



Item No. 10 Town of Atherton

CITY COUNCIL STAFF REPORT – PUBLIC HEARING

**TO: HONORABLE MAYOR AND CITY COUNCIL
GEORGE RODERICKS, CITY MANAGER**

FROM: ANDREAS BOOHER, ASSISTANT CITY ATTORNEY

DATE: JUNE 19, 2024

**SUBJECT: CONSIDER ORDINANCE AMENDING CHAPTER 15.19 OF THE
ATHERTON MUNICIPAL CODE (GREEN BUILDING CODE)**

RECOMMENDATION

It is recommended that the Town Council introduce by title only and waive the first reading of an Ordinance ("Ordinance"), repealing and replacing Section 15.19.030 of the Atherton Municipal Code ("AMC") for consistency with federal law, as articulated by the Ninth Circuit Court of Appeals ruling in California Restaurant Association v. City of Berkeley.

BACKGROUND

On April 17, 2023, a three-judge panel of the Ninth Circuit Court of Appeals ruled in California Restaurant Association v. City of Berkeley ("Berkeley decision"), that a Berkeley ordinance requiring all-electric new buildings was pre-empted by the federal Energy Policy and Conservation Act of 1975 (EPCA) and was therefore invalid. In May 2023, due to the Ninth Circuit Court's ruling, the Town suspended enforcement of the all-electric building requirement for new buildings. On January 2, 2024, the Ninth Circuit Court of Appeals declined to have the case re-heard by the full panel of Ninth Circuit Court judges. In March 2024, the City of Berkeley settled the case with CRA, meaning the Ninth Circuit decision stands and effectively bans local jurisdictions from requiring new buildings be all-electric.

As soon as it became clear that the CRA decision would stand, the Town stopped enforcing those provisions of Chapter 15.19 that conflicted with the decision. Namely, this means that the Town stopped requiring newly constructed buildings to be all-electric by prohibiting the installation of natural gas infrastructure.

Staff now recommends repealing and replacing Section 15.19.030 to remove electrification requirements to bring the Atherton Municipal Code in line with the CRA decision.

ANALYSIS

The California Environmental Quality Act, Public Resources Code section 21000, et seq., ("CEQA") requires the Town to examine the potential environmental impacts from the "projects,"

as that term is defined in CEQA, that the Town approves. CEQA, however, provides for certain categories of projects that are exempt from CEQA review. As set forth in the CEQA Guidelines, the approval of the proposed ordinance would be exempt from CEQA review under the Class 7 and Class 8 exemptions. (CEQA Guidelines, §§ 15307 and 15308.) Class 7 exemptions apply to actions taken by regulatory agencies for the protection of natural resources and Class 8 exemptions apply to actions taken by regulatory agencies for the protection of the environment. The reach code protects both natural resources and the environment by encouraging reductions in the use of fossil fuels, which would reduce the environmental impacts associated with the production, transport, and use of fossil fuels. The reach code also protects both natural resources and the environment by encouraging the reduction in the amount of greenhouse gas emissions, thereby reducing the well-documented impacts to natural resources and the environment from climate change.

FISCAL IMPACT

There is no fiscal impact.

GOAL ALIGNMENT

This Report and its contents are in alignment with the following Council Policy Goals:

- Goal Area F – Be Forward-Thinking, Well-Managed, and Well-Planned

POLICY FOCUS

None

PUBLIC NOTICE

Public notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting in print and electronically. Information about the project is also disseminated via the Town’s electronic News Flash and Atherton Online. There are approximately 1,200 subscribers to the Town’s electronic News Flash publications. Subscribers include residents as well as stakeholders –to include, but be not limited to, media outlets, school districts, Menlo Park Fire Protection District, service providers (water, power, and sewer), and regional elected officials.

COMMISSION/COMMITTEE FEEDBACK/REFERRAL

This item has not been before a Town Committee or Commission

ATTACHMENTS

1. Ordinance Amending Section 15.19.030 of the Atherton Municipal Code

ORDINANCE NO. XXX

**AN ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ATHERTON
REPEALING AND RE-ENACTING SECTION 15.19.030 OF THE ATHERTON
MUNICIPAL CODE**

WHEREAS, the Town of Atherton ("Town") has adopted the 2022 California Green Building Code, and

WHEREAS, the ruling in *California Restaurant Association v. City of Berkeley* limits how the Town can regulate fuel sources in new buildings; and

WHEREAS, the Town now wishes to revise Section 15.19.030 of the Atherton Municipal Code to be consistent with legal requirements imposed by the *City of Berkeley* decision;

The City Council of the Town of Atherton does hereby ordain as follows:

Section 1. PURPOSE AND AUTHORITY

The purpose of this amendment is to repeal and re-enact Section 15.19.030, related to the Town's Green Building Code to make it consistent with federal law as clarified in the *City of Berkeley* decision.

**Section 2. REPEAL AND REENACTMENT OF ATHERTON MUNICIPAL CODE
SECTION 15.19.030**

Section 15.19.030 is hereby repealed and re-enacted to read as follows:

Part 11 – California Green Building Code (CALGreen)

CHAPTER 2 DEFINITIONS

ADDITION. An extension or increase in floor area of an existing building or structure.

ALL-ELECTRIC BUILDING. A building that contains no combustion equipment or plumbing for combustion equipment serving space heating (including fireplaces), water heating (including pools and spas), cooking appliances (including barbeques), and clothes drying, within the building or building property lines, and instead uses electric heating appliances for service.

