

**DOCKETED**

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*Comment Received From: Miller Starr Regalia*  
*Submitted On: 2/18/2020*  
*Docket Number: 19-BSTD-06*

**Objection to Reach Code Approval - Part 1 of 10 pdf - Santa Rosa**

Letter to California Energy Commission with attachments re City of Santa Rosa Ordinance No. 2019-019.  
Part 1 of 10.pdf

*Additional submitted attachment is included below.*



**MILLER STARR  
REGALIA**

1331 N. California Blvd.  
Fifth Floor  
Walnut Creek, CA 94596

T 925 935 9400  
F 925 933 4126  
www.msrlgal.com

Matthew C. Henderson  
Direct Dial: 925 941 3271  
matthew.henderson@msrlgal.com

February 18, 2020

**Via Email**

Docket Unit  
California Energy Commission  
Docket No. 19-BSTD-06  
1516 9th Street, MS-4  
Sacramento, CA 95814  
Email: [docket@energy.ca.gov](mailto:docket@energy.ca.gov)

Re: City of Santa Rosa 2019 Ordinance No. ORD-2019-019,  
Docket No. 19-BSTD-06

Dear California Energy Commission:

This firm represents William Gallaher with respect to the City of Santa Rosa's adoption of an All Electric Reach Code/Natural Gas Ban ("Reach Code") which is now before the Commission at docket no. 19-BSTD-06. Our client is extremely concerned with the potentially adverse planning and environmental and health and safety effects that may occur from adoption and implementation of the Reach Code.

In short, the Reach Code as proposed cannot satisfy the requirements of Public Resources Code section 25402.1, subdivision (h)(2) or section 10-106 of the state Building Energy Efficiency standards, and therefore its adoption cannot be ratified by the Commission. Moreover, the City's adoption of the Reach Code via claimed exemptions under the California Environmental Quality Act ("CEQA," Public Resources Code section 21000 et seq.) was contrary to the law. Under cover of this letter I am forwarding, and incorporate herein by reference, our correspondence with the City as to this issue, as well as the petition for writ of mandate filed in the Superior Court for the County of Sonoma challenging the Reach Code's adoption.

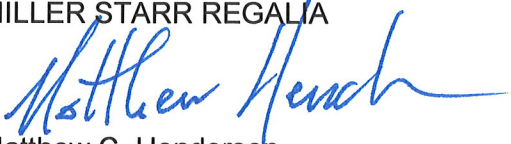
Moreover, it is clear that any finding or determination the Commission makes to approve or ratify the Reach Code will also be a discretionary action requiring review under CEQA. Because the adoption of the Reach Code may have significant environmental impacts that the City has not analyzed via an initial study and environmental impact report, the Commission cannot itself rely on any CEQA exemption to approve it. (See *Save Our Carmel River v. Monterey Peninsula Water Mgmt. Dist.* (2006) 141 Cal.App.4th 677, 702.)

California Energy Commission  
February 18, 2020  
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For all of these reasons, the Commission cannot make the requisite findings under Public Resources Code section 25402.1, subdivision (h)(2) or section 10-106 of the state Building Energy Efficiency standards, nor make the requisite findings under CEQA absent the preparation of an EIR. Thank you for your attention to this matter.

Very truly yours,

MILLER STARR REGALIA



Matthew C. Henderson

MCH:klw  
encls

cc: Kevin Siegel, Esq. (ksiegel@bwslaw.com)  
Arthur F. Coon, Esq. (arthur.coon@msrlegal.com)



**MILLER STARR  
REGALIA**

1331 N. California Blvd. T 925 935 9400  
Fifth Floor F 925 933 4126  
Walnut Creek, CA 94596 www.mslegal.com

Matthew C. Henderson  
Direct Dial: 925 941 3271  
matthew.henderson@msrlegal.com

November 19, 2019

**Via Email and Hand Delivery**

City Council  
City of Santa Rosa  
City Hall  
100 Santa Rosa Ave.  
Santa Rosa, CA 95404  
Email: citycouncil@srcity.org

Re: City of Santa Rosa Proposed Adoption of All-Electric Residential Reach Code (November 19, 2019 City Council Meeting Agenda Item No. 15.2)

Dear Mayor Schwedhelm, Vice Mayor Rogers, and City Councilmembers:

As you are aware, this firm represents William Gallaher in conjunction with the above-referenced matter. As we have expressed in the past, our client is extremely concerned with the potentially adverse planning, and environmental and health and safety effects that may occur from adoption and implementation of the All Electric Reach Code/Natural Gas Ban ("Reach Code") currently being considered for adoption as a local ordinance by the City of Santa Rosa ("City").

In spite of my prior correspondence on this issue I did not receive notice that the City was holding a second reading of the Reach Code ordinance today. I also do not see any of the comments we previously provided in the staff report for the ordinance. Accordingly, I am enclosing herewith my prior correspondence on the Reach Code, as well as recent articles relating to both past and potential future PG&E shutdowns which have directly impacted the City and its residents. I request that my correspondence and attachments be included in the administrative record of the City's proceedings.

Very truly yours,

MILLER STARR REGALIA



Matthew C. Henderson

MCH:klw/ encls.

cc: Sean McGlynn (w/encls.; CMOoffice@srcity.org)  
Sue A. Gallagher, Esq. (w/encls.; via fax, 707-543-3055)  
Dina Manis (w/encls.; CityClerk@srcity.org, dmanis@srcity.org)  
Arthur F. Coon, Esq.

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Offices: Walnut Creek / San Francisco / Newport Beach

1 ARTHUR F. COON (Bar No. 124206)  
MATTHEW C. HENDERSON (Bar No. 229259)  
2 MILLER STARR REGALIA  
A Professional Law Corporation  
3 1331 N. California Blvd., Fifth Floor  
Walnut Creek, California 94596  
4 Telephone: 925 935 9400  
Facsimile: 925 933 4126  
5 Email: arthur.coon@msrlegal.com  
matthew.henderson@msrlegal.com  
6

Attorneys for Petitioner and Plaintiff  
7 WILLIAM P. GALLAHER

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SONOMA

10 WILLIAM P. GALLAHER, an individual,  
11 Petitioner and Plaintiff,

12 v.

13 CITY OF SANTA ROSA, CITY COUNCIL  
OF THE CITY OF SANTA ROSA, and DOES  
14 1 through 25, inclusive,  
15 Defendants and Respondents.

Case No. *SCV 265711*

VERIFIED PETITION FOR WRIT OF  
MANDATE AND COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF

[CCP §§ 1060, 1085, 1094.5; Pub. Resources  
Code, § 21000 et seq; Cal. Code Regs., tit. 14,  
§ 15000 et seq.; Cal. Code Regs., tit. 24, pt. 6,  
§ 10-106]

CEQA ACTION

18 Petitioner and Plaintiff William P. Gallaher, an individual ("Petitioner"), alleges as  
19 follows:

20 GENERAL ALLEGATIONS

21 1. Petitioner is an individual, over the age of eighteen who regularly conducts business  
22 in the City of Santa Rosa.

23 2. Respondent and Defendant City of Santa Rosa ("City") is and at all relevant times  
24 was a political and legal subdivision of the State of California, duly organized and existing under  
25 and pursuant to the laws of the State of California.

26 3. Respondent and Defendant City Council of the City of Santa Rosa ("Council") is,  
27 and at all relevant times was, inter alia, the duly organized legislative body of the City existing  
28 under and by virtue of the laws of the State of California. The Council is, and at relevant times

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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SONOMA

1 was, the local body charged with proposing, drafting, amending and passing legislation governing  
2 land use and the City's municipal affairs, subject to, and in a manner complying with, all applicable  
3 federal, state, and local law.

4 4. Petitioner is unaware of the true names or capacities of the parties fictitiously sued  
5 herein as DOES 1 through 25, inclusive, and will amend this complaint to set forth their true names  
6 and capacities when the same have been ascertained. Petitioner is informed and believes, and based  
7 thereon alleges, that some fictitiously named Respondents were the agents and employees of the  
8 other fictitiously named, or actually named, Respondents and, acting within the course of scope of  
9 such employment or agency, took some part in the acts or omissions hereinafter set forth, or are the  
10 principals and took some part in such acts or omissions, by reason of which said fictitiously-named  
11 Respondents are liable to Petitioner for the relief prayed for herein.

12 5. Respondents and Defendants identified in paragraphs 2 through 4 above, inclusive,  
13 are sometimes referred to collectively herein as "Respondents."

14 6. This action challenges the approval by the City of a so-called "reach code" via  
15 "Ordinance No. ORD-2019-019 Entitled: Ordinance of the Council of the City of Santa Rosa  
16 Adopting by Reference, With Local Amendments, the 2019 California Energy Code Including  
17 All-Electric, Low-Rise Residential Reach Code" ("Reach Code"), which ordinance was passed by  
18 the Council on second reading on November 19, 2019.

19 7. A "reach code" is so called because it "reaches" beyond the ordinary standards of a  
20 building or energy code to impose greater restrictions on building and development. Reach codes  
21 in California are optional and can only be enacted if specific procedures are followed. Here, the  
22 Reach Code forbids the inclusion of natural gas or propane plumbing in new low-rise residential  
23 construction in the City.

24 8. Despite the fact that enactment of the Reach Code constituted a discretionary  
25 project affecting the use and occupancy of land and structures in the City, and having the potential  
26 for reasonably foreseeable and potentially significant adverse physical changes in the  
27 environment, the City enacted the Reach Code without undertaking environmental review as  
28 required by, and therefore in violation of, the California Environmental Quality Act ("CEQA");

1 Pub. Resources Code § 21000 et seq.) and its implementing CEQA Guidelines (Cal. Code Regs.,  
2 tit. 14, § 15000 et seq.).

