



*City  
Council  
Report*

**Item:** 15  
**Category:** PUBLIC HEARINGS AND INTRODUCTION OF ORDINANCES  
**Meeting Date:** August 20, 2024

**TITLE:** Public Hearing to Consider an Ordinance to Add Chapter 6.13 (Air Quality) to the Campbell Municipal Code to Establish New Air Quality and NOx Emissions Standards and Related Amendments to Chapter 2.08 (Officers), Chapter 6.10 (Nuisance Abatement and Administrative Penalties) and Title 18 (Building Codes and Regulations) Serving to Clarify the Administrative Authority Over the New Air Quality and NOx Emissions Standards and Amend Related Electrification and Air Quality Standards and Supporting Definitions. (Ordinance/Roll Call Vote)

**RECOMMENDED ACTION**

That the City Council introduce an Ordinance adding Chapter 6.13 (Air Quality), and amending Chapter 2.08 (Officers), Chapter 6.10 (Nuisance Abatement and Administrative Penalties), and Title 18 (Building Codes and Regulations) of the Campbell Municipal Code.

**PURPOSE**

The purpose of this item is to introduce amendments to the Campbell Municipal Code which serve to replace the City's electrification requirements under its Building Reach Code – which are no longer enforceable – with new air quality regulations that focus on limiting NOx emissions in new construction projects and major remodels of existing structures.

**BACKGROUND**

On November 1, 2022, the City Council adopted a Reach Code that created higher environmental standards in building construction, by requiring all new construction and major remodels to be fully electric.

On May 9, 2024, the City of Campbell suspended enforcement of the electrification requirements of the Reach Code, following a ruling by the U.S. Court of Appeals for the Ninth Circuit that the plain text and structure of the Energy Policy and Conservation Act (EPCA) preempts state and local building codes concerning the energy use of natural gas appliances.

On June 18, 2024, the City Council received a report regarding alternative options for implementing standards that limit natural gas usage and greenhouse gas emissions associated with new construction to meet the sustainability goals associated with the Reach Code. Council directed staff to move forward with an Ordinance using the Air Quality approach restricting NOx emissions, amending Title 6 (Health and Sanitation) of Campbell's municipal code.

On July 24, 2024, staff hosted a virtual meeting with stakeholders to solicit feedback on the proposed updates. The meeting was attended by a total of 15 people, including Campbell residents and representatives from Silicon Valley Clean Energy, Carbon Free Silicon Valley, Acterra, SPUR, Menlo Spark, and Mothers Out Front. While the majority of feedback received was positive, supporting the effort to reduce emissions and improve public health, two members of the audience expressed concerns with the potential added cost for homeowners, liability for the City, and reliability of the grid. A summary of feedback is included in Attachment B (Summary of Comments from Public Meeting).

## **DISCUSSION**

The following discussion is organized into three sections. The first section explains the relationship between this ordinance and the General Plan. The second discusses the relationship of the ordinance to BAAQMD's approach to regulating NOx emissions. The third section serves to summarize the proposed air quality regulations and types of activities regulated.

### **I. Relationship to General Plan**

The City has a responsibility to establish codes and regulations which serve in the best interests of public health, safety, and welfare of the community. Specific to preserving and protecting air quality through the regulation of NOx emissions, the 2040 General Plan includes goals of improving air quality, promoting and enhancing overall health conditions for residents, promoting a comprehensive and diverse approach to community health and wellness, protecting citizens from hazardous materials, and promote community resilience. A full list of General Plan goals, policies, actions that support this ordinance are listed in Attachment C (General Plan Relevant Goals, Policies, and Actions).

### **II. BAAQMD Approach to Air Quality Regulations**

In March of 2023, BAAQMD adopted amendments to their Regulation 9, and Rules 4 and 6, to eliminate emissions of nitrogen oxides, or NOx, from residential and commercial natural gas furnaces and water heaters in the Bay Area by requiring new appliances to be zero-NOx. The proposed amendments to the Campbell Municipal Code follow the approach BAAQMD has taken, focusing on the negative health impacts of air pollution from building appliances.

