

DOCKETED

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ORDINANCE NO. 21-006

Ordinance Of The City Council Of The City Of Emeryville Amending Chapter 10 (“Energy Code”) of Title 8 (“Building Regulations”) Of The Emeryville Municipal Code To Amend The 2019 California Energy Code Of The 2019 Edition Of The California Building Standards Code (California Code Of Regulations, Title 24, Part 6); CEQA Determination: Exempt Pursuant to CEQA Guideline 15061(b)(3)

WHEREAS the California Building Standards Code, Title 24 of the California Code of Regulations, is updated every three years by the California Energy Commission (CEC) and the California Building Standards Commission (CBSC), and the most recent edition was published on July 1, 2019 and became effective throughout California on January 1, 2020; and

WHEREAS, Part 6 of Title 24, called the California Energy Code, establishes energy standards for all new buildings constructed in California; and

WHEREAS, the City of Emeryville adopted the updated Title 24 provisions on December 3, 2019; and

WHEREAS, in addition to enforcing the Title 24 standards, local jurisdictions are authorized by Health & Safety Code sections 18941.5, 17958.5, and 17958.7 to adopt local ordinances that change or are more restrictive than the minimum standards defined by Title 24 when deemed reasonably necessary because of local climactic, geologic, or topographic conditions; and

WHEREAS, the City Council of the City of Emeryville makes the following finding of local climactic, geologic, or topographic conditions that support the adoption of amendments to the 2019 California Energy Code, Sections 100.0(i) and 100.1(b), which are more restrictive standards than those found in the 2019 Energy Code:

- 1) Climactic conditions: climactic conditions in and around the City of Emeryville require local modifications to Title 24 of the California Code of Regulations, including
 - a. Seasonal climactic conditions in and around the City of Emeryville create severe fire hazards to the public health and welfare;
 - b. The City of Emeryville is at risk of the effects of rising sea levels and higher-intensity storms, which put at risk the jurisdiction’s homes, businesses, public facilities, roads, and highways;
 - c. Reducing greenhouse gas (GHG) emissions associated with natural gas and building materials including concrete is necessary to reduce the Emeryville’s contribution to climate change, which is causing the severe local climactic conditions.
- 2) Geologic conditions: geologic conditions in and around the City of Emeryville require local modifications to Title 24 of the California Code of Regulations due to the foreseeable risk of seismic activity, including increased risk of earthquakes due to its proximity to major faults including the Hayward Fault (<3 miles) and the San Andreas Fault (<20 miles). As a result, Emeryville experiences an increased risk of fires caused by seismic activity. Reducing the reliance on natural gas in new

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construction will decrease the risk of fires caused when gas lines rupture or break in seismic-related events.

- 3) Topographic conditions: Emeryville's topography creates conditions that require local modifications to Title 24, since it is contiguous with the San Francisco Bay coastline, resulting in a natural receptor for storm and waste-water runoff, as well as heightened risk from sea level rise conditions.

WHEREAS, electrification enhances the public health and welfare by promoting the environmental and economic health of the city of Emeryville through the design, construction, maintenance, operation and deconstruction of buildings and sites. The provisions of this Ordinance are designed to achieve the following goals:

- 1) Eliminate the greenhouse gas emissions that result from transporting and combusting natural gas;
- 2) Eliminate fire and other dangers associated with transporting natural gas;
- 3) Lower the cost of new residential construction;
- 4) Eliminate the indoor air quality impacts of natural gas combustion in residential buildings; and

WHEREAS, the City Council of the City of Emeryville finds and determines that the amendments to California Energy Code, Sections 100.0(i) and 100.1(b), requiring new residential occupancies (with exceptions) to be "All Electric Buildings" (as defined) are reasonably necessary because of local climatic, geological or topographical conditions stated herein; and

WHEREAS, local governments may adopt energy conservation standards that differ from the California Energy Code with California Energy Commission approval, provided that local governments demonstrate, pursuant to Public Resources Code section 25402.1(h)(2) that the requirements of their proposed standards are cost effective and do not result in buildings that consume more energy than is permitted by Title 24; and

WHEREAS, California Energy Codes & Standards Statewide Utility Program studies demonstrate that the compliance pathways for all-electric residential new construction are cost-effective and do not consume more energy than is permitted by Title 24, based on studies done by TRC under contract to East Bay Community Energy; and

WHEREAS, it is reasonably necessary to require buildings to produce renewable, low-carbon electricity and to reduce energy consumption through efficient design in order to reduce the effects of climate change, reduce regional pollution and improve resilience to climate change; and

WHEREAS, the amendments contained herein will require newly constructed buildings to meet or exceed the energy standards contained in the 2019 Edition of the Title 24 Energy Code, and therefore will not result in buildings that consume more energy than is permitted by Title 24; and

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WHEREAS, the City of Emeryville is committed to reducing greenhouse gas emissions in accordance with State, Local, and Federal regulations, orders, and goals; and