3 9. The enactment of a reach code is governed by section 10-106 of the 2019 Building  
4 Energy Efficiency Standards for Residential and Nonresidential Buildings, title 24, part 6 of the  
5 California Code of Regulations (“Reach Code Law”). Before enacting the Reach Code, the Reach  
6 Code Law required that the City adopt “[a] determination that the standards are cost effective.”  
7 (Cal. Code Regs., tit. 24, pt. 6, § 10-106, subd. (a)(1).) The City’s determination was based on a  
8 document entitled “2019 Cost-effectiveness Study: Low-Rise Residential New Construction”  
9 dated July 17, 2019 (“Study”), whose material conclusions are contradicted by a separate study  
10 entitled “Residential Building Electrification in California.” The Reach Code Law also requires  
11 the submittal of an application to the Executive Director of the California State Energy Resources  
12 Conservation and Development Commission that includes “[a]ny findings, determinations,  
13 declarations or reports, ***including any negative declaration or environmental impact report,***  
14 ***required pursuant to the California Environmental Quality Act***, Pub. Resources Code Section  
15 21000 et seq.” (Cal. Code Regs., tit. 24, pt. 6, § 10-106, subd. (b)(4), emphasis added.)

16 10. Petitioner is beneficially interested in the City’s full compliance with the law  
17 regarding the City’s approval of the Reach Code, including adhering to the requirements of CEQA.  
18 Petitioner has personal, professional, environmental and other interests which will be severely  
19 injured by Respondents’ failure to comply with CEQA and the Reach Code Law. Petitioner lives  
20 close by the City and regularly does business there, including developing projects that would be  
21 subject to the Reach Code. Moreover, the Reach Code’s impacts are necessarily regional in nature,  
22 thereby impacting residents throughout Sonoma County.

23 11. Petitioner is within the class of persons beneficially interested in and aggrieved by  
24 the City’s failure to comply with CEQA and approval of the Reach Code. Petitioner has expressed  
25 his concerns and objections to the approval of the Reach Code in correspondence to the City.  
26 Before approving the Reach Code, the City owed a mandatory duty to comply with the legal duties  
27 which Petitioner alleges were violated. Petitioner has the right to enforce the mandatory duties  
28 which CEQA imposes on the City.



1           12.     The City is the lead agency for purposes of CEQA compliance.

2           13.     Petitioner has exhausted all available administrative remedies in that the City's  
3 approval of the Reach Code is final and not subject to further administrative appeal procedures.

4           14.     Petitioner exhausted its administrative remedies to the extent required by law by  
5 objecting to the approval of the Reach Code in writing and presenting all alleged grounds for non-  
6 compliance with CEQA and the Reach Code Law to the City prior to the close of the public hearing  
7 at which the City considered adoption of the Reach Code. (*Tomlinson v. County of Alameda* (2012)  
8 54 Cal.4th 281.)

9           15.     On December 6, 2019, Petitioner's counsel requested a copy of any notice of  
10 exemption filed by the City for the adoption of the Reach Code. As of the filing of this petition the  
11 City has not responded to that request. According to the County of Sonoma CEQA postings  
12 database (<https://crarecords.sonomacounty.ca.gov/selfserviceweb/>), the City filed a notice of  
13 exemption for the Reach Code on December 12, 2019. Petitioner will timely file this Petition for  
14 Writ of Mandate on or before January 16, 2020, a date not more than thirty-five (35) days after the  
15 filing of the notice of exemption as required by Public Resources Code section 21167, subdivision  
16 (d).

17           16.     Petitioner has caused a Notice of Intent to File Suit to be served on the City as  
18 required by Public Resources Code section 21167.5. A true and correct copy of the Notice of Intent  
19 to File Suit is attached hereto as Exhibit A.

20           17.     Petitioner will have caused a copy of this pleading to be served on the Office of the  
21 Attorney General for the State of California not more than ten (10) days after the commencement of  
22 this proceeding, as required by Public Resources Code section 21167.7 and Code of Civil Procedure  
23 section 388.

24           18.     Petitioner brings this action as a private attorney general to vindicate his own legal  
25 and constitutional rights and those of residents of the City and all others who may be impacted by  
26 the Reach Code. Petitioner seeks, on his own behalf and the behalf of said others, that Respondents  
27 obey the clear law, conduct required environmental reviews of their discretionary actions, require  
28 appropriate and feasible mitigation for their significant impacts, and not act in unlawful, bad faith,

1 arbitrary, capricious, and confiscatory fashion in noticing, analyzing, enacting and enforcing local  
2 land use legislation.

3 19. For these reasons, and others set forth in this Petition and Complaint, the City's  
4 actions described herein and the Reach Code are unlawful, invalid, and unenforceable. Petitioner  
5 therefore requests this Court issue a writ of mandate invalidating the Reach Code and declaring it,  
6 and any actions undertaken thereunder or pursuant thereto, unlawful, null, and void. Petitioner also  
7 seeks declaratory relief regarding the parties' respective legal rights and obligations and temporary,  
8 preliminary and permanent injunctive relief prohibiting enforcement of the Reach Code in any  
9 manner.

10 20. An actual and substantial controversy exists between Petitioner, on the one hand, and  
11 Respondents, on the other hand, relating to the legal rights of the respective parties. The  
12 controversy is well-defined and imminent in nature, such that the need for, and appropriateness of,  
13 judicial determinations at this time is warranted.

14 **FIRST CAUSE OF ACTION**

15 (Writ of Mandamus – Violations of CEQA –

16 Code Civ. Proc., §§ 1085, 1094.5; Pub. Resources Code, § 21168.5 –

17 Against All Respondents)

18 21. The allegations of paragraphs 1 through 20, above, are hereby incorporated herein by  
19 reference as though set forth in full.

20 22. The ordinance adopting the Reach Code is a “project” that is subject to CEQA  
21 review. The CEQA Guidelines, in relevant part, define “project” as “the whole of an action, which  
22 has a potential for resulting in either a direct physical change in the environment, or a reasonably  
23 foreseeable indirect physical change in the environment, and that is any of the following: (1) An  
24 activity directly undertaken by any public agency including but not limited to... enactment and  
25 amendment of zoning ordinances....” (Cal. Code Regs., tit. 14, § 15378, subd. (a)(1).) Indeed,  
26 under CEQA’s broad definition of a “project,” municipal ordinances, laws and regulations affecting  
27 the use of land or structures have consistently been held to be CEQA “projects” over the course of  
28 many decades.

1           23.     The staff report for the Reach Code cites three exemptions: the Class 7 exemption  
2 under section 15307 of the CEQA Guidelines, the Class 8 exemption under section 15308 of the  
3 Guidelines, and the “common sense” exemption under section 15061, subdivision (b)(3).

4           24.     CEQA’s co-called “common sense” exemption may properly be invoked only when  
5 the lead agency can declare “with certainty that there is no possibility that the activity in question  
6 may have a significant effect on the environment.” (Cal. Code Regs., tit. 14, § 15061, subd. (b)(3).)  
7 Thus, it is the City’s burden to provide support for application of the common sense exemption, not  
8 Petitioner’s burden to disprove its applicability. Any legitimate reasonable question about whether  
9 a project might have a significant impact means the project cannot be exempt under the “common  
10 sense” exemption. To invoke the common sense exemption, the City was required to consider  
11 factual evidence and data relating to possible environmental impacts of the Reach Code, and that  
12 consideration must be supported by evidence in the administrative record. (*Muzzy Ranch Co. v.*  
13 *Solano County Airport Land Use Commission* (2007) 41 Cal.4th 372, 386-387.)

14           25.     With respect to the Class 7 and 8 exemptions, such can only be used for an action  
15 that constitutes a preservation of the environment. The Reach Code cannot be said to rise to this  
16 standard as it merely substitutes one source of energy for another, without any sufficient analysis as  
17 to whether that substitution will actually yield any benefit to the environment. (*Dunn-Edwards*  
18 *Corp. v. Bay Area Air Quality Management Dist.* (1992) 9 Cal.App.4th 644; *International*  
19 *Longshoremen’s & Warehousemen’s Union v. Board of Supervisors* (1981) 116 Cal. App.3d 265.)  
20 The City cannot undertake a “net benefit” environmental analysis – i.e., reasoning that the project’s  
21 environmental benefits in one area outweigh its significant adverse effects in another area or areas  
22 of environmental impact – as such is not permitted under CEQA. (*County Sanitation Dist. No. 2 v.*  
23 *County of Kern* (2005) 127 Cal.App.4th 1544, 1577, 1580.) “There may be environmental costs to  
24 an environmentally beneficial project, which must be considered and assessed.” (*California Farm*  
25 *Bureau Federation v. California Wildlife Conservation Board* (2006) 143 Cal.App.4th 173, 178.)

26           26.     Moreover, to qualify for the Class 8 exemption the City must have a regulatory  
27 process to protect the environment that is effectively equivalent to CEQA. The Reach Code lacks  
28

1 any such regulatory process, and the City has no other regulatory program that would fulfill  
2 CEQA's purpose here.

3 27. Neither the common sense nor the class 7 or 8 exemptions apply here. The Reach  
4 Code may have a number of significant impacts on the environment, none of which the City has  
5 analyzed. These include the following:

6 a) **Hazards/Public Safety.** The Reach Code was passed at a time when the supply of  
7 electrical power to the City and surrounding communities may be less reliable and  
8 subject to more and longer planned outages than ever before. In October of 2019 the  
9 City and surrounding area were subject to prolonged electricity blackouts and  
10 wildfires which may have been caused by electrical infrastructure. But the City  
11 failed to analyze how all-electric residential construction would exacerbate these  
12 impacts. Without adequate battery storage of electricity, or an alternative power  
13 source, such as natural gas which powers backup generators cook-stoves and grills,  
14 and other appliances, "all-electric" homes and businesses will be subject to hazards  
15 and risks to public safety during outages when heat, life-saving medical equipment,  
16 lighting, water, refrigeration, food, and air conditioning may be unavailable. Given  
17 the risk of blackouts, some residents will rely on propane or gasoline generators or  
18 other combustible sources of power, which are more prone to accident or spillage  
19 than fixed natural gas lines. There has been no study or analysis of the risks or  
20 impacts associated with such increased usage, including air quality, GHG, and fire  
21 impacts.

