

## City sued over reach code

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December 12,  
2019



### **Two developers filed suit claiming violation of CEQA in plan to reduce town's greenhouse gas emissions**

A pair of lawsuits filed in the wake of Windsor passing an all-electric reach code has brought the conflict between housing needs and the future of energy use and the climate crisis into to stark relief.

The lawsuit was not unexpected, when the council passed the code 4-0-1 (Bruce Okrepkie abstained) and was remarked on in the Oct. 16 meeting where the code was passed.

"We know we're under the threat of litigation, at least," Councilmember Sam Salmon said in that meeting. "I know that it very well may be adopted, and a lawsuit filed and we may revoke it. But, the key here is to proceed and let the public know what we're up against in terms of climate protection.

I hope the public understands that even if it doesn't stay, this will make the public more aware of the fight to save this planet."

Throughout, there had been veiled threats from developers during the public process that such an action was coming.

"The filing of the lawsuits is not surprising, particularly given that Windsor was the first in the county to adopt an all-electric code," said Town Manager Ken MacNab. "The issues raised in the lawsuits generally follow the issues raised in communications received from the

plaintiffs during the adoption process and were anticipated.”

On Nov. 19, Bill Gallaher filed a suit in Sonoma County Superior Court against both the Town of Windsor and the town council. Gallaher is a prominent local developer who has projects in Windsor. He was also present during public comment at the council meetings and warned of this outcome.

The 17-page lawsuit claims the passing of the reach code was a violation of the California Environmental Quality Act (CEQA) process of the code, and argues that a faulty study was used as the basis for the benefits of the code and the exemption from the CEQA process. The suits claim a full environmental impact report and review under CEQA is the only way to legally change the building code.

In a letter dated Sept. 18, Matthew C. Henderson, a lawyer representing Gallaher stated, “I want to emphasize that climate change is real and the goal of reducing greenhouse gas emissions in is a laudable one. However, the law of unintended consequences applies to even the best-intended legislation . . . Without meaningful environmental review under CEQA, neither the town or the public is in a position to understand the trade-offs this ordinance may entail. A half-baked “net-benefit” analysis is legally insufficient. Accordingly, an environmental impact report must be prepared and certified before the town may lawfully adopt the ordinance.”

At an Oct. 16 council meeting, then-vice mayor Deborah Fudge said, “It’s really sad to me when I see CEQA misused. It’s sad to me when I see a local developer using it to try to subvert something good for the environment. We are in a climate emergency. There is no more time to talk. We may already be too late. We must do all of it, everything, and be at net zero by 2050. We have to start now; we know that, even those who fight it, know it. It’s precedent setting, and that’s why the threat is thrown at us. It’s a scare tactic. To me it feels like a bully tactic.”

On Nov. 22, Windsor-Jensen Land Co. LLC, the developer planning to build 200 new homes along Jensen Lane (a project that has its own controversies), filed a second lawsuit citing similar issues.

“The next steps are for the town council to consider how they would like to proceed in response to the lawsuits,” MacNab said. Several closed-door-session meetings about the litigation have already occurred since the filing.

Both lawsuits make reference to fire-related issues, as well as the uncertainty of public safety power shutoffs as reason not to rely on electric. However, PG&E, the company responsible for delivering both natural gas and electric to Windsor, has provided a letter of support for the code to Windsor.

In public meetings, developers have said that anything which is a hindrance to development

and home sales is problematic, due to the significant housing shortage in California. However, the town's response has been to be equally concerned about the climate crisis and how Windsor can do its part to help meet greenhouse gas reduction goals.

"Our main concern is about plaintiffs who do not appear interested in supporting the town council's effort to take a small step towards addressing the environmental impacts of climate change," said MacNab.

Though the town is confident in the legal basis for its code change, MacNab acknowledges that lawsuits are always problematic.

"We are confident that the ordinance is consistent with local policies and state mandates to reduce greenhouse gas emissions and that the process we used in adopting the ordinance was correct," he said. "But, the length of time needed to resolve any case where there is uncertainty or complexity is difficult to assess. A trial could take months to complete — possibly longer."

The lawsuit is not predicted to impact the adoption of the code, though it could ultimately cause it to be rescinded should the plaintiffs win. However, there is still a process that may impact the adoption date for the code.

"Currently we anticipate that the reach code will take effect Jan. 1, 2020," MacNab said. "This presumes that the California Energy Commission reviews and approves the code language beforehand. If we do not receive approval before Jan. 1, the code would take effect sometime after Jan. 1."