



DATE: June 6, 2023

TO: Mayor and City Council

FROM: Director of Public Works
Director of Development Services

SUBJECT Reach Code Amendments: Introduction of Revised Electrification Reach Code Ordinance with Minor Modifications Required by California Building Standards Commission; and Finding that the Action is Exempt from CEQA

RECOMMENDATION

That Council adopts a resolution (Attachment II), introduces the revised Electrification Reach Code ordinance (Attachment III) to modify the California Green Building Standards Code and finds the action exempt from CEQA. The ordinance includes: 1) electrification requirements for new buildings and 2) amendments to the Off-Street Parking Regulations to add electric vehicle charging requirements.

SUMMARY

In November 2022¹, Council adopted a Reach Code ordinance to be effective on January 1, 2023. The purpose of the ordinance is to reduce the use of fossil fuels – both in buildings and in vehicles. The ordinance modifies the State building code to require:

- All new residential buildings, including mixed-use buildings, must be all electric.
- All new non-residential buildings for which natural gas infrastructure is installed, must be “electric ready,” meaning they have the wiring, electrical capacity and space needed to be converted to an all-electric building in the future.
- All new buildings, and modifications to existing buildings resulting in new parking spaces, must have electric vehicle (EV) charging infrastructure above and beyond that required by the California Green Building Standards Code.

After adoption by the City Council, the Reach Code ordinance was submitted to the California Building Standards Commission (CBSC) for review and filing. After review, the CBSC has requested that the City provide a revised ordinance that lists the specific sections of the State Code that are modified by Hayward’s ordinance. Staff made the necessary revisions to the ordinance, which if adopted by Council, will be forwarded to the CBSC. Other than the formatting modifications requested by CSBC, this revision contains no substantive differences from the ordinance adopted by the City Council in November 2022.

¹ [CITY OF HAYWARD - File #: CONS 22-634 \(legistar.com\)](#)

Council Sustainability Committee

This item was presented to the Council Sustainability Committee on October 6, 2022², and was recommended to be presented to Council for adoption.

BACKGROUND

State law allows local jurisdictions to adopt ordinances that amend the California Building Standards Code. The ordinances are commonly referred to as reach codes. More than sixty local governments in California have adopted reach codes to encourage or require all-electric construction as well as electric vehicle charging infrastructure.

Following review and recommendations from the City Council Sustainability Committee and the Planning Commission, Council adopted a Reach Code ordinance on November 15, 2022, to amend the California Building Code. The Reach Code ordinance, all previous Council reports, as well as checklists for builders and developers are available on the City's Reach Code webpage³. The requirements from the adopted ordinance have been incorporated into the City's Municipal Code with the building electrification requirements included as Chapter 9, Article 8 and the electric vehicle charging requirements included as amendments to the City's Off-Street Parking Regulations (Chapter 10, Article 2).

DISCUSSION

Once adopted, Reach Codes are required to be filed with the California Building Standards Commission (CBSC). Staff submitted Hayward's Reach Code to the CBSC and Commission staff responded requesting that the City provide a revised ordinance that specifically lists the sections of the California Building Standards Code that are amended by Hayward's ordinance. The attached revised Electrification Reach Code ordinance (see Attachment III) has been revised to reference the appropriate sections of Part 11 (California Green Building Standards Code, aka CALGreen) of the California Building Code (Title 24 of the California Code of Regulations). The ordinance does not include any other substantive changes from what was adopted in November 2022, and the requirements in the ordinance remain the same.

