirements of this Chapter;
 3. Applying the requirements of this Chapter would effectuate an unconstitutional taking of property or otherwise have an unconstitutional application to the property.
- C. Granting of Exemption. If the Director of the Planning and Building Department, determines that it is infeasible for the applicant to fully meet the requirements of this Chapter based on the information provided, the Director shall determine the maximum feasible threshold of compliance reasonably achievable for the project. The decision of the Director shall be provided to the applicant in writing. If an exemption is granted, the applicant shall be required to comply with this Chapter in all other respects and shall be required to achieve, in accordance with this Chapter, the threshold of compliance determined to be achievable by the Director.
- D. Denial of Exemption. If the Director of the Planning and Building Department determines that it is reasonably possible for the applicant to fully meet the requirements of this Chapter, the request shall be denied and the Director shall so notify the applicant in writing. The project and compliance documentation shall be modified to comply with this Chapter prior to further review of any pending planning or building application.
- E. Council Review of Exemption. For any Newly Constructed Building that requires review and action by the City Council, the Council shall act to grant or deny the exemption, based on the criteria outlined above, after recommendation by the Director of the Planning and Building Department.

15.37.060 Appeal.

- A. Any aggrieved Applicant may appeal the determination of the Director of the Planning and Building Department regarding the granting or denial of an exemption pursuant to this Chapter.
- B. Any appeal must be filed in writing with the Planning and Building Department not later than fourteen (14) days after the date of the determination by the Director. The appeal shall state the alleged error or reason for the appeal.

- C. The appeal shall be processed and considered by the City Council in accordance with the provisions of the Oakland Municipal Code.

15.37.070 Periodic Review and Administrative Regulations.

The City Administrator or designee shall review the requirements of this Chapter for ongoing consistency with California Building Standards Commission regulations under Title 24 and the Commission's triennial code adoption cycle and is also authorized to draft administrative regulations implementing requirements of this Chapter.

15.37.080 Violations.

An owner of a building subject to this Chapter who fails to comply with any of this Chapter's requirements shall be subject to fines and penalties contained in Titles 1 and 15 pursuant to Section 106 of the Charter of the City of Oakland, which provides that the City has the right and the power to make and enforce all laws and regulations with respect to municipal affairs.

SECTION 3. Direction to City Administrator to Study and Provide Informational Report and Options on: (1) Potential Application of this Chapter to Major Renovations and (2) Energy Efficient Commercial and Residential Appliances Appropriate for All-Electric Buildings.

The City Council directs City Administrator to study and provide an informational report to the City Council on: (1) the potential application of this Chapter to buildings that undergo a Major Renovation, including developing a feasible definition for "Major Renovation" that is consistent with the California Building Code and the Oakland Municipal Code and (2) energy efficient commercial and residential appliances that are appropriate for All-Electric Buildings.

SECTION 4. California Environmental Quality Act. The City Council finds that this Ordinance is exempt from CEQA under CEQA Guidelines section 15061(b)(3) on the grounds that the standards contained therein are more stringent than those set forth in the State Building Standards Code, and as a result there are no reasonably foreseeable adverse impacts or possibility that the activity in question may have a significant effect on the environment. The Ordinance is also exempt from CEQA under CEQA Guidelines section 15308, because it is a regulatory action for the protection of the environment. The foregoing determination is made by the City Council in its independent judgment.

SECTION 5. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

SECTION 6. Effective Date. This Ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES -FORTUNATO BAS, GALLO, GIBSON MCELHANEY, KALB, REID, TAYLOR, THAO
AND PRESIDENT KAPLAN

NOES –

ABSENT –

ABSTENTION –

ATTEST: _____

ASHA REED
Acting City Clerk and Clerk of the Council
of the City of Oakland, California

Date of Attestation: _____

NOTICE AND DIGEST

ORDINANCE AMENDING THE OAKLAND MUNICIPAL CODE (O.M.C.) TO ADD BUILDING AND CONSTRUCTION CODE CHAPTER 15.37 ENTITLED “ALL-ELECTRIC CONSTRUCTION IN NEWLY CONSTRUCTED BUILDINGS”; AND ADOPTING CEQA EXEMPTION FINDINGS

This Ordinance adds Building and Construction Code Chapter 15.37, entitled “All Electric Construction in Newly Constructed Buildings,” to require the full electrification of Newly Constructed Buildings, provided the Newly Constructed Building has not been previously used or occupied for any other purpose. The ordinance also prevents the conversion of existing All-Electric Buildings to Mixed-Fuel Buildings. The City also made a finding of no potential significant environmental impact based on California Environmental Quality Act (CEQA) Guidelines sections 15061(b)(3) and 15308. The intent of this Ordinance is to improve community health, safety, and resilience by reducing the emissions of greenhouse gases (GHGs), which have numerous deleterious health and environmental effects from the results of global warming.