ALTERATION OR ALTER. Any construction or renovation to an existing structure other than repair for the purpose of maintenance or addition.

COMBUSTION EQUIPMENT. Any equipment or appliance used for space heating, water heating, cooking, clothes drying and/or lighting that uses fuel gas.

ELECTRIC HEATING APPLIANCE. A device that produces heat energy to create a warm environment by the application of electric power to resistance elements, refrigerant compressors, or dissimilar material junctions, as defined in the California Mechanical Code.

FUEL GAS. A gas that is natural or manufactured, including liquefied petroleum, or a mixture thereof.

NEWLY CONSTRUCTED (or NEW CONSTRUCTION). A newly constructed building (or new construction) does not include additions, alterations, or repairs.

CHAPTER 4 – RESIDENTIAL MANDATORY MEASURES

Division 4.1 PLANNING AND DESIGN

SECTION 4.106

SITE DEVELOPMENT

4.106.5 Readiness to become all-electric buildings. New construction buildings shall comply with Section 4.106.5.1 or 4.106.5.2 so that they are ready to accommodate installation of electric heating appliances.

4.106.5.1. New construction. All newly constructed buildings and Accessory Dwelling Units, Guest Houses and Pool Houses shall be ready to become all-electric buildings.

Tenant improvements shall not be considered new construction. The final determination whether a project meets the definition of substantial reconstruction/alteration shall be made by the local enforcing agency.

Exceptions:

1. Residential Buildings may contain non-electric indoor and outdoor cooking appliances, fireplaces, and outdoor firepits.
2. [repealed]
3. Emergency Generators may utilize fuel gas.

[repealed]4.106.5.2 Requirements for combustion equipment.

Where combustion equipment is allowed under Sections 4.106.5 or 4.106.5.1, the construction drawings shall indicate electrical infrastructure and physical space accommodating the future installation of an electrical heating appliance in the following ways, as certified by a registered design professional or licensed electrical contractor:

1. Branch circuit wiring, electrically isolated and designed to serve all electrical heating appliances in accordance with manufacturer requirements and the California Electrical

Code, including the appropriate voltage, phase, minimum amperage, and an electrical receptacle or junction box within five feet of the appliance that is accessible with no obstructions. Appropriately sized conduit may be installed in lieu of conductors; and

2. Labeling of both ends of the unused conductors or conduit shall be with “For Future Electrical Appliance”; and
3. Reserved circuit breakers in the electrical panel for each branch circuit, appropriately labeled (i.e., “Reserved for Future Electric Range”), and positioned on the opposite end of the panel supply conductor connection; and
4. Connected subpanels, panelboards, switchboards, busbars, and transformers shall be sized to serve the future electrical heating appliances. The electrical capacity requirements shall be adjusted for demand factors in accordance with the California Electric Code; and
5. Physical space for future electrical heating appliances, including equipment footprint, and if needed a pathway reserved for routing of ductwork to heat pump evaporator(s), shall be depicted on the construction drawings. The footprint necessary for future electrical heating appliances may overlap with non-structural partitions and with the location of currently designed combustion equipment.

CHAPTER 5 – NONRESIDENTIAL MANDATORY MEASURES

Division 5.1 PLANNING AND DESIGN

SECTION 5.106 - SITE DEVELOPMENT

5.106.13 Readiness to become all-electric buildings. New construction buildings shall comply with Section 5.106.13.1 or 5.106.13.2 so that they are ready to facilitate future electrification.

5.106.13.1. New construction. All newly constructed nonresidential buildings shall be ready to become all-electric buildings.

Tenant improvements shall not be considered new construction. The final determination whether a project meets the definition of substantial reconstruction/alteration shall be made by the local enforcing agency.

Exceptions:

1. Nonresidential buildings containing kitchens located in a place of public accommodation, as defined in the California Building Code Chapter 2, may install commercial food heat-processing equipment served by fuel gas.

The applicant shall comply with Section 5.106.13.2.

2. [repealed]

5.106.13.2. Requirements for combustion equipment.

Where combustion equipment is allowed under Sections 5.106.13 or 5.106.13.1, the construction drawings shall indicate electrical infrastructure and physical space accommodating the future installation of an electrical heating appliance in the following ways, as certified by a registered design professional or licensed electrical contractor:

1. Branch circuit wiring, electrically isolated and designed to serve all electrical heating appliances in accordance with manufacturer requirements and the California Electrical Code, including the appropriate voltage, phase, minimum amperage, and an electrical receptacle or junction box within five feet of the appliance that is accessible with no obstructions. Appropriately sized conduit may be installed in lieu of conductors; and
2. Labeling of both ends of the unused conductors or conduit shall be with “For Future Electrical Appliance”; and
3. Reserved circuit breakers in the electrical panel for each branch circuit, appropriately labeled (i.e., “Reserved for Future Electric Range”), and positioned on the opposite end of the panel supply conductor connection; and
4. Connected subpanels, panelboards, switchboards, busbars, and transformers shall be sized to serve the future electrical heating appliances. The electrical capacity requirements shall be adjusted for demand factors in accordance with the California Electric Code; and
5. Physical space for future electrical heating appliances, including equipment footprint, and if needed a pathway reserved for routing of ductwork to heat pump evaporator(s), shall be depicted on the construction drawings. The footprint necessary for future electrical heating appliances may overlap with non-structural partitions and with the location of currently designed combustion equipment.