22 The 2018 Camp Fire, the deadliest in California history, was apparently caused by  
23 electrical transmission lines. There is no analysis whatsoever in the administrative  
24 record as to any potential increase in fire risk from expanded electrical service  
25 facilities which the Reach Code would necessitate.

26 b) **Utilities/Service Systems/Wildfire.** The CEQA Guidelines Appendix G checklist –  
27 a template for the initial study the City is required to conduct under CEQA – requires  
28 evaluation of the question of whether the project would "[r]equire or result in the

1 relocation or construction of new or expanded ... electric power, natural gas, or  
2 telecommunications facilities, the construction of which could cause significant  
3 environmental effects?” Projects requiring significant new construction to rely  
4 solely on electricity as a power source clearly have the potential to result in the  
5 installation, upgrading, and/or maintenance of associated infrastructure (e.g., roads,  
6 fuel breaks, power lines), and where such occurs in or near areas of high fire hazard  
7 the resulting environmental impacts must also be studied. (See Appendix G, Section  
8 XX WILDFIRE [listing potential impacts such as impairment of adopted emergency  
9 response and evacuation plans, exacerbation of wildfire risks, and other human  
10 safety and environmental risks and impacts].) And, as noted above, the most deadly  
11 fire in California history was started not by natural gas facilities, but by electrical  
12 lines. Moreover, also as noted above, increased generator use may give rise to its  
13 own increased risk of fire.

14 c) Similarly, the administrative record does not analyze whether the existing electrical  
15 grid is sufficient to satisfy the demand of all new construction under a 100%  
16 electricity standard. Given PG&E’s warnings about potential blackouts, the grid’s  
17 ability to handle this new demand is questionable at best. Moreover, the City did not  
18 sufficiently discuss the sources of the additional electricity required under the reach  
19 Code, nor the impacts related to those sources. Electric power generation powered  
20 plants fueled by natural gas or other non-renewable energy sources will obviously  
21 negate the supposed benefit of gas-free construction. Wind and solar sources also  
22 have their own well-known adverse impacts relating to wildlife, aesthetics, etc.  
23 They are also subject to supply issues depending on weather and other conditions.  
24 And hydroelectric power comes with its own suite of adverse impacts as well,  
25 including harm to anadromous fish and other species and the risk of failure and flood  
26 (as with the Oroville Dam crisis of 2017). In fact, hydroelectric facilities in  
27 California and the west are being removed, making this source of power uncertain  
28 for future electricity needs.

1 d) **GHG/Air Quality**. In passing the Reach Code the City assumed that GHGs are the  
2 only environmental concern and impact at issue; such a facile assumption is clearly  
3 incorrect. The Reach Code would eliminate natural gas-powered heaters, stoves,  
4 water heaters, built-in outdoor barbeques, gas burning fireplaces, fire pits, and, as  
5 noted above, gas-powered backup generators to protect against losses, disruptions  
6 and safety problems from blackouts of a fragile and overburdened electrical grid.  
7 Alternative fuel sources – such as wood, gasoline, propane or charcoal – exist for  
8 many of these amenities, and could be substituted for the cleaner-burning natural gas  
9 that the proposal would eliminate, leading to greater GHG emissions and air quality  
10 impacts. Such unintended, but clearly reasonably foreseeable, adverse  
11 environmental consequences must be fully evaluated under CEQA. (See, e.g.,  
12 *Rodeo Citizens Association v. County of Contra Costa* (2018) 22 Cal.App.5th 214  
13 [recognizing that to extent captured butane and propane were used to displace use of  
14 other fuels such as coal, home heating fuel, fuel oil, diesel, kerosene, gasoline and  
15 ethanol, they would also displace GHG emissions otherwise resulting from use of  
16 those alternate fuels].) For example, propane barbeques produce only one-third of  
17 the GHG emissions of charcoal barbeques (*id.* at p. 226), and natural gas is similarly  
18 a much cleaner burning fuel than propane, charcoal, wood or gasoline. Moreover,  
19 the increased use of gasoline, diesel, or propane generators may also give rise to air  
20 quality and/or GHG impacts that are completely unanalyzed in the administrative  
21 record.

22 e) **Population and Housing/Human Impacts**. Projects that would displace substantial  
23 numbers of people or housing, or render housing unaffordable, may have significant  
24 adverse impacts on the environment and human beings that require CEQA analysis  
25 and mitigation. (See CEQA Guidelines, Appdx. G, Section XIV.) To the extent the  
26 Reach Code could, for example, substantially increase the cost of new multi-family  
27 apartment dwelling construction and/or retrofitting, it could lead to increased rents,  
28 unaffordable housing, and tenant displacement from the same, with resulting adverse

1 human impacts. Alternatively, renters or home buyers may prefer residences with  
2 traditional gas appliances and therefore show a greater propensity to move outside of  
3 the City and commute. This may also impact the supply of housing in the City.  
4 Residential displacement, in and of itself, has been recognized as a significant  
5 adverse environmental impact subject to CEQA analysis and mitigation. (*Lincoln*  
6 *Place Tenants Assn. v. City of Los Angeles* (2007) 155 Cal.App.4th 425 [holding  
7 CEQA mitigation measures designed to mitigate tenant displacement impacts of  
8 project, contained in a vesting tentative map, were enforceable and did not conflict  
9 with Ellis Act].) Public entities possess the power under existing law “to mitigate  
10 adverse impacts on displaced tenants.” (*San Francisco Apartment Assn. v. City and*  
11 *County of San Francisco* (2016) 3 Cal.App.5th 463, 484, citing *Pieri v. City and*  
12 *County of San Francisco* (2006) 137 Cal.App.4th 886, 892; see Gov. Code,  
13 § 7060.1.) As explained by the *Lincoln Place* Court of Appeal, “CEQA... is made  
14 relevant... by the Ellis Act’s explicit exceptions for a public agency’s power to  
15 regulate, among other things,... the mitigation of adverse impacts on persons  
16 displaced by reason of the withdrawal of rental accommodations. *Such items are the*  
17 *common focus and byproducts of the CEQA process....*” (*Lincoln Place Tenants*  
18 *Assn., supra*, 155 Cal.App.4th at 451, *emph. added.*) Indeed, the Supreme Court has  
19 recently reaffirmed “that CEQA addresses human health and safety” and “that public  
20 health and safety are of great importance in the statutory scheme.” (*California*  
21 *Building Industry Assn. v. Bay Area Air Quality Management Dist.* (2015) 62 Cal.4th  
22 369, 386, citations omitted.) CEQA’s “express language... requires a finding of a  
23 “significant effect on the environment” ([Pub. Resources Code,] § 21083(b)(3))  
24 whenever the “environmental effects of a project will cause substantial effects *on*  
25 *human beings*, either directly or indirectly.” (*Id.* at p. 386, *emphasis in original.*)

- 26 f) **Land Use/Planning**. Given the foregoing, the City failed to adequately analyze the  
27 Reach Code’s consistency with its General Plan. While the City has discretion in  
28 interpreting and applying its General Plan, it cannot do so in a way that frustrates the

1 purpose of the General Plan. (*Napa Citizens for Honest Government v. Napa County*  
2 *Board of Supervisors* (2001) 91 Cal.App.4th 342, 378-381.) The analysis in the  
3 administrative record is far too brief to fully address the proposed ordinance's  
4 consistency with the General Plan and its overall purpose.

5 28. Given the foregoing, the Reach Code may have any number of potentially significant  
6 impacts on the environment, which makes the City's reliance on the common sense and Class 7 and  
7 8 exemptions improper.

8 29. Even if the Reach Code were subject to a categorical exemption, it is clear that the  
9 unusual circumstances exception would apply, rendering the exemptions inapplicable. (Cal Code  
10 Regs., tit. 14, § 15300.2, subd. (c).) Substantial evidence supports a finding that the project  
11 presents unusual circumstances giving rise to the impacts discussed herein. These unusual  
12 circumstances include, but are not limited to, the following: PG&E's express planned electricity  
13 service interruptions and/or blackouts that will potentially last for days in this and other Sonoma  
14 County areas, creating very serious health and safety problems if power is actually out that long and  
15 not resumed from a non-grid source; the jurisdiction and cumulative study area jurisdictions are in  
16 very high fire danger areas, increasing both the likelihood and seriousness of electricity blackouts;  
17 there are well-known serious traffic problems on Highway 101 making even longer commutes to  
18 the City by displaced homebuyers and renters who want a choice other than all-electric more  
19 environmentally harmful. Accordingly, even assuming arguendo a categorical exemption applies,  
20 there is more than a fair argument that the adoption of the ordinance may have significant adverse  
21 environmental effects due to unusual circumstances which require actual analysis in a legally  
22 adequate initial study and appropriate environmental document pursuant to CEQA.

23 30. The City's reliance on exemptions also overlooks the Reach Code's potential for  
24 contributing to significant and adverse cumulative impacts. (Cal Code Regs., tit. 14, § 15300.2,  
25 subd. (b).) If other jurisdictions in Sonoma County or Northern California more broadly enact  
26 similar ordinances, the increase in the demand for electricity will be potentially much greater than  
27 that from the City's alone, and so would the related impacts.

28



1           31.     Section 10-106 of the Building Energy Efficiency Standards upon which the City  
2 relied to enact the Reach Code requires the submission of materials in support of an application for  
3 a reach code. The specific submittals required do not extend to a notice of claimed exemption but a  
4 “negative declaration or environmental impact report, required pursuant to the California  
5 Environmental Quality Act, Public Resources Code Section 21000 et seq.” (Cal. Code Regs., tit.  
6 24, § 10-106, subd. (b)(4).) The provision clearly does not contemplate the use of an exemption  
7 because the Reach Code will invariably require at least an initial study and appropriate  
8 environmental analysis under CEQA. Thus, the reliance on an exemption here is in error under the  
9 very authority upon which the City has relied to enact it.

