

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING CHAPTER 17.845 (PROHIBITION OF NATURAL GAS INFRASTRUCTURE IN NEWLY CONSTRUCTED BUILDINGS) OF TITLE 17 OF THE SAN JOSE MUNICIPAL CODE TO IMPLEMENT A MORATORIUM UNTIL LOCAL CONTROL OVER NATURAL GAS INFRASTRUCTURE IS CLARIFIED OR AUTHORIZED

WHEREAS, pursuant to Sections 17922, 17958, 17958.5 and 17958.7 of the California Health and Safety Code, the City of San José (“City”) may adopt the provisions of the Green Building Standards Code and Building Efficiency Energy Standards with certain amendments to those provisions which are reasonably necessary to protect the health, welfare and safety of the citizens of San José because of local climatic, geological and topographical conditions; and

WHEREAS, the City Council affirms the findings in the Resolution for the Declaration of the Climate Emergency within the City and the City Council adopts and incorporates those findings into this Ordinance; and

WHEREAS, the City Council affirms the findings made in prior actions relating to Prohibition of Natural Gas Infrastructure including those contained in Kerrie Romanow and Rosalynn Hughey’s Memorandum dated August 21, 2019 and October 8, 2019, and the staff presentations including those at the September 17, 2019, October 29, 2019 and November 17, 2020 City Council meetings and incorporates them into this Ordinance; and

WHEREAS, the City remains committed to reducing the use of fossil fuels in buildings and decreasing the reliance on natural gas as set forth in the Climate Smart San José and Pathway to Carbon Neutrality by 2023; and

WHEREAS, this Ordinance was found to be categorically exempt from environmental review, per the provisions of the California Environmental Quality Act (CEQA) of 1970, as amended, 14 California Code of Regulations Section 15308, and Title 21 of the San José Municipal Code, under File Number ER20-202; and

WHEREAS, the City Council of the City of San José is the decision-making body for this Ordinance; and

WHEREAS, this Council has reviewed, considered, and approves the Statement of Exemption determination under CEQA prior to taking any approval actions on this Ordinance;

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Section 17.845.010 of Chapter 17.845 of Title 17 of the San José Municipal Code is amended to read as follows:

17.845.010 Applicability

- A. The requirements of this Chapter shall apply to the entitlement of or the processing of development applications for all Newly Constructed Buildings proposed to be located in whole or in part within the City.
- B. The requirements of this Chapter shall not apply to portable propane appliances for outdoor cooking and heating.
- C. This Chapter shall in no way be construed as amending Energy Code requirements under Title 24 of the California Code of Regulations, Part 6 or

Part 1, nor as requiring the use or installation of any specific appliance or system as a condition of approval.

D. The requirements of this Chapter shall be incorporated into conditions of approval for applications for permits under San José Municipal Code Titles 17 and 20.

E. This Chapter shall be operative at such time as the case law in *California Restaurant Association v. City of Berkeley*, 89 F.4th 1094 (9th Cir., 2023, as amended) is overturned or disapproved by a court of competent jurisdiction, or modified by the legislature to authorize local control of natural gas infrastructure; or the Energy Policy and Conservation Act (42 USC §6297) or other similar legislation is clarified or modified by the legislature or voters to authorize local control of natural gas infrastructure.

//
//
//
//
//
//
//
//
//
//
//

PASSED FOR PUBLICATION of title this _____ day of _____, 2024, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

MATT MAHAN
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk