



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Kerrie Romanow  
Chris Burton

**SUBJECT:** Moratorium on Natural  
Gas Infrastructure  
Prohibition Ordinance

**DATE:** July 22, 2024

Approved

Date:

8/1/24

**COUNCIL DISTRICT:** Citywide

## **RECOMMENDATION**

Approve an ordinance amending Chapter 17.845 of Title 17 (*Prohibition of Natural Gas Infrastructure in Newly Constructed Buildings*), Section 17.845.010, of the San José Municipal Code to implement a moratorium on further City enforcement of Chapter 17.845 until local control over natural gas infrastructure is clarified or authorized.

## **SUMMARY AND OUTCOME**

In September 2019, the City adopted its first building “reach code” that included provisions to incentivize all-electric new construction. The City Council readopted similar provisions in September 2023 that went into effect as of October 1, 2023. In October 2019, City Council also adopted Chapter 17.845, *Prohibition of Natural Gas Infrastructure in New Single-Family, Low-Rise Residential Buildings, and Detached Accessory Dwelling Units* that was extended in December 2020 to all newly constructed buildings in San José, with limited exemptions, effective August 1, 2021. These increased building standards help reduce community-wide greenhouse gas emissions in line with the City’s Climate Smart San José plan and carbon neutrality by 2030 goals, provide financial benefits related to lower-cost electric construction, and support public health by decreasing air pollution emissions and exposure.

Recent federal legal decisions question the City’s ability to enforce its Natural Gas Infrastructure Prohibition Ordinance. The City’s building reach code, which was a backstop to the City’s Natural Gas Infrastructure Prohibition Ordinance, remains in place and enforceable. The City’s building reach code will continue to strongly incentivize the construction of all-electric buildings in San José. The proposed amendment will acknowledge the current legal direction and allow the City to enforce the City Council-approved ordinance if the current legal decision is overturned without requiring further City Council action.

## **BACKGROUND**

Every three years, the State of California updates its Technical Codes, including California Building Energy Efficiency Standards and the California Green Building Standards Code. Local jurisdictions may adopt and enforce “reach codes” to require development projects to exceed minimum state standards based upon geographical, topographical, or local climatic conditions. In September 2019, the City adopted its first building “reach code” that included provisions to incentivize all-electric new construction. The City Council readopted similar provisions in September 2023 that went into effect as of October 1, 2023.

In October 2019, City Council also adopted a separate Natural Gas Infrastructure Prohibition Ordinance that was extended in December 2020 to all newly constructed buildings in San José, with limited exemptions. The ordinance went into effect as of August 1, 2021. The Natural Gas Infrastructure Prohibition Ordinance essentially required, with limited exceptions, that all new building construction in San José be all-electric.

In *California Restaurant Association v. City of Berkeley*, 89 F.4<sup>th</sup> 1094 (9<sup>th</sup> Cir., 2023, as amended), the Ninth Circuit Court of Appeal held that the Energy Policy and Conservation Act expressly preempted the City of Berkeley’s ordinance banning the installation of natural gas piping in newly constructed buildings.

The City disagrees with the court ruling that the Energy Policy and Conservation Act, which provides federal control over the energy use of appliances, preempts a natural gas infrastructure ban. However, in light of the *Berkeley* decision, enforcement of the Natural Gas Infrastructure Prohibition in Chapter 17.845 is challenging. To provide clarification for the public, the proposed ordinance provides that when the law is settled that local control over natural gas infrastructure is permissible, the City will resume enforcement of Chapter 17.845.

## **ANALYSIS**

The *California Restaurant Association v. City of Berkeley* case is now final. Under the proposed ordinance, the City will resume enforcement of Chapter 17.845, *Prohibition of Natural Gas Infrastructure in Newly Constructed Buildings*, once the law is clarified that local control may be exercised over natural gas infrastructure.

Even without the enforcement of the City’s Natural Gas Infrastructure Prohibition Ordinance, the City’s building reach code, which was a backstop to the City’s Natural Gas Infrastructure Prohibition Ordinance, continues to be enforced. The building reach code strongly incentivizes all-electric new construction by requiring increased source energy compliance margins when the building is modeled in state-approved building modeling software. A source energy compliance margin reflects the baseline carbon

emission of a building as if it used carbon or traditional fuel. Compliance margins are calculated on the emission savings from that baseline so a higher source energy compliance margin equates to a more efficient building, which can most easily be met by all-electric building design.

Given how the reach code is structured, it will only affect the space and water-heating components of a building and will not hinder other end uses, process loads, or on-site generation. This means that the City's current reach code would not hinder the ability to build new natural gas distributed energy resources, such as natural gas fuel cells. Staff will continue to monitor and evaluate the impact of its building reach code for new construction to determine if additional City action is needed to support the City's building electrification goals.

### **Climate Smart San José Analysis**

The proposed ordinance update will reduce the City's ability to ensure that there is no new natural gas infrastructure associated with new construction in San José, thereby hindering the City's efforts to facilitate the energy efficiency of new homes and commercial buildings in alignment with Climate Smart San José goals.

### **EVALUATION AND FOLLOW-UP**

Staff will provide progress updates to City Council on Climate Smart San José activities, including the reach code, on a semi-annual basis.

### **COORDINATION**

This memorandum has been coordinated with the City Attorney's Office and the City Manager's Budget Office.

### **PUBLIC OUTREACH**

This memorandum will be posted on the City's Council Agenda website for the August 13, 2024 City Council meeting.

### **COMMISSION RECOMMENDATION AND INPUT**

No commission recommendation or input is associated with this action.

HONORABLE MAYOR AND CITY COUNCIL

July 22, 2024

**Subject: Moratorium on Natural Gas Infrastructure Prohibition Ordinance**

Page 4

**CEQA**

Not a Project, File No. PP17-008, General Procedure and Policy Making resulting in no changes to the physical environment.

**PUBLIC SUBSIDY REPORTING**

This item does not include a public subsidy as defined in section 53083 or 53083.1 of the California Government Code or the City's Open Government Resolution.

/s/

Kerrie Romanow  
Director, Environmental Services

/s/

Chris Burton  
Director, Planning, Building,  
and Code Enforcement

For questions, please contact Julie Benabente, Deputy Director, Environmental Services Department, at [Julie.Benabente@sanjoseca.gov](mailto:Julie.Benabente@sanjoseca.gov).