



STAFF REPORT

City Council

Date: April 3, 2024

To: Mayor and City Council

From: Michael Chandler, City Manager

Prepared By: Jill Bergman, Community and Economic Development Director

Title: Adopt Urgency Ordinance No. 1456, Repealing Chapter 15.11 (Energy Code) of the Martinez Municipal Code, Removing Requirement for All-Electric Infrastructure in New Construction

Recommendation

Waive reading, introduce and adopt the attached urgency ordinance making findings under Government Code Section 36937(b) and repealing Chapter 15.11 (Energy Code) to Title 15 (Buildings and Construction) and Ordinance 1439 (Adoption by Reference of the 2019 California Energy Code to Require all Newly Construction Residential Buildings, Hotels, Offices and Retail Buildings to be Construction as All-electric Buildings Without Natural Gas Infrastructure) to Comply with Federal Law and Declaring the Urgency Thereof in Accordance with Government Code Sections 36934 and 36937.

Background

On October 5, 2022, the City Council adopted Ordinance No. 1439, which added Chapter 15.11 (Energy Code) to Title 15 (Buildings and Construction) of the Martinez Municipal Code, adopting by reference the 2019 California Energy Code for the purpose of requiring all newly constructed residential buildings, hotels, offices, and retail buildings to be constructed as all-electric buildings without natural gas infrastructure, unless otherwise indicated by the California Energy Code. This action was taken in recognition of the Council's declaration of climate emergency pursuant to Council Resolution 047-21, adopted on April 21, 2021, which among other things, indicated the City should develop policies to require all new construction to be fully electric.

The trend toward all electric infrastructure to reduce greenhouse gases was previously embraced by the City of Berkeley in 2019, with adoption of its "green building"/all-electric infrastructure regulations, and also by the Contra Costa County Board of Supervisors on January 18, 2022.

In November 2019, the California Restaurant Association (CRA) sued the City of Berkeley to challenge its all-electric infrastructure ordinance, asserting that such regulation is preempted

by federal law under the Energy Policy and Conservation Act (EPCA), which regulates the standards for consumer appliances. The federal District Court for the Northern District rejected the CRA's challenge and dismissed the case. The CRA appealed.

In April 2023, the Ninth Circuit Court of Appeals reversed the District Court's decision, and held that the EPCA preempts the City of Berkeley's 2019 ordinance banning installation of natural gas piping in newly constructed buildings, finding that such a regulation "concerns the energy use" of a "covered product" under EPCA. The City of Berkeley filed a timely petition for rehearing, which was joined by amici curiae from across the United States. The Ninth Circuit ultimately denied the petition for rehearing on January 2, 2024. As a result, the City's "all electric infrastructure" ordinance and similar regulations throughout the country are deemed preempted by federal law.

Discussion

The purpose of the attached Urgency Ordinance No. 1456 is to eliminate any confusion as to the requirements of the City's building codes and avoid confusion for applicants for building permits. Developers and applicants who have pending or have had previously approved projects (which were subject to the all-electric infrastructure requirement but are not yet built) need immediate relief from the mandatory application of Chapter 15.11 all-electric infrastructure requirements. Additionally, when an ordinance has been rendered legally unenforceable as a result of subsequent changes in the law, the ordinance should be repealed as soon as possible as necessary to protect the public's health, safety and welfare by complying with state and federal law. This is in accordance with the procedures and findings set forth in Government Code Section 36934 and 36937(b).

Urgency Ordinance No. 1456 also repeals any conditions of approval implementing Chapter 15.11 for development applications which were previously approved subject to compliance with Chapter 15.11, but which have not yet been issued building permits to construct all electric infrastructure. Developers may still choose to construct their development with all-electric infrastructure, but they are not required to do so as of the effective date of the Urgency Ordinance.

Staff will indicate the repeal of Chapter 15.11 within the Municipal Code accessed through the City's website until the next Municode Library update occurs.

Fiscal Impact

No City fiscal actions are associated with adoption of this Urgency Ordinance, which repeals Ordinance No 1439 and thereby repeals Martinez Municipal Code Section 15-11 (Energy Code), eliminating the requirement for all-electric infrastructure for new construction.

Attachments

- Urgency Ordinance No. 1456