10           32.     Accordingly, there was no basis in law or fact for the City to conclude that adoption  
11 of the Reach Code was exempt under CEQA.

12           33.     Under CEQA, a lead agency prejudicially abuses its discretion when it (1) fails to  
13 proceed in the manner required by law; or (2) its decision is not supported by the evidence. (Pub.  
14 Resources Code, § 21168.5.) By deeming the Reach Code exempt from CEQA review,  
15 Respondents abused their discretion in failing to comply with CEQA and failing to proceed in the  
16 manner required by law. As a result of Respondents’ violations of CEQA, government decision-  
17 makers have been deprived of critical information essential to informal and intelligent decision-  
18 making, and Petitioner and other members of the public have been deprived and harmed in that  
19 they were not fully informed about the significant environmental impacts of the Reach Code and  
20 potentially feasible ways to mitigate them prior to Respondents’ enactment of the same.  
21 Petitioner, as well as members of the general public, will suffer irreparable harm if the relief  
22 requested herein is not granted, as the Reach Code will be implemented in the absence of a full  
23 and adequate environmental review under CEQA. For the foregoing reasons, inter alia, Petitioner  
24 seeks an immediate stay of the Reach Code.

25           34.     Petitioner has exhausted all administrative remedies made available to him to  
26 address Respondents’ unlawful conduct to the extent required and not excused, and any further  
27 attempts would in any event have been an idle and futile exercise even if available. Petitioner has  
28 no plain, speedy, and adequate remedy in the ordinary course of law to challenge the Reach Code,

1 and a writ of ordinary mandamus under Code of Civil Procedure section 1085 or 1094.5 is the  
2 prescribed remedy for violations of this type. Petitioner is herewith or shortly will be filing and  
3 serving on Respondents his election to prepare the administrative record pursuant to Public  
4 Resources Code section 21167, subdivision (b)(2), and all other applicable laws. Petitioner has also  
5 performed all other conditions precedent to issuance of a writ of mandate, including service of  
6 written notice of the commencement of this action on Respondents in accordance with the  
7 requirements of Public Resources Code section 21167.5, and mail service of the petition on the  
8 California Attorney General no more than ten (10) days after its filing (see Code Civ. Proc., § 388).

9 35. The adoption of the Reach Code are in violation of CEQA and the CEQA  
10 Guidelines.

11 WHEREFORE, Petitioner prays for judgment as hereinafter set forth.

12 **SECOND CAUSE OF ACTION**

13 (Writ of Mandamus – Violations of Cal. Code Regs., tit. 24, pt. 6, § 10-106 –  
14 Code Civ. Proc., §§ 1085, 1094.5 –  
15 Against All Respondents)

16 36. The allegations of paragraphs 1 through 35, above, are hereby incorporated by  
17 reference as though set forth in full.

18 37. Section 10-106 of the Reach Code Law requires that a jurisdiction enacting a reach  
19 code satisfy certain substantive and procedural requirements. As noted above, the City was  
20 required to make “[a] determination that the standards are cost effective.” (Cal. Code Regs., tit. 24,  
21 pt. 6, § 10-106, subd. (a)(1).) The City relied upon the Study to make this determination. However,  
22 the Study was prepared for PG&E, and based on information and belief, the City did not prepare  
23 any other materials to comply with the Reach Code Law.

24 38. The Study concludes that there will be a cost savings associated with all-electric  
25 low-rise residential uses with respect to consumer bills and lifecycle costs based on a “Statewide  
26 Electric Residential Average Rate” of 2% per year from 2020 to 2025 and 1% thereafter. However,  
27 an April 2019 study that was also authored by Frontier Energy, Inc. showed an increase in costs for  
28

1 “Bay Area” consumers purchasing new homes based specifically on PG&E electric rates, which  
2 would be applicable to the City. In support of its conclusion, the April 2019 study states that  
3 “PG&E’s electric rates are assumed to increase faster than the natural gas rates due to wildfire risk  
4 and liability...” Based on the failure of the Study to account for specific PG&E electric rates and  
5 the evidence that based upon electric rates specific to PG&E, costs would increase, the City has  
6 failed to show that the Reach Code would be cost effective. Moreover, the Study fails to account  
7 for tiered electricity pricing and fails to analyze how that would apply to all-electric construction  
8 under the Reach Code. It also is not clear as to whether all-electric construction would lead to  
9 residential units that cannot meet the requirements of the Building Energy Efficiency standards in  
10 Part 6 of Title 24, which would preclude building altogether. The City could therefore not make the  
11 proper determination under the Reach Code Law to pass the Reach Code.

12 39. The Reach Code Law also requires the submittal of an application to the Executive  
13 Director of the California State Energy Resources Conservation and Development Commission that  
14 includes “[a]ny findings, determinations, declarations or reports, *including any negative*  
15 *declaration or environmental impact report, required pursuant to the California Environmental*  
16 *Quality Act*, Pub. Resources Code Section 21000 et seq.” (Cal. Code Regs., tit. 24, pt. 6, § 10-106,  
17 subd. (b)(4), emphasis added.) As noted above, the City did not prepare a negative declaration or  
18 EIR in support of the Reach Code. Accordingly, it cannot make the requisite submittal under the  
19 Reach Code Law.

20 40. Respondents’ action in adopting the Reach Code was therefore arbitrary and  
21 capricious and/or constituted a prejudicial abuse of discretion in that Respondents failed to proceed  
22 in a manner required by law.

23 WHEREFORE, Petitioner prays for judgment as hereinafter set forth.

24 **THIRD CAUSE OF ACTION**

25 (Declaratory and Injunctive Relief

26 - Against All Respondents)

27 41. The allegations of paragraphs 1 through 40, above, are hereby incorporated by  
28 reference as though set forth in full.

1           42.     An actual controversy has arisen and now exists between Petitioner and the  
2 Respondents. Petitioner contends that the Reach Code is invalid due to Respondents' failure to  
3 follow CEQA and/or the Reach Code Law. Petitioner is informed and believes, and on that basis  
4 alleges, that Respondents contend that the Reach Code is valid and enforceable and was properly  
5 enacted.

6           43.     Petitioner desires a judicial determination of the validity of the Reach Code. In  
7 particular, Petitioner desires a declaration that the Reach Code is invalid and unenforceable due to  
8 Respondents' failure to follow CEQA and the Reach Code Law.

9           44.     Such a declaration is necessary and appropriate at this time in order that Petitioner  
10 and similarly situated persons understand their rights and obligations with respect to the Reach  
11 Code.

12           45.     Petitioner also seeks to enjoin Respondents from applying or enforcing the Reach  
13 Code, and to require that Respondents rescind their approval of the Reach Code.

14           WHEREFORE, Petitioner prays for judgment as follows:

15           A.     On the First Cause of Action

16                   1.     For a stay, temporary restraining order, and preliminary injunction directed to  
17 Respondents' and Defendants' unlawful enactment and enforcement of the Reach Code without  
18 required CEQA review, analysis and mitigation as required by law, and for a peremptory writ of  
19 ordinary mandamus invalidating, voiding, and setting aside the adoption of Reach Code and any  
20 actions taken under or pursuant to it;

21                   2.     For attorneys' fees pursuant to Code of Civil Procedure section 1021.5,  
22 Government Code section 800, and all applicable law.

23           B.     On the Second Cause of Action

24                   3.     For a stay, temporary restraining order, and preliminary injunction directed to  
25 Respondents' and Defendants' unlawful enactment and enforcement of Reach Code, and for a  
26 peremptory writ of ordinary mandamus invalidating, voiding, and setting aside their adoption of the  
27 Reach Code and any actions taken under or pursuant to it; and  
28

1                   4.     For attorneys' fees pursuant to Code of Civil Procedure section 1021.5,  
2 Government Code section 800, and all applicable law.

3           C.     On the Third Cause of Action

4                   1.     For a stay, temporary restraining order, and preliminary injunction directed to  
5 Defendants' unlawful enactment and enforcement of the Reach Code, and preventing the Reach  
6 Code from being enforced or given effect in any manner;

7                   2.     For a declaration that the Reach Code is invalid; and

8                   3.     For a permanent injunction preventing enforcement of the Reach Code.


9           D.     On All Causes of Action

10                   1.     For costs and reasonable attorneys' fees as provided by law, including but  
11 not limited to attorneys' fees provided by Code of Civil Procedure section 1021.5; and

12                   2.     For such other and further relief as the Court may deem just and proper.

13  
14 Dated: December 17, 2019

MILLER STARR REGALIA

15  
16 By:   
17 MATTHEW C. HENDERSON  
18 Attorneys for Petitioner and Plaintiff  
19 WILLIAM P. GALLAHER  
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**VERIFICATION**

I have read the foregoing Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief and know its contents.

I am one of the attorneys for William P. Gallaher, a party to this action. Such party is absent from the county where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 17, 2019, at Walnut Creek, California.

Matthew C. Henderson  
Print Name of Signatory

  
Signature

**EXHIBIT A**

1 ARTHUR F. COON (Bar No. 124206)  
MATTHEW C. HENDERSON (Bar No. 229259)  
2 MILLER STARR REGALIA  
A Professional Law Corporation  
3 1331 N. California Blvd., Fifth Floor  
Walnut Creek, California 94596  
4 Telephone: 925 935 9400  
Facsimile: 925 933 4126  
5 Email: arthur.coon@msrlegal.com  
matthew.henderson@msrlegal.com

6 Attorneys for Petitioner and Plaintiff  
7 WILLIAM P. GALLAHER

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SONOMA

10  
11 WILLIAM P. GALLAHER, an individual,  
12 Petitioner and Plaintiff,  
13 v.  
14 CITY OF SANTA ROSA, CITY COUNCIL  
OF THE CITY OF SANTA ROSA, and DOES  
15 1 through 25, inclusive,  
16 Defendants and Respondents.