Studies show that NO<sub>x</sub> – along with the Particulate Matter (PM<sub>2.5</sub>) and Ozone formed because of NO<sub>x</sub> pollution – are all dangerous to human health. These pollutants are associated with impaired lung function, coughing wheezing, increased asthma attacks, cardiovascular harm, lower birth weight, increased emergency room and hospital admissions, increased risk of respiratory infections, and premature death.

Campbell is in a non-attainment area for Ozone at the federal level, and for both Ozone and PM<sub>2.5</sub> at the state level.<sup>1</sup> By regulating NO<sub>x</sub> emissions, the City can reduce harm to public health, improve air quality, and assist in the transition to BAAQMD's rules, which start to go into effect beginning in 2027.

### **III. Proposed Code Amendments**

The proposed Section 6.13 – Air Quality prohibits NO<sub>x</sub> emissions from equipment being installed in any newly constructed building or substantial rebuild. This ordinance applies to **water heaters**, **furnaces**, **ovens/ranges**, and **clothes driers**. It does not apply to outdoor grills or portable heaters.

#### **Limited Exemptions**

The proposed code amendments recognize limited exceptions for certain types of businesses where operations or specific processes might be infeasible or present an unreasonable hardship, such as certain industrial processes or the cooking needs of restaurants. These limited exceptions would remain in any new regulations.

The Air Quality ordinance has the **same exemptions that existed in the Reach Code** as follows:

1. **Dependent processes**. Business or commercial activities that require the emission of NO<sub>x</sub> for specific operationally dependent processes, shall be allowed to emit NO<sub>x</sub> in exceedance of the limit established by Section 6.13.040 (NO<sub>x</sub>-emission regulations) for that process. Examples include, but shall not be limited to, metallurgy, glass blowing, pottery, research and development uses, and certain medical processes.
2. **Commercial cooking**. Commercial restaurants and similar commercial food preparatory facilities shall be permitted appliances that emit NO<sub>x</sub> in exceedance of the limit established by Section 6.13.040 (NO<sub>x</sub>-emission regulations) for food preparation. Examples include, but shall not be limited to, restaurants, bakeries, grocery stores, and commercial kitchens.
3. **Cost prohibitive**. Appliances that emit NO<sub>x</sub> in exceedance of the limit established by Section 6.13.040 (NO<sub>x</sub>-emission regulations) shall be permitted when it can be demonstrated that the ten-year life-cycle cost analysis of installing and using a compliant appliance will be fifty percent or greater than that of using NO<sub>x</sub> emitting appliance. When estimating the life-cycle cost, all calculations will assume the purchase and use of all new appliances.

<sup>1</sup> <https://ww2.arb.ca.gov/aaqs-designation-tool>

4. Reconstruction after damage or destruction. A structure with appliances that emit NOx in exceedance of the limit established by Section 6.13.040 (NOx-emission regulations) which is involuntarily damaged or partially destroyed to the extent that the cost of restoration does not exceed seventy-five percent of the cost of construction of a comparable new structure (as determined by the Building Official) may continue to have NOx emitting appliances in exceedance of the limit established by Section 6.13.040 (NOx-emission regulations) provided that building permits are submitted for the reconstruction of the structure within twelve months of its involuntary damage or destruction.

These criteria will be used by the Building Official to determine if a limited exemption is warranted. Decisions by the Building Official may be appealed to the Community Development Director, and ultimately, the City Council.

#### Effective Date

The proposed Ordinance would take effect thirty (30) days following adoption.

#### **FISCAL IMPACT**

Requirements of the Ordinance will be verified through the City's standard development review and building permit plan check process. Review of projects for compliance with the air quality regulations is not anticipated to result in additional staff time or permit costs.

Further, as enforcement of the Ordinance would be through a nuisance abatement, any time or costs Code Enforcement Department to remedy violations of the Ordinance will be partially offset by fines.

#### **ALTERNATIVES**

1. Take no action.
2. Propose amendments to the draft ordinance as appropriate.
3. Request staff to return with an alternative approach (i.e. Performance Standards), as previously discussed at the June 18, 2024, meeting.

**Tiffany Hudson**

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Approved by:



Brian Loventhal, City Manager

**Attachment:**

- a. Draft Ordinance
- b. Summary of Comments from Public Meeting