

**DRAFT**

ORDINANCE NO.

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING CHAPTER 17.845 OF TITLE 17 OF THE SAN JOSE MUNICIPAL CODE TO AMEND SECTIONS 17.845.010, 17.845.020, 17.845.030, 17.845.040, 17.845.050, AND 17.845.060 AND ADD SECTION 17.845.045 TO PROHIBIT NATURAL GAS INFRASTRUCTURE IN NEWLY CONSTRUCTED BUILDINGS**

**WHEREAS**, pursuant to Sections 17922, 17958, 17958.5 and 17958.7 of the California Health and Safety Code, the City of San José (“City”) may adopt the provisions of the Green Building Standards Code and Building Efficiency Energy Standards with certain amendments to those provisions which are reasonably necessary to protect the health, welfare and safety of the citizens of San José because of local climatic, geological and topographical conditions; and

**WHEREAS**, on September 17, 2019, the City Council adopted Resolution No. 79251 declaring a Climate Emergency within the City and the City Council adopts and incorporates the findings in that Resolution; and

**WHEREAS**, the City Council hereby makes the following findings with respect to local geological, topographical and climatic conditions relating to the amendments to the California Codes for which such findings are required:

- A. The San Francisco Bay area region is densely populated and located in an area of high seismic activities. The City is bounded by the Hayward and San Andreas faults capable of producing major earthquakes; and
- B. Concern for fire-life safety associated with gas appliances and associated piping located in the ground and in the buildings increases with the risk of explosion or

fire if there is a structural failure due to a seismic event considering the increasing number of buildings in the region; and

- C. Severe seismic events could disrupt communications, damage gas mains, and place extreme demands on the limited and widely dispersed resources of the Fire Department necessary for the life safety needs of the community; and
- D. The local geographic, topographic, and climatic conditions pose an increased hazard in acceleration, spread, magnitude, and severity of potential fires in the City, and may cause a delayed response from emergency responders, allowing further growth of the fire; and
- E. Over the next century, increasing levels of atmospheric greenhouse gas concentrates are expected to result in global temperature increases, causing a variety of local changes, including extreme weather conditions, sea level rise, more frequent heat waves and extended period of drought. Local geographic, topographic, and climatic conditions include increased risk of the following:
  - 1. Fire Risk: In addition to the increased risk as a result of earthquakes, the City is surrounded by hills both within City limits and adjacent to them. The dry brush and steep terrain are particularly susceptible to wildfires. The City, through its Fire Department, has designated approximately 54.5 square miles of the City's 180 square miles of incorporated area as Wildland Urban Interface ("WUI"). These areas in in the southwestern and southeastern areas of the City known as the Almaden Valley and East Foothills which allows for heightened construction and regulatory standards to mitigate the spread of wildfires. In addition, wildfires located outside of the area in 2018 created a blanket of toxic smoke over the City,

causing the worst air quality on record by the Bay Area Air Quality Management District for two consecutive weeks; and

2. Historic Fires in 2020: As of September 11, 2020, 3.1 million acres have burned in California, including fires approaching City limits, obliterating the record number of acres burned in a year. Six of the top 20 largest fires in state history have occurred in 2020, according to Cal Fire. Lightening initially triggered many of the fires, and unusual and extreme meteorological conditions turned some of them into the worst events in decades. According to NASA's Earth Applied Science Program, "record-breaking air temperatures, periods of unusually dry air, and blasts of fierce winds—on top of serious drought in some areas—led fires to ravage forests and loft vast plumes of smoke to rarely seen heights"; and
3. Landslides: Extreme storms as a result of climate change increases the chance of rainfall-induced landslide; fire and drought may kill vegetation on the City's WUI, increasing runoff and potential for landslide; and
4. Drought: Prolonged period of drought as a result of climate change may deplete reservoirs and the groundwater basin serving San José; and
5. Flooding: Extreme weather conditions such as sudden, prolonged rainfall as result of climate change could also result in a spillover from local dams, including the Anderson Dam, which can result in flooding of local creeks which run through San José, such as the Coyote Creek, as the City experienced in 2017; and
6. Sea Level Rise: Sea level rise as a result of climate change will have a dramatic local impact on the City. The City's Alviso area borders the

southern end of the San Francisco Bay and is particularly vulnerable to sea level rise and is at an increased risk of flooding; and

7. Heat: Increased heat as a result of climate change can have a local impact on the health, safety, and welfare of the City's population, especially those without resources to purchase air conditioning, the elderly, disabled, or those with children; and
- F. Failure to address and substantially reduce Greenhouse Gas creates an increased risk to the health, safety and welfare of the City residents; and
- G. Natural gas combustion and gas appliances emit a wide range of air pollutants, such as carbon monoxide (CO), nitrogen oxides (NO<sub>x</sub>, including nitrogen dioxide (NO<sub>2</sub>)), particulate matter (PM), and formaldehyde, which according to a UCLA Study, have been linked to various acute and chronic health effects, including respiratory illness and cardiovascular disease, and additionally exceed levels set by national and California-based ambient air quality standards; and
- H. The City Council considers and adopts as findings the analysis contained in Kerrie Romanow and Rosalynn Hughey's Memorandum dated August 21, 2019 and October 8, 2019, and the staff presentations including those at the September 17, 2019, October 29, 2019 and November 17, 2020 City Council meetings; and
- I. Amendments to the California Codes have been adopted in the past by the City Council based on specific findings of local geographic, topographic and climatic conditions; and the City Council hereby reaffirms such findings and confirms that the facts on which such findings were based continue to exist; and