Case No.

NOTICE OF INTENT TO COMMENCE  
CEQA ACTION  
[Pub. Resources Code, § 21167.5]

**CEQA Action**

17  
18 **TO: CITY OF SANTA ROSA and CITY COUNCIL OF THE CITY OF**  
19 **SANTA ROSA:**

20 **PLEASE TAKE NOTICE** that, pursuant to Public Resources Code section  
21 21167.5, Petitioner and Plaintiff WILLIAM P. GALLAHER will commence a civil action under  
22 the California Environmental Quality Act (“CEQA”; Pub. Resources Code, § 21000 et seq.)  
23 against the City of Santa Rosa and City Council of the City of Santa Rosa (collectively  
24 “Respondents”) challenging the approval, implementation and enforcement by Respondents of  
25 “Ordinance No. ORD-2019-019 Entitled: Ordinance of the Council of the City of Santa Rosa  
26 Adopting by Reference, With Local Amendments, the 2019 California Energy Code Including  
27 All-Electric, Low-Rise Residential Reach Code” (“Reach Code”) without undertaking  
28 environmental review of such action as required by CEQA, and in violation of other requirements

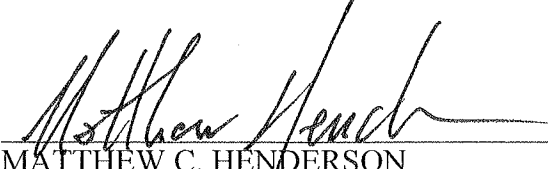


1 of law, and all related actions of Respondents in furtherance of implementation and enforcement  
2 of the Reach Code.

3                   The action will be filed in the Sonoma County Superior Court, on or about  
4 December 17, 2019.

5  
6 Dated: December 17, 2019

MILLER STARR REGALIA

7  
8 By:   
9                   MATTHEW C. HENDERSON  
10                  Attorneys for Petitioner and Plaintiff WILLIAM P.  
11                  GALLAHER

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1 ARTHUR F. COON (Bar No. 124206)  
MATTHEW C. HENDERSON (Bar No. 229259)  
2 MILLER STARR REGALIA  
A Professional Law Corporation  
3 1331 N. California Blvd., Fifth Floor  
Walnut Creek, California 94596  
4 Telephone: 925 935 9400  
Facsimile: 925 933 4126  
5 Email: arthur.coon@msrlegal.com  
matthew.henderson@msrlegal.com

6 Attorneys for Petitioner and Plaintiff WILLIAM  
7 P. GALLAHER

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SONOMA

10 WILLIAM P. GALLAHER, an individual,  
11 Petitioner and Plaintiff,  
12 v.  
13 CITY OF SANTA ROSA, CITY COUNCIL  
OF THE CITY OF SANTA ROSA, and DOES  
14 1 through 25, inclusive,  
15 Defendants and Respondents.

Case No.

VERIFIED PETITION FOR WRIT OF  
MANDATE AND COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF

[CCP §§ 1060, 1085, 1094.5; Pub. Resources  
Code, § 21000 et seq; Cal. Code Regs., tit. 14,  
§ 15000 et seq.; Cal. Code Regs., tit. 24, pt. 6,  
§ 10-106]

**CEQA ACTION**

16  
17  
18 Petitioner and Plaintiff William P. Gallaher, an individual (“Petitioner”), alleges as  
19 follows:

20 **GENERAL ALLEGATIONS**

21 1. Petitioner is an individual, over the age of eighteen who regularly conducts business  
22 in the City of Santa Rosa.

23 2. Respondent and Defendant City of Santa Rosa (“City”) is and at all relevant times  
24 was a political and legal subdivision of the State of California, duly organized and existing under  
25 and pursuant to the laws of the State of California.

26 3. Respondent and Defendant City Council of the City of Santa Rosa (“Council”) is,  
27 and at all relevant times was, inter alia, the duly organized legislative body of the City existing  
28 under and by virtue of the laws of the State of California. The Council is, and at relevant times

1 was, the local body charged with proposing, drafting, amending and passing legislation governing  
2 land use and the City's municipal affairs, subject to, and in a manner complying with, all applicable  
3 federal, state, and local law.

4 4. Petitioner is unaware of the true names or capacities of the parties fictitiously sued  
5 herein as DOES 1 through 25, inclusive, and will amend this complaint to set forth their true names  
6 and capacities when the same have been ascertained. Petitioner is informed and believes, and based  
7 thereon alleges, that some fictitiously named Respondents were the agents and employees of the  
8 other fictitiously named, or actually named, Respondents and, acting within the course of scope of  
9 such employment or agency, took some part in the acts or omissions hereinafter set forth, or are the  
10 principals and took some part in such acts or omissions, by reason of which said fictitiously-named  
11 Respondents are liable to Petitioner for the relief prayed for herein.

12 5. Respondents and Defendants identified in paragraphs 2 through 4 above, inclusive,  
13 are sometimes referred to collectively herein as "Respondents."

14 6. This action challenges the approval by the City of a so-called "reach code" via  
15 "Ordinance No. ORD-2019-019 Entitled: Ordinance of the Council of the City of Santa Rosa  
16 Adopting by Reference, With Local Amendments, the 2019 California Energy Code Including  
17 All-Electric, Low-Rise Residential Reach Code" ("Reach Code"), which ordinance was passed by  
18 the Council on second reading on November 19, 2019.

19 7. A "reach code" is so called because it "reaches" beyond the ordinary standards of a  
20 building or energy code to impose greater restrictions on building and development. Reach codes  
21 in California are optional and can only be enacted if specific procedures are followed. Here, the  
22 Reach Code forbids the inclusion of natural gas or propane plumbing in new low-rise residential  
23 construction in the City.

24 8. Despite the fact that enactment of the Reach Code constituted a discretionary  
25 project affecting the use and occupancy of land and structures in the City, and having the potential  
26 for reasonably foreseeable and potentially significant adverse physical changes in the  
27 environment, the City enacted the Reach Code without undertaking environmental review as  
28 required by, and therefore in violation of, the California Environmental Quality Act ("CEQA");

1 Pub. Resources Code § 21000 et seq.) and its implementing CEQA Guidelines (Cal. Code Regs.,  
2 tit. 14, § 15000 et seq.).

3 9. The enactment of a reach code is governed by section 10-106 of the 2019 Building  
4 Energy Efficiency Standards for Residential and Nonresidential Buildings, title 24, part 6 of the  
5 California Code of Regulations (“Reach Code Law”). Before enacting the Reach Code, the Reach  
6 Code Law required that the City adopt “[a] determination that the standards are cost effective.”  
7 (Cal. Code Regs., tit. 24, pt. 6, § 10-106, subd. (a)(1).) The City’s determination was based on a  
8 document entitled “2019 Cost-effectiveness Study: Low-Rise Residential New Construction”  
9 dated July 17, 2019 (“Study”), whose material conclusions are contradicted by a separate study  
10 entitled “Residential Building Electrification in California.” The Reach Code Law also requires  
11 the submittal of an application to the Executive Director of the California State Energy Resources  
12 Conservation and Development Commission that includes “[a]ny findings, determinations,  
13 declarations or reports, *including any negative declaration or environmental impact report,*  
14 *required pursuant to the California Environmental Quality Act,* Pub. Resources Code Section  
15 21000 et seq.” (Cal. Code Regs., tit. 24, pt. 6, § 10-106, subd. (b)(4), emphasis added.)

16 10. Petitioner is beneficially interested in the City’s full compliance with the law  
17 regarding the City’s approval of the Reach Code, including adhering to the requirements of CEQA.  
18 Petitioner has personal, professional, environmental and other interests which will be severely  
19 injured by Respondents’ failure to comply with CEQA and the Reach Code Law. Petitioner lives  
20 close by the City and regularly does business there, including developing projects that would be  
21 subject to the Reach Code. Moreover, the Reach Code’s impacts are necessarily regional in nature,  
22 thereby impacting residents throughout Sonoma County.

23 11. Petitioner is within the class of persons beneficially interested in and aggrieved by  
24 the City’s failure to comply with CEQA and approval of the Reach Code. Petitioner has expressed  
25 his concerns and objections to the approval of the Reach Code in correspondence to the City.  
26 Before approving the Reach Code, the City owed a mandatory duty to comply with the legal duties  
27 which Petitioner alleges were violated. Petitioner has the right to enforce the mandatory duties  
28 which CEQA imposes on the City.

1           12.     The City is the lead agency for purposes of CEQA compliance.

2           13.     Petitioner has exhausted all available administrative remedies in that the City's  
3 approval of the Reach Code is final and not subject to further administrative appeal procedures.

4           14.     Petitioner exhausted its administrative remedies to the extent required by law by  
5 objecting to the approval of the Reach Code in writing and presenting all alleged grounds for non-  
6 compliance with CEQA and the Reach Code Law to the City prior to the close of the public hearing  
7 at which the City considered adoption of the Reach Code. (*Tomlinson v. County of Alameda* (2012)  
8 54 Cal.4th 281.)

9           15.     On December 6, 2019, Petitioner's counsel requested a copy of any notice of  
10 exemption filed by the City for the adoption of the Reach Code. As of the filing of this petition the  
11 City has not responded to that request. According to the County of Sonoma CEQA postings  
12 database (<https://crarecords.sonomacounty.ca.gov/selfserviceweb/>), the City filed a notice of  
13 exemption for the Reach Code on December 12, 2019. Petitioner will timely file this Petition for  
14 Writ of Mandate on or before January 16, 2020, a date not more than thirty-five (35) days after the  
15 filing of the notice of exemption as required by Public Resources Code section 21167, subdivision  
16 (d).