WHEREAS, the United Nations Intergovernmental Panel on Climate Change (IPCC) has warned that failure to address the causes of global climate change within the next few years will result in significant sea level increases and frequency of wildland fires and reduced freshwater resources, which will significantly increase the cost of providing local governmental services and protecting public infrastructure; and

WHEREAS the Adapting to Rising Tides¹ shoreline sea level rise vulnerability assessment concluded that with end of the century projections of three feet of sea level rise and a 100-year storm event, nearly half of Emeryville's land area could be flooded, potentially impacting local homes and businesses as well as regional transportation networks; and

WHEREAS, the City of Emeryville is authorized by statute to adopt local amendments or additions to the California Building Standards Code when determined to be reasonably necessary by the City Council of the City of Emeryville because of local climatic, geological, topographical or environmental conditions, provided the procedures and effective date of local amendments coincide with the procedures and effective date of the California Building Standards Code; and

WHEREAS, the relevant amendments contained herein will be enacted as amendments to the 2019 California Energy Code; and

WHEREAS, the City of Emeryville published notice of a public hearing pursuant to California Government Code Section 6066; and

WHEREAS, the City Council of the City of Emeryville held a public hearing on July 20, 2021, and September 13, 2021, at which time all interested persons had the opportunity to appear and be heard on the matter of amending the Codes as stated herein; and

WHEREAS, at least one copy of each of the California Energy Code amended by this ordinance was available for public inspection at the office of the City Clerk fifteen (15) days preceding the public hearing pursuant to Government Code Section 50022.6; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EMERYVILLE DOES HEREBY ORDAIN AS FOLLOWS:

SECTION ONE: Amendments.

Emeryville Municipal Code, Title 8, Chapter 10 ("Energy Code") is hereby amended to add the following new Section 8-10.03. Additions are in double underline text. Deletions are in ~~strikeout~~ text. Those portions not specifically amended remain unchanged.

¹ Adapting to Rising Tides, a program of the San Francisco Bay Conservation and Development Commission (BCDC), <https://www.adaptingtorisingtides.org/>

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"Section 8-10.03 Amendments to California Energy Code.

The 2019 California Energy Code is hereby amended as follows:

(a) A new subsection (i) is added to Section 100.0 read as follows:

100.0 (i) Energy Reach Code. In addition to all requirements of the California Energy Code applicable to new construction, the following shall apply:

1. New residential occupancies defined as R-1, R-2, R-3, or R-4, other than Free Standing Accessory Dwelling Units that are no greater than 400 square feet, shall be an All Electric Building as defined in Section 100.1(b). For the purposes of All-Electric Building requirements, newly constructed buildings as defined in Section 100.1 shall include a construction project where an alteration includes replacement of over 50% of the existing foundation for purposes other than a repair or reinforcement as defined in California Existing Building Code Section 202; or when over 50% of the existing framing above the sill plate is removed or replaced for purposes other than repair. If either of these criteria are met within a 3-year period, measured from the date of the most recent previously obtained permit final date, that structure is considered new construction and shall be subject to the All-Electric Building requirements. The final determination whether a project meets the definition of substantial reconstruction/alteration shall be made by a designated building official.

EXCEPTION 1 to Section 100.0(i)1. The All Electric Building local amendments do not apply to Free Standing Accessory Dwelling Units less than 400 square feet.

EXCEPTION 2 to Section 100.0(i)1. If an applicant believes circumstances exist that make it infeasible to meet the All Electric Building local amendments the applicant may request an exemption from the Building Official. In applying for an exemption, the burden is on the applicant to show infeasibility. An exemption will be granted only in unusual circumstances where, due to exceptional characteristics of the structure, property, or business involved, a literal enforcement of this code will result in practical infeasibility, provided that no such exemption will be contrary to the intent of this code. If the Building Official grants a modification pursuant to this Exception, the applicant shall comply with the pre-wiring provision of Note 1 below.

EXCEPTION 3 to Section 100.0(i)1. Projects that have been approved for a Planning Permit as defined in the Planning Regulations at Section 9-8.216(y) of Title 9 of the Emeryville Municipal Code, or a Zoning Compliance Review as defined in the Planning Regulations at Section 9-8.226(e) of Title 9 of the Emeryville Municipal Code, prior to the effective date of the ordinance, shall be exempt from the All-Electric Building local amendments. Projects which do not require planning approval, and for which a building permit application has been filed prior to the effective date of the ordinance are also exempt.

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EXCEPTION 4 to Section 100.0(i)1: Newly constructed nonresidential buildings and all nonresidential occupancies in a mixed-use building are not required to meet the All-Electric Building local amendments.

