



## CITY ATTORNEY'S OFFICE

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### CITY COUNCIL STAFF REPORT

Meeting: September 17, 2024

#### Subject

Adoption of local amendments to the California Energy Code and repeal of Municipal Code Chapter 16.32 (Local Sustainability Requirements for Newly Adopted Buildings)

#### Recommended Action

Conduct a first reading of and introduce Ordinance No. 24-\_\_\_\_, entitled "AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO REPEALING MUNICIPAL CODE CHAPTER 16.32: LOCAL SUSTAINABILITY REQUIREMENTS FOR NEWLY CONSTRUCTED BUILDINGS, AND ADOPTING LOCAL AMENDMENTS TO CALIFORNIA ENERGY CODE"

#### Reasons for Recommendation

In August 2022, the City Council adopted the City's "Climate Action Plan 2.0." The updated Climate Action Plan set the goals of reducing community-wide emissions by 50% below 2010 levels by 2030 and achieving community-wide carbon neutrality no later than 2040. As part of the City's efforts to meet these goals, the Climate Action Plan includes policies to address greenhouse gas emissions (GHG) from residential and commercial buildings, which are responsible approximately 25% of GHG emissions in California. Specifically, the Climate Action Plan includes a policy to "[r]equire new residential and commercial development to be all-electric at time of construction." (CAP 2.0, Table ES-2, Policy BE-4; see also CAP 2.0 Table 12, Measure BE-4.1 [stating that the City should "[a]dopt an electrification ordinance for new residential and commercial development which requires developers to build all-electric at time of construction"].)

On November 1, 2022, the Cupertino City Council adopted Ordinance No. 22-2245 to implement the building decarbonization policies in Climate Action Plan 2.0. The ordinance amended the Municipal Code to Chapter 16.32 (Local Sustainability Requirements for Newly Constructed Buildings), which, subject to certain exemptions, required all-electric construction in newly constructed buildings.

While the implementation of the City's all-electric code has been successful, a legal challenge to the City of Berkeley's natural gas infrastructure ordinance has led the City to

reconsider its approach to building decarbonization. The Ninth Circuit Court of Appeal's ruling in that case, *California Restaurant Association v. City of Berkeley* (2024) 89 F.4th 1094, held that restrictions on new natural gas infrastructure enacted by the City of Berkeley in 2019 were preempted by Subchapter III of the Energy Policy and Conservation Act (EPCA), 42 U.S.C. § 6291 *et seq.*, a federal statute that establishes uniform federal standards regulating the energy efficiency for commercial and residential appliances.

The *California Restaurant Association v. City of Berkeley* case raised concerns that all-electric codes adopted in Cupertino and other jurisdictions fell within the scope of EPCA's preemption clause. In response, in May 2024, the City Manager announced that the City would join other jurisdictions in the region and state and suspend enforcement of its all-electric code. Following the City Manager's decision, staff began work to develop a replacement for the all-electric code that is consistent with the Ninth Circuit panel's interpretation of federal law in the *California Restaurant Association* case.

Staff have identified increased building energy performance requirements via local amendments to the California Energy Code as the preferred alternative to the current all-electric code, given the limits imposed by the Ninth Circuit's decision. The California Energy Code establishes whole-building efficiency requirements, which account for a building's water heater, HVAC (heating, ventilation, and air conditioning) system, solar generating system, and insulation, among other design elements. The California Energy Code includes both a prescriptive option and performance option based on building type.

Under the Energy Code, local jurisdictions may adopt amendments to statewide energy efficiency standards provided that the amendments are shown to be cost effective and use less energy than the standard requirements contained in the state Code (commonly referred to as "reach codes"). (24 Cal. Code Regs., Title 6, § 10-106.) In collaboration with Silicon Valley Clean Energy (SVCE), staff has proposed local amendments to the Energy Code that increase energy efficiency, encourage building electrification, and meet the requirements of state and federal law ([Attachment A](#)). The proposed reach code primarily amends the performance pathway of the California Energy Code. The proposed code amendments do not regulate cooking equipment, laundry dryers, or other energy uses not addressed by the performance pathway of the California Energy Code.

The proposed local amendments to the Energy Code include the following:

- **Proposed Energy Performance Enhancements:** The proposed ordinance would adopt local Energy Code amendments that increase the required Energy Design Rating (EDR) score for single-family residences and the required Source Energy<sup>1</sup> scores for all other buildings.

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<sup>1</sup> The Source Energy Score, a new metric added to the 2022 Energy Code to support building electrification goals, is a standard that combines the value and cost of energy

- **Electric Ready Requirements:** The proposed reach code would add to the current 2022 California Energy Code requirements for “electric ready” components in buildings, including electric outlets near natural gas appliances, appropriate ventilation for future heat pump appliances, and reserved and labelled breakers in the electrical panel for future electric appliances.

The proposed local Energy Code amendments are largely consistent with amendments to the statewide Energy Code that are being considered by the Energy Commission for adoption in the 2025 building standards code cycle. The local amendments would have the effect of implementing these proposed statewide code amendments approximately one year early in Cupertino.

TRC, a consultant retained by SCVE that provides technical support for member jurisdictions, has prepared a memorandum to support the required findings under the Energy Code ([Attachment B](#)). The memorandum concludes that the proposed local code amendments would be cost effective and would result in the use of less energy than the standards in the state Energy Code.

The proposed ordinance would repeal existing Municipal Code Chapter 16.32 and add the local Energy Code amendments outlined above to Chapter 16.54. The ordinance includes the required findings under the Energy Code, as well as required findings regarding local conditions for the adoption of local amendments to statewide building standards.

Staff recommends adopting the proposed local Energy Code amendments to advance the City’s climate action goals to the greatest extent possible within the legal constraints imposed by the Ninth Circuit panel’s interpretation of federal law. If the City Council approves the introduction of the proposed ordinance, the ordinance will be presented to Council for a second reading and adoption on October 1. The adopted ordinance would then be submitted to the California Energy Commission for review and approval.

#### Sustainability Impact

The proposed ordinance advances the policy of requiring all-electric construction in newly constructed buildings set forth in Climate Action Plan 2.0.

#### Fiscal Impact

No fiscal impact.

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consumed at different times of the day and year (referred to as Time Dependent Valuation of energy, or TDV), and the emissions from the building’s energy source.

California Environmental Quality Act

The proposed ordinance is categorically exempt from review under the California Environmental Quality Act pursuant to California Code of Regulations, Title 14, § 15308 (Actions Taken by Regulatory Agencies for Protection of the Environment) and § 15061(b)(3) (“common sense” exemption).

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Approved for Submission by:

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Attachments:

A – Proposed Ordinance

B – Memorandum Re: Reach Code Energy Performance Approach