17           16.     Petitioner has caused a Notice of Intent to File Suit to be served on the City as  
18 required by Public Resources Code section 21167.5. A true and correct copy of the Notice of Intent  
19 to File Suit is attached hereto as Exhibit A.

20           17.     Petitioner will have caused a copy of this pleading to be served on the Office of the  
21 Attorney General for the State of California not more than ten (10) days after the commencement of  
22 this proceeding, as required by Public Resources Code section 21167.7 and Code of Civil Procedure  
23 section 388.

24           18.     Petitioner brings this action as a private attorney general to vindicate his own legal  
25 and constitutional rights and those of residents of the City and all others who may be impacted by  
26 the Reach Code. Petitioner seeks, on his own behalf and the behalf of said others, that Respondents  
27 obey the clear law, conduct required environmental reviews of their discretionary actions, require  
28 appropriate and feasible mitigation for their significant impacts, and not act in unlawful, bad faith,

1 arbitrary, capricious, and confiscatory fashion in noticing, analyzing, enacting and enforcing local  
2 land use legislation.

3 19. For these reasons, and others set forth in this Petition and Complaint, the City’s  
4 actions described herein and the Reach Code are unlawful, invalid, and unenforceable. Petitioner  
5 therefore requests this Court issue a writ of mandate invalidating the Reach Code and declaring it,  
6 and any actions undertaken thereunder or pursuant thereto, unlawful, null, and void. Petitioner also  
7 seeks declaratory relief regarding the parties’ respective legal rights and obligations and temporary,  
8 preliminary and permanent injunctive relief prohibiting enforcement of the Reach Code in any  
9 manner.

10 20. An actual and substantial controversy exists between Petitioner, on the one hand, and  
11 Respondents, on the other hand, relating to the legal rights of the respective parties. The  
12 controversy is well-defined and imminent in nature, such that the need for, and appropriateness of,  
13 judicial determinations at this time is warranted.

14 **FIRST CAUSE OF ACTION**

15 (Writ of Mandamus – Violations of CEQA –  
16 Code Civ. Proc., §§ 1085, 1094.5; Pub. Resources Code, § 21168.5 –  
17 Against All Respondents)

18 21. The allegations of paragraphs 1 through 20, above, are hereby incorporated herein by  
19 reference as though set forth in full.

20 22. The ordinance adopting the Reach Code is a “project” that is subject to CEQA  
21 review. The CEQA Guidelines, in relevant part, define “project” as “the whole of an action, which  
22 has a potential for resulting in either a direct physical change in the environment, or a reasonably  
23 foreseeable indirect physical change in the environment, and that is any of the following: (1) An  
24 activity directly undertaken by any public agency including but not limited to... enactment and  
25 amendment of zoning ordinances....” (Cal. Code Regs., tit. 14, § 15378, subd. (a)(1).) Indeed,  
26 under CEQA’s broad definition of a “project,” municipal ordinances, laws and regulations affecting  
27 the use of land or structures have consistently been held to be CEQA “projects” over the course of  
28 many decades.

1           23.     The staff report for the Reach Code cites three exemptions: the Class 7 exemption  
2 under section 15307 of the CEQA Guidelines, the Class 8 exemption under section 15308 of the  
3 Guidelines, and the “common sense” exemption under section 15061, subdivision (b)(3).

4           24.     CEQA’s co-called “common sense” exemption may properly be invoked only when  
5 the lead agency can declare “with certainty that there is no possibility that the activity in question  
6 may have a significant effect on the environment.” (Cal. Code Regs., tit. 14, § 15061, subd. (b)(3).)  
7 Thus, it is the City’s burden to provide support for application of the common sense exemption, not  
8 Petitioner’s burden to disprove its applicability. Any legitimate reasonable question about whether  
9 a project might have a significant impact means the project cannot be exempt under the “common  
10 sense” exemption. To invoke the common sense exemption, the City was required to consider  
11 factual evidence and data relating to possible environmental impacts of the Reach Code, and that  
12 consideration must be supported by evidence in the administrative record. (*Muzzy Ranch Co. v.*  
13 *Solano County Airport Land Use Commission* (2007) 41 Cal.4th 372, 386-387.)

14           25.     With respect to the Class 7 and 8 exemptions, such can only be used for an action  
15 that constitutes a preservation of the environment. The Reach Code cannot be said to rise to this  
16 standard as it merely substitutes one source of energy for another, without any sufficient analysis as  
17 to whether that substitution will actually yield any benefit to the environment. (*Dunn-Edwards*  
18 *Corp. v. Bay Area Air Quality Management Dist.* (1992) 9 Cal.App.4th 644; *International*  
19 *Longshoremen’s & Warehousemen’s Union v. Board of Supervisors* (1981) 116 Cal. App.3d 265.)  
20 The City cannot undertake a “net benefit” environmental analysis – i.e., reasoning that the project’s  
21 environmental benefits in one area outweigh its significant adverse effects in another area or areas  
22 of environmental impact – as such is not permitted under CEQA. (*County Sanitation Dist. No. 2 v.*  
23 *County of Kern* (2005) 127 Cal.App.4th 1544, 1577, 1580.) “There may be environmental costs to  
24 an environmentally beneficial project, which must be considered and assessed.” (*California Farm*  
25 *Bureau Federation v. California Wildlife Conservation Board* (2006) 143 Cal.App.4th 173, 178.)

26           26.     Moreover, to qualify for the Class 8 exemption the City must have a regulatory  
27 process to protect the environment that is effectively equivalent to CEQA. The Reach Code lacks  
28

1 any such regulatory process, and the City has no other regulatory program that would fulfill  
2 CEQA's purpose here.

3 27. Neither the common sense nor the class 7 or 8 exemptions apply here. The Reach  
4 Code may have a number of significant impacts on the environment, none of which the City has  
5 analyzed. These include the following:

6 a) **Hazards/Public Safety.** The Reach Code was passed at a time when the supply of  
7 electrical power to the City and surrounding communities may be less reliable and  
8 subject to more and longer planned outages than ever before. In October of 2019 the  
9 City and surrounding area were subject to prolonged electricity blackouts and  
10 wildfires which may have been caused by electrical infrastructure. But the City  
11 failed to analyze how all-electric residential construction would exacerbate these  
12 impacts. Without adequate battery storage of electricity, or an alternative power  
13 source, such as natural gas which powers backup generators cook-stoves and grills,  
14 and other appliances, "all-electric" homes and businesses will be subject to hazards  
15 and risks to public safety during outages when heat, life-saving medical equipment,  
16 lighting, water, refrigeration, food, and air conditioning may be unavailable. Given  
17 the risk of blackouts, some residents will rely on propane or gasoline generators or  
18 other combustible sources of power, which are more prone to accident or spillage  
19 than fixed natural gas lines. There has been no study or analysis of the risks or  
20 impacts associated with such increased usage, including air quality, GHG, and fire  
21 impacts.

22 The 2018 Camp Fire, the deadliest in California history, was apparently caused by  
23 electrical transmission lines. There is no analysis whatsoever in the administrative  
24 record as to any potential increase in fire risk from expanded electrical service  
25 facilities which the Reach Code would necessitate.

26 b) **Utilities/Service Systems/Wildfire.** The CEQA Guidelines Appendix G checklist –  
27 a template for the initial study the City is required to conduct under CEQA – requires  
28 evaluation of the question of whether the project would "[r]equire or result in the



1 relocation or construction of new or expanded ... electric power, natural gas, or  
2 telecommunications facilities, the construction of which could cause significant  
3 environmental effects?" Projects requiring significant new construction to rely  
4 solely on electricity as a power source clearly have the potential to result in the  
5 installation, upgrading, and/or maintenance of associated infrastructure (e.g., roads,  
6 fuel breaks, power lines), and where such occurs in or near areas of high fire hazard  
7 the resulting environmental impacts must also be studied. (See Appendix G, Section  
8 XX WILDFIRE [listing potential impacts such as impairment of adopted emergency  
9 response and evacuation plans, exacerbation of wildfire risks, and other human  
10 safety and environmental risks and impacts].) And, as noted above, the most deadly  
11 fire in California history was started not by natural gas facilities, but by electrical  
12 lines. Moreover, also as noted above, increased generator use may give rise to its  
13 own increased risk of fire.

14 c) Similarly, the administrative record does not analyze whether the existing electrical  
15 grid is sufficient to satisfy the demand of all new construction under a 100%  
16 electricity standard. Given PG&E's warnings about potential blackouts, the grid's  
17 ability to handle this new demand is questionable at best. Moreover, the City did not  
18 sufficiently discuss the sources of the additional electricity required under the reach  
19 Code, nor the impacts related to those sources. Electric power generation powered  
20 plants fueled by natural gas or other non-renewable energy sources will obviously  
21 negate the supposed benefit of gas-free construction. Wind and solar sources also  
22 have their own well-known adverse impacts relating to wildlife, aesthetics, etc.  
23 They are also subject to supply issues depending on weather and other conditions.  
24 And hydroelectric power comes with its own suite of adverse impacts as well,  
25 including harm to anadromous fish and other species and the risk of failure and flood  
26 (as with the Oroville Dam crisis of 2017). In fact, hydroelectric facilities in  
27 California and the west are being removed, making this source of power uncertain  
28 for future electricity needs.