Note 1: Where Exceptions 1-3 apply, natural gas appliance locations shall be furnished with conduit or pre-wiring for future electric appliance installation, including the below, in accordance with the California Electrical Code:

1. Electric Circuits for Space Heating. A dedicated 240-volt, 30 amp or greater electrical circuit shall be provided that terminates within 3 feet from the heater or designated future location of an electric replacement heater with no obstructions into a listed cabinet, box, enclosure, or receptacle labelled "For Future 240V Heat Pump Space Heater". In the electrical panel the circuit shall be served by a dedicated double pole circuit breaker or a single pole circuit breaker with a reserved single pole circuit breaker space adjacent and shall be labeled with the words "For Future 240V Heat Pump Space Heater."
2. Electric Circuits for Combined Cooktop/Oven, Stand-Alone Cooktop, and Stand-Alone Oven. A dedicated 240-volt, 50 amp or greater circuit shall be provided that terminates within 3 feet of all combined or stand-alone cooking equipment with no obstructions into a listed cabinet, box, enclosure, or receptacle labelled "For Future 240V Electric Cooking". In the electrical panel the circuit shall be served by a dedicated double pole circuit breaker or a single pole circuit breaker with a reserved single pole circuit breaker space adjacent and shall be labeled with the words "For Future 240V Electric Cooking."
3. Electric Circuits for Clothes Dryer. A dedicated 240-volt, 30 amp or greater electrical circuit shall be provided that terminates within 3 feet from the heater or designated future location of an electric replacement with no obstructions into a listed cabinet, box, enclosure, or receptacle labelled "For Future 240V Electric Clothes Dryer". In the electrical panel the circuit shall be served by a dedicated double pole circuit breaker or a single pole circuit breaker with a reserved single pole circuit breaker space adjacent and shall be labeled with the words "For Future 240V Electric Clothes Dryer".

2. All newly constructed Hotel/Motel Occupancies and High-Rise Multifamily Buildings shall be required to install solar photovoltaic panels on an area no less than the entire Solar Zone, as specified in Section 110.10.

EXCEPTION 1 to 100.0(i)2: The Building Official or his/her designee may grant a modification if the applicant demonstrates that the required percentage of PV installation will over-generate the annual kWh required to operate the proposed building;

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EXCEPTION 2 to 100.0(i)2: For vegetative roofs covering 35 percent of the roof area or greater and meeting all relevant code requirements including considerations for wind, fire, and structural loads, the Building Official may grant a modification if the applicant demonstrates that installing solar PV on the solar zone is infeasible due to physical constraints. The applicant shall submit findings demonstrating that the modification will be narrowly tailored to the extent necessary to address the infeasibility only. Circumstances that constitute infeasibility include, but are not limited to, conflicts with other sections of the Municipal Code or Zoning Code, or lack of sufficient roof, overhang, or covered parking area.

(b) Section 100.1(b) Definitions is revised by adding the following definitions:

ALL-ELECTRIC BUILDING is a building that has no Fuel Gas plumbing installed within the building, and that uses electricity as the source of energy for its space heating, water heating, cooking, clothes drying, and fireplace appliances. An All-Electric Building may include solar thermal collectors, outdoor cooking appliances, and backup power generation fueled by a free-standing Fuel Gas tank and which is not plumbed to a building, gas line or gas main. An All-Electric Building may include backup power generation by plumbed Fuel Gas. The term "Fuel Gas" shall be as defined in the California Mechanical and Plumbing Codes.

FREE STANDING ACCESSORY DWELLING UNIT is a detached building that is not intended for sale separate from the primary residence, on a lot that is zoned for single family or multifamily use, located on the same lot as an existing dwelling, and does not exceed 1,200 square feet of total floor area.

SECTION TWO: CEQA

This Ordinance is exempt from CEQA under 15061(b)(3) on the grounds that these standards are more stringent than the State energy standards, there are no reasonably foreseeable adverse impacts and there is no possibility that the activity in question may have a significant effect on the environment.

SECTION THREE: Severability

If any word, phrase sentence part, section, subsection or other portion of this amendment or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this amendment, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City Council of the City of Emeryville hereby declares that it would have passed this amendment and each section, subsection sentence, clause and phrase of this amendment, irrespective of the fact that any one or more sections, subsection, sentences, clauses or phrases is declared invalid or unconstitutional.

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SECTION FOUR: Codification

Section One of this Ordinance shall be codified in the Emeryville Municipal Code. Sections Two, Three, Four, and Five shall NOT be so codified

SECTION FIVE: Effective Date; Filing

This Ordinance shall take effect thirty (30) days following its adoption by the City Council. Notwithstanding the foregoing, those provisions requiring approval by the California Energy Commission shall take effect upon the granting of such approval. The City Clerk is hereby directed to file a copy of this Ordinance with the California Building Standards Commission and the California Energy Commission of the State of California. The City Clerk is directed to cause copies of this Ordinance to be posted or published as required by Government Code Section 33633.

This Ordinance was introduced and first read by the City Council of the City of Emeryville at a regular meeting held on Tuesday, July 20, 2021, and **PASSED AND ADOPTED** by the City Council at a regular meeting held on Monday, September 13, 2021 by the following vote:

AYES:	4	Mayor Martinez, Vice Mayor Donahue, and Council Members Bauters and Medina
NOES:	0	
ABSTAIN:	0	
ABSENT:	0	

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MAYOR
APPROVED AS TO FORM:

ATTEST:

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 CITY CLERK

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 INTERIM CITY ATTORNEY