



City Council AGENDA REPORT

DATE: 06/01/2023

AGENDA OF: 06/13/2023

DEPARTMENT: Planning and Community Development

SUBJECT: Suspension of the Natural Gas Prohibition Ordinance (PL)

RECOMMENDATION: Resolution suspending enforcement of Santa Cruz Municipal Code 6.100 Prohibition of Natural Gas Infrastructure in new buildings.

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 was modeled after the City of Berkeley's natural gas prohibition which was also recently adopted at the time. Santa Cruz's ordinance did provide exceptions that the Berkeley ordinance did not, with the most important being that restaurants would still be allowed to use natural gas (for cooking purposes only). For more information on the ordinance and its role in building electrification efforts, SCMC Chapter 6.100 text is attached as well as the Building Electrification City Council Agenda Report of March 24, 2020.

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 Opinion holds that the Energy Policy and Conservation Act (EPCA) preempts the City of Berkeley's ordinance as the EPCA does not allow State and local governments to prohibit an end-user's ability to use natural gas products. This ruling calls into question Santa Cruz's ability to enforce its Natural Gas Prohibition Ordinance given the similarities between the two ordinances.

DISCUSSION: The City Attorney's Office analyzed the *City of Berkeley* ruling and determined that the City of Santa Cruz's exceptions in its Natural Gas Prohibition Ordinance do not enable the City to avoid the decision's applicability to the City. The ruling is being appealed, but until further court decisions are made, staff recommends that the City Council approve a resolution suspending enforcement of SCMC Chapter 6.100. The resolution to suspend enforcement of SCMC Chapter 6.100 is attached.

Should this ruling stand, staff are already contemplating alternatives to a natural gas prohibition that allow the City to help achieve its energy and decarbonization goals. These were being considered as part of the existing building electrification efforts and will now be contemplated for both existing buildings and new construction. One possibility could be enforcing stricter energy efficiency standards through the Building Code. This type of regulation would be allowed

despite the *City of Berkeley* ruling because it would not prohibit natural gas, but it would disincentivize natural gas in favor of building electrification. An interdepartmental team of staff was already formed last year to work on decarbonization efforts, and this team will continue to work on alternatives that further sustainable development.

Health in All Policies

The goal of Health in All Policies (HiAP) is to ensure that decision-makers are informed about the impacts on the three HiAP pillars of health, equity, and sustainability when reviewing projects and policy options. While the City’s Natural Gas Prohibition Ordinance greatly supported health and sustainability throughout the City, the Ninth Circuit’s *California Restaurant Association v. City of Berkeley* deemed this type of ordinance to not be in compliance with the law. Therefore, suspending the City’s Ordinance until further notice protects the City from other lawsuits that could affect the fiscal sustainability of the City.

ENVIRONMENTAL REVIEW: This resolution suspending the noted City ordinance is done to comply with applicable case law and associated federal law and as such is mandated, thus it is not a project subject to the California Environmental Quality Act (CEQA) and does not require any further environmental review or documentation.

FISCAL IMPACT: It is anticipated that there will be a small increase in staff time related to building field inspections as the gas piping field will be reintroduced for new construction. Otherwise, this resolution would have no direct effect on the fiscal conditions of the City. Suspension of the Natural Gas Prohibition Ordinance will protect the City from lawsuits that would have a longer-term negative effect on the City’s fiscal conditions.

Prepared By:
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Submitted By:
Lee Butler
Director of Planning and
Community Development

Approved By:
Matt Huffaker
City Manager

ATTACHMENTS:

1. RESOLUTION.DOCX
2. SCMC CHAPTER 6.100.PDF
3. BUILDING ELECTRIFICATION CITY COUNCIL AGENDA REPORT - 3.24.20.PDF

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SANTA CRUZ AUTHORIZING AND DIRECTING THE CITY MANAGER AND THE PLANNING AND COMMUNITY DEVELOPMENT DIRECTOR TO ADMINISTRATIVELY SUSPEND ENFORCEMENT OF SANTA CRUZ MUNICIPAL CODE CHAPTER 6.100, CONSISTENT WITH, AND AS REQUIRED BY, THE DECISION OF THE NINTH CIRCUIT COURT OF APPEAL RULING IN *CALIFORNIA RESTAURANT ASSOCIATION V. CITY OF BERKELEY* AND ANY SUBSEQUENT JUDICIAL PROCEEDING OR ORDER OF THE COURT RELATED TO THE TIMING AND APPLICATION OF THE RULING

WHEREAS, on April 14, 2020, City Council adopted Ordinance No. 2020-06, now codified as City of Santa Cruz Municipal Code Chapter 6.100 (Prohibition of Natural Gas Infrastructure in New Buildings); and

WHEREAS, on April 17, 2023, a three-judge panel of the Ninth Circuit Court of Appeal issued a decision holding that an ordinance of the City of Berkeley with similar provisions as the City's ordinance is preempted by the Energy Policy and Conservation Act of 1975; and

WHEREAS, while the Berkeley decision is currently binding precedent in the 9th Circuit Court of Appeals, the City of Berkeley may seek *en banc* review or petition the U.S. Supreme Court for a writ of *certiorari* and, therefore the binding nature of the case on parties other than the litigants has not been finally resolved.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Santa Cruz as follows:

SECTION 1. Authorization and Direction to Suspend Enforcement. The City Manager and Planning and Community Development Director are hereby authorized and directed to suspend enforcement of City of Santa Cruz Municipal code Chapter 6.100, consistent with, and as required by, the decision of the Ninth Circuit Court of Appeals ruling in *California Restaurant Association v. City of Berkeley* and any subsequent judicial proceeding and/or order of the Court related to the timing and application of the ruling.

SECTION 2. Notice. Notice of the action suspending enforcement of Chapter 6.100 shall be made publicly available for review and posted to the City's website, and shall also be provided to affected development applicants in the city at the time of application, or as otherwise necessary to provide direct notice to applicants regarding the impacts of such actions on the processing of their applications.

PASSED AND ADOPTED this 13th day of June 2023, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

APPROVED: _____
Fred Keeley, Mayor

ATTEST: _____
Bonnie Bush, City Clerk Administrator