1 d) **GHG/Air Quality**. In passing the Reach Code the City assumed that GHGs are the  
2 only environmental concern and impact at issue; such a facile assumption is clearly  
3 incorrect. The Reach Code would eliminate natural gas-powered heaters, stoves,  
4 water heaters, built-in outdoor barbeques, gas burning fireplaces, fire pits, and, as  
5 noted above, gas-powered backup generators to protect against losses, disruptions  
6 and safety problems from blackouts of a fragile and overburdened electrical grid.  
7 Alternative fuel sources – such as wood, gasoline, propane or charcoal – exist for  
8 many of these amenities, and could be substituted for the cleaner-burning natural gas  
9 that the proposal would eliminate, leading to greater GHG emissions and air quality  
10 impacts. Such unintended, but clearly reasonably foreseeable, adverse  
11 environmental consequences must be fully evaluated under CEQA. (See, e.g.,  
12 *Rodeo Citizens Association v. County of Contra Costa* (2018) 22 Cal.App.5th 214  
13 [recognizing that to extent captured butane and propane were used to displace use of  
14 other fuels such as coal, home heating fuel, fuel oil, diesel, kerosene, gasoline and  
15 ethanol, they would also displace GHG emissions otherwise resulting from use of  
16 those alternate fuels].) For example, propane barbeques produce only one-third of  
17 the GHG emissions of charcoal barbeques (*id.* at p. 226), and natural gas is similarly  
18 a much cleaner burning fuel than propane, charcoal, wood or gasoline. Moreover,  
19 the increased use of gasoline, diesel, or propane generators may also give rise to air  
20 quality and/or GHG impacts that are completely unanalyzed in the administrative  
21 record.

22 e) **Population and Housing/Human Impacts**. Projects that would displace substantial  
23 numbers of people or housing, or render housing unaffordable, may have significant  
24 adverse impacts on the environment and human beings that require CEQA analysis  
25 and mitigation. (See CEQA Guidelines, Appdx. G, Section XIV.) To the extent the  
26 Reach Code could, for example, substantially increase the cost of new multi-family  
27 apartment dwelling construction and/or retrofitting, it could lead to increased rents,  
28 unaffordable housing, and tenant displacement from the same, with resulting adverse

1 human impacts. Alternatively, renters or home buyers may prefer residences with  
2 traditional gas appliances and therefore show a greater propensity to move outside of  
3 the City and commute. This may also impact the supply of housing in the City.  
4 Residential displacement, in and of itself, has been recognized as a significant  
5 adverse environmental impact subject to CEQA analysis and mitigation. (*Lincoln*  
6 *Place Tenants Assn. v. City of Los Angeles* (2007) 155 Cal.App.4th 425 [holding  
7 CEQA mitigation measures designed to mitigate tenant displacement impacts of  
8 project, contained in a vesting tentative map, were enforceable and did not conflict  
9 with Ellis Act].) Public entities possess the power under existing law “to mitigate  
10 adverse impacts on displaced tenants.” (*San Francisco Apartment Assn. v. City and*  
11 *County of San Francisco* (2016) 3 Cal.App.5th 463, 484, citing *Pieri v. City and*  
12 *County of San Francisco* (2006) 137 Cal.App.4th 886, 892; see Gov. Code,  
13 § 7060.1.) As explained by the *Lincoln Place* Court of Appeal, “CEQA... is made  
14 relevant... by the Ellis Act’s explicit exceptions for a public agency’s power to  
15 regulate, among other things,... the mitigation of adverse impacts on persons  
16 displaced by reason of the withdrawal of rental accommodations. *Such items are the*  
17 *common focus and byproducts of the CEQA process....*” (*Lincoln Place Tenants*  
18 *Assn., supra*, 155 Cal.App.4th at 451, *emph. added.*) Indeed, the Supreme Court has  
19 recently reaffirmed “that CEQA addresses human health and safety” and “that public  
20 health and safety are of great importance in the statutory scheme.” (*California*  
21 *Building Industry Assn. v. Bay Area Air Quality Management Dist.* (2015) 62 Cal.4th  
22 369, 386, citations omitted.) CEQA’s “express language... requires a finding of a  
23 “significant effect on the environment” ([Pub. Resources Code,] § 21083(b)(3))  
24 whenever the “environmental effects of a project will cause substantial effects *on*  
25 *human beings, either directly or indirectly.*” (*Id.* at p. 386, *emphasis in original.*)

26 f) **Land Use/Planning.** Given the foregoing, the City failed to adequately analyze the  
27 Reach Code’s consistency with its General Plan. While the City has discretion in  
28 interpreting and applying its General Plan, it cannot do so in a way that frustrates the

1 purpose of the General Plan. (*Napa Citizens for Honest Government v. Napa County*  
2 *Board of Supervisors* (2001) 91 Cal.App.4th 342, 378-381.) The analysis in the  
3 administrative record is far too brief to fully address the proposed ordinance's  
4 consistency with the General Plan and its overall purpose.

5 28. Given the foregoing, the Reach Code may have any number of potentially significant  
6 impacts on the environment, which makes the City's reliance on the common sense and Class 7 and  
7 8 exemptions improper.

8 29. Even if the Reach Code were subject to a categorical exemption, it is clear that the  
9 unusual circumstances exception would apply, rendering the exemptions inapplicable. (Cal Code  
10 Regs., tit. 14, § 15300.2, subd. (c).) Substantial evidence supports a finding that the project  
11 presents unusual circumstances giving rise to the impacts discussed herein. These unusual  
12 circumstances include, but are not limited to, the following: PG&E's express planned electricity  
13 service interruptions and/or blackouts that will potentially last for days in this and other Sonoma  
14 County areas, creating very serious health and safety problems if power is actually out that long and  
15 not resumed from a non-grid source; the jurisdiction and cumulative study area jurisdictions are in  
16 very high fire danger areas, increasing both the likelihood and seriousness of electricity blackouts;  
17 there are well-known serious traffic problems on Highway 101 making even longer commutes to  
18 the City by displaced homebuyers and renters who want a choice other than all-electric more  
19 environmentally harmful. Accordingly, even assuming *arguendo* a categorical exemption applies,  
20 there is more than a fair argument that the adoption of the ordinance may have significant adverse  
21 environmental effects due to unusual circumstances which require actual analysis in a legally  
22 adequate initial study and appropriate environmental document pursuant to CEQA.

23 30. The City's reliance on exemptions also overlooks the Reach Code's potential for  
24 contributing to significant and adverse cumulative impacts. (Cal Code Regs., tit. 14, § 15300.2,  
25 subd. (b).) If other jurisdictions in Sonoma County or Northern California more broadly enact  
26 similar ordinances, the increase in the demand for electricity will be potentially much greater than  
27 that from the City's alone, and so would the related impacts.

1           31.     Section 10-106 of the Building Energy Efficiency Standards upon which the City  
2 relied to enact the Reach Code requires the submission of materials in support of an application for  
3 a reach code. The specific submittals required do not extend to a notice of claimed exemption but a  
4 “negative declaration or environmental impact report, required pursuant to the California  
5 Environmental Quality Act, Public Resources Code Section 21000 et seq.” (Cal. Code Regs., tit.  
6 24, § 10-106, subd. (b)(4).) The provision clearly does not contemplate the use of an exemption  
7 because the Reach Code will invariably require at least an initial study and appropriate  
8 environmental analysis under CEQA. Thus, the reliance on an exemption here is in error under the  
9 very authority upon which the City has relied to enact it.

10           32.     Accordingly, there was no basis in law or fact for the City to conclude that adoption  
11 of the Reach Code was exempt under CEQA.

12           33.     Under CEQA, a lead agency prejudicially abuses its discretion when it (1) fails to  
13 proceed in the manner required by law; or (2) its decision is not supported by the evidence. (Pub.  
14 Resources Code, § 21168.5.) By deeming the Reach Code exempt from CEQA review,  
15 Respondents abused their discretion in failing to comply with CEQA and failing to proceed in the  
16 manner required by law. As a result of Respondents’ violations of CEQA, government decision-  
17 makers have been deprived of critical information essential to informal and intelligent decision-  
18 making, and Petitioner and other members of the public have been deprived and harmed in that  
19 they were not fully informed about the significant environmental impacts of the Reach Code and  
20 potentially feasible ways to mitigate them prior to Respondents’ enactment of the same.  
21 Petitioner, as well as members of the general public, will suffer irreparable harm if the relief  
22 requested herein is not granted, as the Reach Code will be implemented in the absence of a full  
23 and adequate environmental review under CEQA. For the foregoing reasons, inter alia, Petitioner  
24 seeks an immediate stay of the Reach Code.

25           34.     Petitioner has exhausted all administrative remedies made available to him to  
26 address Respondents’ unlawful conduct to the extent required and not excused, and any further  
27 attempts would in any event have been an idle and futile exercise even if available. Petitioner has  
28 no plain, speedy, and adequate remedy in the ordinary course of law to challenge the Reach Code,

1 and a writ of ordinary mandamus under Code of Civil Procedure section 1085 or 1094.5 is the  
2 prescribed remedy for violations of this type. Petitioner is herewith or shortly will be filing and  
3 serving on Respondents his election to prepare the administrative record pursuant to Public  
4 Resources Code section 21167, subdivision (b)(2), and all other applicable laws. Petitioner has also  
5 performed all other conditions precedent to issuance of a writ of mandate, including service of  
6 written notice of the commencement of this action on Respondents in accordance with the  
7 requirements of Public Resources Code section 21167.5, and mail service of the petition on the  
8 California Attorney General no more than ten (10) days after its filing (see Code Civ. Proc., § 388).

9 35. The adoption of the Reach Code are in violation of CEQA and the CEQA  
10 Guidelines.

11 WHEREFORE, Petitioner prays for judgment as hereinafter set forth.

12 **SECOND CAUSE OF ACTION**

13 (Writ of Mandamus – Violations of Cal. Code Regs., tit. 24, pt. 6, § 10-106 –  
14 Code Civ. Proc., §§ 1085, 1094.5 –  
15 Against All Respondents)

16 36. The allegations of paragraphs 1 through 35, above, are hereby incorporated by  
17 reference as though set forth in full.

18 37. Section 10-106 of the Reach Code Law requires that a jurisdiction enacting a reach  
19 code satisfy certain substantive and procedural requirements. As noted above, the City was  
20 required to make “[a] determination that the standards are cost effective.” (Cal. Code Regs., tit. 24,  
21 pt. 6, § 10-106, subd. (a)(1).) The City relied upon the Study to make this determination. However,  
22 the Study was prepared for PG&E, and based on information and belief, the City did not prepare  
23 any other materials to comply with the Reach Code Law.

