



City Council Memorandum

City of Arts & Innovation

TO: HONORABLE MAYOR AND CITY COUNCIL **DATE: JUNE 18, 2024**

FROM: OFFICE OF SUSTAINABILITY **WARDS: ALL**
CITY ATTORNEY'S OFFICE
COMMUNITY AND ECONOMIC DEVELOPMENT DEPARTMENT

SUBJECT: AN ORDINANCE TO REPEAL CHAPTER 16.26 - ELECTRIFICATION OF NEW BUILDINGS TO TITLE 16 OF THE RIVERSIDE MUNICIPAL CODE

ISSUE:

Consider the first reading of an ordinance to repeal Chapter 16.26 - Electrification of New Buildings to Title 16 of the Riverside Municipal Code.

RECOMMENDATIONS:

That the City Council adopt the first reading of an ordinance to repeal Chapter 16.26 - Electrification of New Buildings to Title 16 of the Riverside Municipal Code.

BACKGROUND:

On December 6, 2022, the City Council adopted Ordinance No. 7616 and added Chapter 16.26, titled "Electrification of New Buildings" to Title 16 of the Riverside Municipal Code. The ordinance requires all newly constructed buildings three-stories or less with a building permit application filed on or after January 1, 2023 to be all electric. All other newly constructed buildings, regardless of height or size, would be required to be all-electric if a building permit application were filed January 1, 2026 or later, in alignment with the next triennial building code cycles adoption.

Since the effective date of the ordinance on January 6, 2023, development activity subject to the ordinance includes:

- 436 total building permit applications
- 359 single family dwelling units (includes townhomes/duplexes)
- 17 Multifamily buildings
- 60 Commercial buildings (industrial, retail, office, etc.)
- 110 building permits issued

Riverside allows nine exceptions to the ordinance's requirements under specified circumstances, including an exception that allows natural gas to be used for food service establishments and

commercial kitchen appliances. The ordinance also includes an Infeasibility Waiver Process like several other adopting agencies. Given the exceptions and waiver option of the Riverside ordinance, no challenges have been received to date.

However, the City of Riverside's ordinance to require all-electric buildings is similar to those in other California cities including the City of Berkeley (Berkeley). Berkeley's ordinance was challenged by the California Restaurant Association (CRA). On April 17, 2023, a three-judge panel of the United States Court of Appeal for the Ninth Circuit issued an opinion in the case *California Restaurant Association v. City of Berkeley* that held that the Berkeley electrification ordinance was preempted by the federal Energy Policy and Conservation Act (EPCA).

EPCA is a federal regulation that establishes that energy use standards for "covered products" are set by federal law. "Covered products" include most major household appliances including cooking stoves, refrigerators, water heaters, clothes dryers, furnaces, air conditioners, pool heaters, and more. Under the broadly drafted opinion not only do the federal standards preempt state and local regulations, but any ordinance that has the impact of banning "covered products" is preempted by federal law. As such, Berkeley's ordinance which banned natural gas infrastructure indirectly banned natural gas appliances.

On May 31, 2023, Berkeley filed a petition for a rehearing en banc. On January 2, 2024 the Ninth Circuit denied Berkeley's petition. To settle the litigation filed by CRA, Berkeley agreed to not enforce its ordinance and agreed to repeal it on May 14, 2024.

DISCUSSION:

Riverside's Electrification of New Buildings ordinance was intended to support the City's Envision Riverside Strategic Plan priorities for Community Well-Being, Environmental Stewardship, and High Performing Government. It also supported the State's goals to decarbonize including the goal of statewide carbon neutrality by 2045.

With or without Riverside's ordinance, buildings in the City will continue to be decarbonized due to regulations and legislation from the State of California.

- Builders in the City can continue to opt, by their choice, to construct all-electric buildings.
- California's Green Building Code has increasingly shifted to all-electric fuel use as being more energy efficient and meeting the states goals to decarbonize the building sector. As an example, the latest building codes adopted in 2022 require residential buildings be constructed to support all-electric appliances and decarbonization measures for all building types.
- California's appliance standards are also increasingly requiring increased energy efficiency and limits on emissions of nitrous oxides (NO_x) that will be allowed.
- Electric appliances such as water heaters, space heaters, dryers, ovens, and cooktops will need to meet these stricter requirements to ensure both energy savings and improved indoor air quality.

When the City Council passed the ordinance in Riverside, over 60 cities in California had adopted similar policies and ordinances though some have been more limited in scope at the time that Riverside adopted its ordinance. Several of these cities are now repealing their ordinances. Other local governments are changing their building codes to limit their electrification "reach code" to

standards that demonstrate energy savings. Demonstrating energy savings requires in-depth technical analysis to ensure that the choice to electrify saves energy. These reach code ordinances also require approval by the California Energy Commission.

Considering the recent Ninth Circuit decision, Riverside’s ordinance could be vulnerable to a challenge. Due to the risk associated with litigation and the fact that the state is moving forward numerous regulations that will meet the same goals as the City, staff recommends that Riverside’s ordinance be repealed.

STRATEGIC PLAN ALIGNMENT:

This item contributes to the following Strategic Priorities and Goals:

Strategic Priority 5 – High Performing Government to provide world-class public service and **Goal 5.3** - Enhance communication and collaboration with community members to improve transparency, build public trust, and encourage shared decision-making.

This item aligns with each of the five Cross-Cutting Threads as follows:

1. **Community Trust** – This item is presented in a public meeting supporting transparency and is based on timely and sound policy.
2. **Equity** – The repeal will be consistent, fair, and impartial application of applicable laws and adopted building standards with equitable distribution of services to the entire community.
3. **Fiscal Responsibility** – The repeal of the ordinance reflects the City’s prudent stewardship of public funds and ensures responsible management of the City while providing quality public services.
4. **Innovation** – The triennial code update implements new building standards that improve means and methods of construction, enable the latest engineering practices, life safety measures, and allows new materials that help improve and strengthen the City’s built environment and the repeal of the all-electric ordinance does not impede those standards.
5. **Sustainability and Resiliency** – The repeal of the all-electric building ordinance does not impede the implementation of the triennial code update adopts the latest building standards that advance clean, green technology and resiliency within the built environment through the updated green, building, fire and energy codes.

FISCAL IMPACT:

There is no fiscal impact associated with the adoption of this ordinance.

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Approved by: Rafael Guzman, Assistant City Manager/Chief Sustainability Officer
Approved as to form: Phaedra A. Norton, City Attorney

Attachments:

1. Ordinance
2. Presentation