CRA v. Berkeley – The electrification standards for new residential construction may be impacted by pending litigation involving the City of Berkeley's ordinance banning the use of natural gas in new construction that was adopted in 2019. Soon after adoption of Berkeley's ordinance, the California Restaurant Association sued Berkeley claiming that the ordinance was preempted by the federal Energy Policy & Conservation Act (EPCA). Under EPCA, the Department of Energy "sets minimum energy efficiency standards for approximately sixty categories of appliances and equipment used in homes and businesses"⁴. EPCA also expressly pre-empts state and local laws that regulate the amount of energy used by EPCA-covered appliances. The Ninth Circuit Court of Appeals recently issued an opinion that invalidated Berkeley's ordinance banning fuel gas piping in new buildings. In reaching this decision, the Ninth Circuit broadened the scope of EPCA's pre-emption to include state and local laws that regulate the type of energy that EPCA regulated

² [CITY OF HAYWARD - File #: ACT 22-093 \(legistar.com\)](#)

³ <https://www.hayward-ca.gov/reach-code>

⁴ <https://www.energy.gov/eere/buildings/about-appliance-and-equipment-standards-program>

appliances can use, ostensibly calling into question the validity of local ordinances banning natural gas in new construction. Berkeley recently filed a petition for re-hearing in the Ninth Circuit. Staff will continue to monitor the progress of this litigation and assess how to proceed. Notwithstanding this litigation, staff recommends proceeding with introduction and adoption of the revised Reach Code ordinance as currently drafted.

FISCAL AND ECONOMIC IMPACT

Adoption of the revised Electrification Reach Code will not have a significant impact on the City's General Fund or any other City funds, nor will it have a significant impact on the local economy. Discussions of the expected impacts associated with implementing the Reach Code are included in the November 1, 2022⁵, and June 14, 2022⁶, Council reports.

STRATEGIC ROADMAP

This agenda item supports the Strategic Priority to *Confront Climate Crisis & Champion Environmental Justice* as included in the Strategic Roadmap adopted by Council on May 3, 2022. Specifically, this item is related to implementation of the following projects:

- Project C1: Ban natural gas in new residential buildings (Completed with the March 2020 adoption of the Reach Code.)
- Project C2: Require EV charging infrastructure in new construction (Completed with the March 2020 adoption of the Reach Code.)
- Project C10: Explore feasibility of banning natural gas in non-residential (commercial) buildings.

SUSTAINABILITY FEATURES

The use of electric appliances in homes and businesses avoids indoor air pollution associated with the burning of natural gas. Ending the use of natural gas and providing the infrastructure needed for a transition to electric vehicles are both necessary to meet the City's long term GHG reduction goals, which include:

- 30% below 2005 levels by 2025
- 55% below 2005 levels by 2030
- work with the community to develop a plan that may result in the reduction of community based GHG emissions to achieve carbon neutrality by 2045

ENVIRONMENTAL REVIEW

Adoption of the revised Electrification Reach Code is not a project under the requirements of the California Environmental Quality Act, together with related State CEQA Guidelines (collectively, "CEQA"), because it has no potential for resulting in a physical change to the environment. In the event that this Ordinance is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines section 15061(b)(3) because it can be seen with certainty to have no possibility that the action approved may have a

⁵ [CITY OF HAYWARD - File #: CONS 22-634 \(legistar.com\)](#)

⁶ [CITY OF HAYWARD - File #: WS 22-020 \(legistar.com\)](#)

significant effect on the environment. CEQA applies only to actions that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. In this circumstance, the proposed action would have no or only a de minimis effect on the environment. The Ordinance is also exempt from CEQA under CEQA Guidelines section 15308, because it is a regulatory action for the protection of the environment.

PUBLIC CONTACT

No public contact was made regarding the adoption of the revised Electrification Reach Code. A summary of the public outreach conducted leading up to the adoption of the ordinance is included in the November 1, 2022, Council report.

NEXT STEPS

If Council approves the attached resolution, a second reading of the ordinance will be scheduled for a subsequent meeting. If the ordinance is adopted, it will be filed with the California Building Standards Commission.

Prepared by: Erik Pearson, Environmental Services Manager

Recommended by: Alex Ameri, Director of Public Works
Sara Buizer, Acting Development Services Director

Approved by:



Kelly McAdoo, City Manager