24 38. The Study concludes that there will be a cost savings associated with all-electric  
25 low-rise residential uses with respect to consumer bills and lifecycle costs based on a “Statewide  
26 Electric Residential Average Rate” of 2% per year from 2020 to 2025 and 1% thereafter. However,  
27 an April 2019 study that was also authored by Frontier Energy, Inc. showed an increase in costs for  
28

1 “Bay Area” consumers purchasing new homes based specifically on PG&E electric rates, which  
2 would be applicable to the City. In support of its conclusion, the April 2019 study states that  
3 “PG&E’s electric rates are assumed to increase faster than the natural gas rates due to wildfire risk  
4 and liability....” Based on the failure of the Study to account for specific PG&E electric rates and  
5 the evidence that based upon electric rates specific to PG&E, costs would increase, the City has  
6 failed to show that the Reach Code would be cost effective. Moreover, the Study fails to account  
7 for tiered electricity pricing and fails to analyze how that would apply to all-electric construction  
8 under the Reach Code. It also is not clear as to whether all-electric construction would lead to  
9 residential units that cannot meet the requirements of the Building Energy Efficiency standards in  
10 Part 6 of Title 24, which would preclude building altogether. The City could therefore not make the  
11 proper determination under the Reach Code Law to pass the Reach Code.

12 39. The Reach Code Law also requires the submittal of an application to the Executive  
13 Director of the California State Energy Resources Conservation and Development Commission that  
14 includes “[a]ny findings, determinations, declarations or reports, *including any negative*  
15 *declaration or environmental impact report, required pursuant to the California Environmental*  
16 *Quality Act*, Pub. Resources Code Section 21000 et seq.” (Cal. Code Regs., tit. 24, pt. 6, § 10-106,  
17 subd. (b)(4), emphasis added.) As noted above, the City did not prepare a negative declaration or  
18 EIR in support of the Reach Code. Accordingly, it cannot make the requisite submittal under the  
19 Reach Code Law.

20 40. Respondents’ action in adopting the Reach Code was therefore arbitrary and  
21 capricious and/or constituted a prejudicial abuse of discretion in that Respondents failed to proceed  
22 in a manner required by law.

23 WHEREFORE, Petitioner prays for judgment as hereinafter set forth.

24 **THIRD CAUSE OF ACTION**

25 (Declaratory and Injunctive Relief

26 - Against All Respondents)

27 41. The allegations of paragraphs 1 through 40, above, are hereby incorporated by  
28 reference as though set forth in full.

1           42.     An actual controversy has arisen and now exists between Petitioner and the  
2 Respondents. Petitioner contends that the Reach Code is invalid due to Respondents' failure to  
3 follow CEQA and/or the Reach Code Law. Petitioner is informed and believes, and on that basis  
4 alleges, that Respondents contend that the Reach Code is valid and enforceable and was properly  
5 enacted.

6           43.     Petitioner desires a judicial determination of the validity of the Reach Code. In  
7 particular, Petitioner desires a declaration that the Reach Code is invalid and unenforceable due to  
8 Respondents' failure to follow CEQA and the Reach Code Law.

9           44.     Such a declaration is necessary and appropriate at this time in order that Petitioner  
10 and similarly situated persons understand their rights and obligations with respect to the Reach  
11 Code.

12           45.     Petitioner also seeks to enjoin Respondents from applying or enforcing the Reach  
13 Code, and to require that Respondents rescind their approval of the Reach Code.

14           WHEREFORE, Petitioner prays for judgment as follows:

15           A.     On the First Cause of Action

16                   1.     For a stay, temporary restraining order, and preliminary injunction directed to  
17 Respondents' and Defendants' unlawful enactment and enforcement of the Reach Code without  
18 required CEQA review, analysis and mitigation as required by law, and for a peremptory writ of  
19 ordinary mandamus invalidating, voiding, and setting aside the adoption of Reach Code and any  
20 actions taken under or pursuant to it;

21                   2.     For attorneys' fees pursuant to Code of Civil Procedure section 1021.5,  
22 Government Code section 800, and all applicable law.

23           B.     On the Second Cause of Action

24                   3.     For a stay, temporary restraining order, and preliminary injunction directed to  
25 Respondents' and Defendants' unlawful enactment and enforcement of Reach Code, and for a  
26 peremptory writ of ordinary mandamus invalidating, voiding, and setting aside their adoption of the  
27 Reach Code and any actions taken under or pursuant to it; and  
28



1                   4.     For attorneys' fees pursuant to Code of Civil Procedure section 1021.5,  
2 Government Code section 800, and all applicable law.

3                   C.     On the Third Cause of Action

4                   1.     For a stay, temporary restraining order, and preliminary injunction directed to  
5 Defendants' unlawful enactment and enforcement of the Reach Code, and preventing the Reach  
6 Code from being enforced or given effect in any manner;

7                   2.     For a declaration that the Reach Code is invalid; and

8                   3.     For a permanent injunction preventing enforcement of the Reach Code.

9                   D.     On All Causes of Action

10                  1.     For costs and reasonable attorneys' fees as provided by law, including but  
11 not limited to attorneys' fees provided by Code of Civil Procedure section 1021.5; and

12                  2.     For such other and further relief as the Court may deem just and proper.

13  
14 Dated: December \_\_, 2019

MILLER STARR REGALIA

15  
16 By:

17 \_\_\_\_\_  
18 MATTHEW C. HENDERSON  
19 Attorneys for Petitioner and Plaintiff  
20 WILLIAM P. GALLAHER  
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**VERIFICATION**

I have read the foregoing Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief and know its contents.

I am one of the attorneys for William P. Gallaher, a party to this action. Such party is absent from the county where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December \_\_, 2019, at Walnut Creek, California.

Matthew C. Henderson  
\_\_\_\_\_  
Print Name of Signatory

\_\_\_\_\_  
Signature

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**PROOF OF SERVICE**

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Contra Costa, State of California. My business address is 1331 N. California Blvd., Fifth Floor, Walnut Creek, CA 94596.

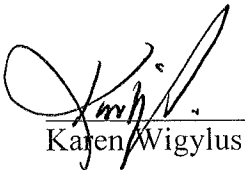
On December 17, 2019, I served true copies of the following document(s) described as **NOTICE OF INTENT TO COMMENCE CEQA ACTION** on the interested parties in this action as follows:

City Clerk	City Council of the City of Santa Rosa
City of Santa Rosa	City of Santa Rosa
100 Santa Rosa Avenue, Room 10	100 Santa Rosa Avenue
Santa Rosa, CA 95404	Santa Rosa, CA 95404

**BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Miller Starr Regalia for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope was placed in the mail at Walnut Creek, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 17, 2019, at Walnut Creek, California.




---

Kajen Wigylus



**MILLER STARR  
REGALIA**

1331 N. California Blvd.  
Fifth Floor  
Walnut Creek, CA 94596

T 925 935 9400  
F 925 933 4126  
www.msrlgal.com

Matthew C. Henderson  
Direct Dial: 925 941 3271  
matthew.henderson@msrlgal.com

February 18, 2020

**Via Email**

Docket Unit  
California Energy Commission  
Docket No. 19-BSTD-06  
1516 9th Street, MS-4  
Sacramento, CA 95814  
Email: [docket@energy.ca.gov](mailto:docket@energy.ca.gov)

Re: City of Santa Rosa 2019 Ordinance No. ORD-2019-019,  
Docket No. 19-BSTD-06

Dear California Energy Commission:

This firm represents William Gallaher with respect to the City of Santa Rosa's adoption of an All Electric Reach Code/Natural Gas Ban ("Reach Code") which is now before the Commission at docket no. 19-BSTD-06. Our client is extremely concerned with the potentially adverse planning and environmental and health and safety effects that may occur from adoption and implementation of the Reach Code.

In short, the Reach Code as proposed cannot satisfy the requirements of Public Resources Code section 25402.1, subdivision (h)(2) or section 10-106 of the state Building Energy Efficiency standards, and therefore its adoption cannot be ratified by the Commission. Moreover, the City's adoption of the Reach Code via claimed exemptions under the California Environmental Quality Act ("CEQA," Public Resources Code section 21000 et seq.) was contrary to the law. Under cover of this letter I am forwarding, and incorporate herein by reference, our correspondence with the City as to this issue, as well as the petition for writ of mandate filed in the Superior Court for the County of Sonoma challenging the Reach Code's adoption.

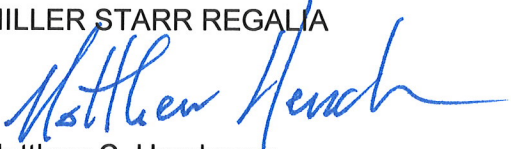
Moreover, it is clear that any finding or determination the Commission makes to approve or ratify the Reach Code will also be a discretionary action requiring review under CEQA. Because the adoption of the Reach Code may have significant environmental impacts that the City has not analyzed via an initial study and environmental impact report, the Commission cannot itself rely on any CEQA exemption to approve it. (See *Save Our Carmel River v. Monterey Peninsula Water Mgmt. Dist.* (2006) 141 Cal.App.4th 677, 702.)

California Energy Commission  
February 18, 2020  
Page 2

For all of these reasons, the Commission cannot make the requisite findings under Public Resources Code section 25402.1, subdivision (h)(2) or section 10-106 of the state Building Energy Efficiency standards, nor make the requisite findings under CEQA absent the preparation of an EIR. Thank you for your attention to this matter.

Very truly yours,

MILLER STARR REGALIA



Matthew C. Henderson

MCH:klw  
encls

cc: Kevin Siegel, Esq. (ksiegel@bwslaw.com)  
Arthur F. Coon, Esq. (arthur.coon@msrlegal.com)