



AGENDA REPORT

Community Development

DATE:	September 24, 2024
TO:	Mayor Martinez and Members of the City Council
FROM:	Lina Velasco, Community Development Director Avery Stark, Principal Planner Kimberly Y. Chin, Senior Asst. City Attorney
Subject:	Repeal of Richmond Municipal Code Chapter 9.64 - Prohibition of Natural Gas Infrastructure in Newly Constructed Buildings
FINANCIAL IMPACT:	The repeal of the subject Ordinance will not have a fiscal impact on the General Fund.
PREVIOUS COUNCIL ACTION:	In November 2021, the City of Richmond passed Ordinance No. 15-21 N.S, effectuating a Prohibition of Natural Gas Infrastructure in Newly Constructed Buildings.
STATEMENT OF THE ISSUE:	In <i>California Restaurant Association v. City of Berkeley</i> , the 9th Circuit Court of Appeals found the City of Berkeley's ordinance prohibiting natural gas infrastructure in new buildings unlawful. Since the City of Richmond's ordinance is modeled after Berkeley's ordinance, repeal of Ordinance No. 15-21 N.S is necessary to avoid possible litigation or other legal issues in the future.
RECOMMENDED ACTION:	INTRODUCE an ordinance (first reading) repealing Chapter 9.64 to the Richmond Municipal Code (RMC), which bans natural gas infrastructure in new construction - Community Development Department (Lina Velasco/Avery Stark 510-620-6714).

BACKGROUND:

In July 2019, the City of Berkeley passed Ordinance 7672-NS entitled “Prohibition of Natural Gas Infrastructure in New Buildings” (“Berkeley Ordinance”). The Berkeley Ordinance was codified at Berkeley Municipal Code Chapter 12.80. In relevant part, the Berkeley Ordinance seeks to “eliminate obsolete natural gas infrastructure and associated greenhouse gas emissions in new buildings where all-electric infrastructure can be most practicably integrated, thereby reducing the environmental and health hazards produced by the consumption and transportation of natural gas.” It does so by: (1) prohibiting natural gas infrastructure (defined as “fuel gas piping, other than service pipe, in or in connection with a building . . . extending from the point of delivery at the gas meter”) in newly constructed buildings (defined as “a building that has never been used or occupied for any purpose”) with limited exceptions, (2) deeming that requirement “objective planning standards under Government Code section 65913.4 and objective development standards under Government Code section 65589.5,” and (3) applying that requirement to Use Permit and Zone Certificate applications submitted on or after the effective date of the ordinance.

In November 2021, the City of Richmond (“City”) passed Ordinance No. 15-21 N.S, which added the same prohibition of natural gas infrastructure in newly constructed buildings as Chapter 9.64 to the Richmond Municipal Code. The wording of the City’s ordinance is nearly identical to the Berkeley Ordinance and the prohibition applies to “Design Review Permits, Use Permit[s], and/or Zoning Compliance Review applications.” The differences between the City’s ordinance and the Berkeley Ordinance are minor and inconsequential to this analysis.

In November 2019, the California Restaurant Association (“CRA”) sued Berkeley claiming the federal Energy Policy and Conservation Act (“EPCA”) and state law preempted the Berkeley Ordinance. Berkeley moved to dismiss the lawsuit, which the District Court did, concluding that the EPCA should be “interpreted in a limited manner” so that it does not “sweep into areas that are historically the province of state and local regulation.” CRA appealed to the Ninth Circuit Court of Appeals.

Ninth Circuit Decision

The Ninth Circuit reversed the District Court’s decision. It held, in relevant part, that the EPCA preempts building codes like the Berkeley Ordinance which ban natural gas piping within new buildings. Specifically, EPCA has a preemption clause, which reads, “no State regulation concerning the energy efficiency, energy use, or water use of such covered product shall be effective with respect to such product.” The Ninth Circuit ruled the Berkeley Ordinance concerns the energy use of covered products because it prohibits consumers from using natural gas-powered appliances in newly constructed buildings. It held, “by enacting EPCA, Congress ensured that States and localities could not prevent consumers from using covered products in their homes, kitchens, and businesses. So EPCA preemption extends to regulations that address the products themselves and building codes that concern their use of natural gas.” The Court found “Berkeley can’t bypass EPCA’s preemption of building codes that directly ban covered

products by instead simply prohibiting the piping that transports natural gas from the utility's meter to the appliance.”

DISCUSSION:

Because the City's ordinance is nearly identical to the Berkeley Ordinance, the Ninth Circuit's decision, holding that the Berkeley Ordinance is preempted by federal law, applies equally to the City's ordinance.

Furthermore, on May 14, 2024, the City of Berkeley adopted an ordinance repealing Chapter 12.80 to the Berkeley Municipal Code (BMC), which bans natural gas infrastructure in new construction. The repeal of the adopted ordinance resolved the litigation.

After the amended decision was issued on January 2, 2024, relevant City staff were directed, on January 19, 2024, to cease enforcement of the City's Ordinance. The City has not enforced the Ordinance since that time. As such, staff recommends that the City Council adopt an ordinance (see Attachment 1) repealing Chapter 9.64 of the Richmond Municipal Code (RMC), which bans natural gas infrastructure in new construction, to avoid possible litigation or other legal issues in the future. In addition, the CRA has sent the City a letter requesting that the City repeal its ordinance or make a public announcement suspending its enforcement (see Attachment 2).

FUTURE POLICY CONSIDERATION:

Moving forward, staff will continue to encourage all-electric construction by sharing its many benefits, some of which include:

- Cleaner air and better health outcomes from eliminating the emissions associated with burning fossil fuels, particularly indoors.
- Not having to pay to install gas pipes in new buildings.
- Taking advantage of financial incentives and rebates for all-electric appliances.
- Resilience against power outages, particularly when electric technologies are paired with battery storage.
- Hedging against high energy costs by being able to schedule electric appliances to operate at times of day when electricity costs are lowest.
- Preparing for the potential discontinuation of gas appliances in the future that could occur from possible regulatory actions by regional, state, or federal agencies.
- More efficient appliances.
- Reduced risk of combustion in the event of an earthquake.

Community Development and Environmental and Health Initiatives staff are exploring future policy options to bring to the City Council for consideration that would support

achieving the greenhouse gas reduction goals expressed in the Climate Action Plan. that motivated the adoption of the natural gas ban. Some options could include adopting local amendments to the Building Code to establish an energy reach code that considers Richmond's unique local climatic, geological, topographic conditions.

DOCUMENTS ATTACHED:

Attachment 1 – Ordinance

Attachment 2 – Letter from the California Restaurant Association