



AGENDA REPORT

City Council

MEETING DATE: May 15, 2024

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Sustainability Analyst

DEPARTMENT DIRECTOR: Kerry Kusiak

DEPARTMENT: Development Services

CITY MANAGER: Pamela Antil

SUBJECT:

Public Hearing to review and consider the introduction of City Council Ordinance No. 2024-04 proposing Municipal Code amendments which modify the 2022 California Building Standards Code related to energy efficiency and green building

RECOMMENDED ACTION:

Introduce City Council Ordinance No. 2024-04, titled “An Ordinance of the City Council of the City of Encinitas, California, adopting amendments to Chapter 23.12 (Uniform Codes for Construction) of Title 23 (Building and Construction) of the Encinitas Municipal Code to make certain amendments, additions, and deletions related to energy efficiency and green building” (Attachment 1 (clean) and 2 (local strikeout)).

ENVIRONMENTAL CONSIDERATIONS:

The minor amendments proposed will not have a significant effect on the environment because the strengthened requirements reduce hazards and accommodate features to reduce environmental effects. Adoption of the amendments is exempt from environmental review as per Section 15308 of the CEQA Guidelines, which allows a categorical exemption for “actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment.” Furthermore, the amendments were previously evaluated in the Final Negative Declaration (ND) for the Climate Action Plan (Case No. 17-224), dated December 5, 2017, and Addendum to the ND (Case No. ENV-004106-2020), dated Oct 20, 2020. The ND and the Addendum evaluated the potential environmental effects of the implementation of the Climate Action Plan, including the adoption and enforcement of energy efficiency and renewable energy ordinances. This project is within the scope of the Final Negative Declaration and the Addendum, and no further California Environmental Quality Act (CEQA) compliance is required.

This item is related to the following measures in the City’s Climate Action Plan:

- BE-2: Require Decarbonization of New Residential Buildings
- BE-4: Require Decarbonization of New Commercial Buildings

STRATEGIC PLAN:

This item aligns with the Environmental Health and Leadership Focus Area of the Strategic Plan.

FISCAL CONSIDERATIONS:

There is no direct fiscal impact associated with the staff recommendation. Costs associated with administering the ordinances will be recovered through plan check, permitting, and inspection fees currently in effect. No fee modifications are proposed.

BACKGROUND:

On November 18, 2020, City Council approved an interim update to the Climate Action Plan which included the following updated building-related measures which exceed state Building Code minimum standards:

- BE-2: Require Decarbonization of New Residential Buildings
- BE-4: Require Decarbonization of New Commercial Buildings

On October 26, 2022, City Council adopted and amended the California Building Standards Code (Attachment 3). The amendments, codified in Encinitas Municipal Code (EMC) Chapter 23.12 (Uniform Codes for Construction) of Title 23 (Building and Construction), included a decarbonization requirement, specifying that newly constructed buildings be all-electric.

The City of Berkeley had adopted a similar regulation in 2019, which was subject to an unsuccessful challenge in federal district court that the federal Energy Policy and Conservation Act (EPCA) preempted the City of Berkeley's all-electric ordinance. However, on April 17, 2023, the United States Court of Appeals for the Ninth Circuit ("Ninth Circuit") reversed a district court's decision and ruled that the EPCA preempted the City of Berkeley's all-electric ordinance. The EPCA (42 U.S.C. § 6297(c)) states that "no State [or local] regulation concerning the energy efficiency, energy use, or water use, of [a] covered product shall be effective with respect to such covered product." In response to the Ninth Circuit's ruling, on June 14, 2023, the City Council adopted Resolution 2023-75 (Attachment 4), temporarily suspending the all-electric requirement for new buildings.

On January 2, 2024, the Ninth Circuit denied the City of Berkeley's petition for rehearing and issued a modified opinion affirming that Berkeley's regulation is preempted by federal law. The City of Berkeley subsequently announced that it would not pursue an appeal of the Ninth Circuit ruling and will repeal its ordinance banning natural gas connections in new buildings. This decision effectively solidifies the Ninth Circuit's ruling on April 17, 2023, as final law.

ANALYSIS:

Staff recognizes City Council's priority to implement the City's Climate Action Plan and reduce local greenhouse gas emissions while ensuring compliance with federal and state laws. To this end, and in response to the outcomes of *California Restaurant Association v. City of Berkeley*, the recommended action before City Council is to permanently repeal EMC Sections 23.12.110.B and 23.12.110.C, which regulate the use of fuel gas infrastructure in new buildings, and adopt a revised set of requirements that encourages decarbonization through enhanced energy efficiency performance requirements that are not in conflict with EPCA. This approach aims to reduce emissions from new mixed-fuel buildings as well. The state allows such local amendments (commonly called "reach codes") to the California Energy Code (Part 6, of the California Building Standards Code) when findings can be made to support that local topographical, geological, and climatic conditions necessitate the amendments and when findings can be made that the standards are cost-effective. In no circumstances can a local amendment be less restrictive than the state adopted codes.

Proposed Ordinance No. 2024-04 would update the EMC to adopt an amended version of the California Energy Code that includes higher performance standards for all newly constructed single-family and low-rise (three habitable stories or less) multifamily buildings. The performance standards would apply to mixed-fuel and all-electric buildings alike. In addition, the proposed ordinance would expand electric-readiness requirements for all mixed-fuel multifamily and nonresidential newly constructed buildings. Single-family buildings less than 1,500 square feet, (including detached accessory dwelling units), high-rise (4 stories or more) multifamily buildings, and nonresidential buildings would be excluded from the requirement because, in these scenarios, meeting the requirement may not be cost effective (Attachment 5).

The 2022 California Energy Code establishes certain energy requirements for new construction, including energy performance targets. The performance requirements state that a proposed design may not exceed a specific energy budget, as calculated by State-approved modeling software. The proposed standards in Ordinance No. 2024-04 would increase the performance requirements to encourage the use of highly efficient heat pump appliances in newly constructed single-family and low-rise multifamily buildings.

For single-family buildings, the proposed standard is a 4.5-point reduction in the Energy Design Rating 1 (EDR1), where EDR1 represents the source energy budget. For low-rise multifamily buildings, the proposed standard is an eight (8) percent reduction in the source energy budget. Both standards have been determined to be cost effective and analysis has shown that constructing a new single-family building or low-rise multi-family building with all-electric appliances would be the most economical compliance option (Attachment 5).

In summary, the proposed approach aligns with federal and state laws, promotes energy efficiency, and encourages the transition to all-electric buildings while offering flexibility for mixed-fuel construction. It represents a balanced strategy to achieve greenhouse gas reduction targets while ensuring compliance and technical feasibility. Notably, the Cities of Santa Cruz, San Luis Obispo, and San Jose have each adopted a similar high-performance reach code, with several other municipalities in the state exploring a similar approach.

The ordinance also includes several administrative updates to enhance clarity and align with the proposed 2025 State Energy Code:

- Introduction of definition for “Certified Energy Analyst” to support the performance approach reach code language.
- Removal of definitions and code sections pertaining to the all-electric requirement.
- Modification of code language to clarify the electric vehicle (EV) charging requirements for nonresidential additions and alterations.
- Addition of electric readiness requirements for mixed-fuel single-family and multifamily buildings, including a guidance document for electric readiness of multifamily central hot water systems (Attachment 6). While the California Energy Code already incorporates some electric readiness provisions, the proposed requirements offer enhanced specificity to facilitate future conversion to all-electric systems.
- Reinstatement of the adoption by reference of the 2022 California Energy Code, Part 6 and the 2022 California Green Building Standards Code, Part 11, Title 24 of the California Code of Regulations which were previously omitted unintentionally in prior Ordinance Nos. 2022-13 and 2022-14.

All proposed amendments to the Municipal Code are shown in Attachment 2. ~~Red strike-through~~ font indicates deletions, while blue underlined font indicates additions. A clean copy of the draft ordinance is attached herein as Attachment 1. A redline version tailored for submission to the California Energy Commission and the California Building Standards Commission is also attached herein as Attachment 7.

ATTACHMENT(S):

1. Clean version of City Council Ordinance No. 2024-04, titled “An Ordinance of the City Council of the City of Encinitas, California, adopting amendments to Chapter 23.12 (Uniform Codes for Construction) of Title 23 (Building and Construction) of the Encinitas Municipal Code to make certain amendments, additions, and deletions related to energy efficiency and green building.”
2. Strikeout version of City Council Ordinance No. 2024-04 titled “An Ordinance of the City Council of the City of Encinitas, California, adopting amendments to Chapter 23.12 (Uniform Codes for Construction) of Title 23 (Building and Construction) of the Encinitas Municipal Code to make certain amendments, additions, and deletions related to energy efficiency and green building.”
3. Ordinance No. 2022-14, titled “An Ordinance of the City Council of Encinitas, adopting amendments to Chapter 23.12 (Uniform Codes for Construction) of Title 23 (Building and Construction) of the Encinitas Municipal Code to make certain amendments, additions, and deletions related to building decarbonization, electric vehicles, water conservation and energy efficiency.”
4. Resolution No. 2023-75, titled “A Resolution of the City Council of the City of Encinitas Temporarily Suspending Sections 23.12.110.B and 23.12.110.C of Chapter 23.12 (Uniform Building Codes for Construction) Of Title 23 (Building and Construction) of the Encinitas Municipal Code.
5. High Performance Reach Code Analysis, California Energy Codes and Standards Team
6. Guidance for Electric Readiness of Multifamily Central Hot Water Systems
7. Redline amendments to the 2022 Title 24 California Building Standards Code, Part 6, Energy Code and 2022 Title 24 California Building Standards Code, Part 11, Green Building (CALGreen) Code for filing with the California Building Standards Commission.