- J. The provisions of this Ordinance establishing certain more restrictive standards than the California Codes will better serve to prevent or minimize structural and environmental damage resulting from local conditions; and

**WHEREAS**, the City Council hereby makes the following additional findings with respect to cost effectiveness of any amendments to the California Codes for which such findings are required:

- A. An August 1, 2019 Low Rise Residential Reach Code Cost Effectiveness Study prepared by Frontier Energy, Inc. and Misti Bruceri & Associates, LLC, funded by California utility ratepayers and submitted to the California Energy Commission supports and documents the cost-effectiveness of the Ordinance; and
- B. A July 25, 2019 Non-residential New Construction Reach Code Cost Effectiveness Study prepared by TRC Advanced Energy and Energy Soft, funded by California utility ratepayers and submitted to the California Energy Commission further supports and documents the cost-effectiveness of the Ordinance; and
- C. A June 22, 2020 Mid-Rise New Construction Reach Code Cost-Effectiveness Study prepared by Frontier Energy, Inc., Misti Bruceri & Associates, LLC, and Energy Soft, funded by California utility ratepayers and submitted to the California Energy Commission further supports and documents the cost-effectiveness of the Ordinance; and
- D. An October 9, 2020 High-Rise Residential New Construction Reach Code Cost Effectiveness Study prepared by Frontier Energy, Inc., Misti Bruceri & Associates, LLC, and Energy Soft, funded by California utility ratepayers and

submitted to the California Energy Commission further supports and documents the cost-effectiveness of the Ordinance; and

- E. This Ordinance is in alignment with the cost effectiveness studies and therefore the City Council finds them to be cost-effective; and
- F. This Ordinance is intended to reduce Greenhouse Gas Emissions, increase indoor air quality, and protect the public health and safety, but also exceeds all minimum conservation and insulation standards; and
- G. None of the provisions of this Ordinance change minimum efficiency standards, and therefore this Ordinance is not preempted by federal appliance regulations; and

**WHEREAS**, this Ordinance was found to be categorically exempt from environmental review, per the provisions of the California Environmental Quality Act (CEQA) of 1970, as amended, 14 California Code of Regulations Section 15308, and Title 21 of the San José Municipal Code, under File Number ER20-202; and

**WHEREAS**, the City Council of the City of San José is the decision-making body for this Ordinance; and

**WHEREAS**, this Council has reviewed, considered, and approves the Statement of Exemption determination under CEQA prior to taking any approval actions on this Ordinance;

**NOW THEREFORE**, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. The Title of Chapter 17.845 of Title 17 of the San José Municipal Code is amended to read as follows:

**CHAPTER 17.845**

**PROHIBITION OF NATURAL GAS INFRASTRUCTURE IN NEWLY CONSTRUCTED BUILDINGS ~~SINGLE-FAMILY, LOW-RISE RESIDENTIAL BUILDINGS, AND DETACHED ACCESSORY DWELLING UNITS~~**

SECTION 2. Section 17.845.010 of Chapter 17.845 of Title 17 of the San José Municipal Code is amended to read as follows:

**17.845.010 Applicability**

- A. The requirements of this Chapter shall apply to the entitlement of or the processing of development applications for all Newly Constructed ~~Single Family, Low Rise Residential and Accessory Dwelling~~ Buildings proposed to be located in whole or in part within the City.
- B. The requirements of this Chapter shall not apply to portable propane appliances for outdoor cooking and heating.
- C. This Chapter shall in no way be construed as amending Energy Code requirements under Title 24 of the California Code of Regulations, Part 6 or Part 1, nor as requiring the use or installation of any specific appliance or system as a condition of approval.
- D. The requirements of this Chapter shall be incorporated into conditions of approval for applications for permits under San José Municipal Code Titles 17 and 20.

SECTION 3. Section 17.845.020 of Chapter 17.845 of Title 17 of the San José Municipal Code is amended to read as follows:

**17.845.020 Definitions**

- A. "Accessory Dwelling Unit" ~~shall~~ means a detached secondary unit as specified in San José Municipal Code Section 20.200.325.
  
- B. "Cooking Equipment" means equipment intended for commercial use, including ovens, ranges, and cooking appliances for use in a Commercial Kitchen, restaurant, or other business establishment where food is dispensed.
  
- C. "Commercial Kitchen" means a food facility preparation area as defined in San José Municipal Code Section 20.200.205.
  
- D. "Director" ~~shall~~ means the Director of Planning, Building, Code Enforcement or his or her designee.
  
- E. "Distributed Energy Resource" means an electric generation or storage technology that complies with the emissions standards adopted by the State Air Resources Board pursuant to the distributed generation certification requirements of Section 94203 of Title 17 of the California Code of Regulations, or any successor regulation.
  
- F. "Food Service Establishment" means a building with Commercial Kitchen or Cooking Equipment.



- G. “Hospital” means a building as defined the California Building Code, Chapter 2, Section 202.
- H. “Low Rise Residential Building” ~~shall~~ means a building which is three stories or less with a multifamily or single-family residential occupancy and shall not include a hotel or motel.
- I. “Manufacturing and Industrial Facility” means a building with the occupancy classification as defined in the California Building Code, Chapter 3, Section 306, Group F.
- J. “Natural Gas” ~~shall have the same~~ meansing as “Fuel Gas” as defined in California Plumbing Code and Mechanical Code.
- K. “Natural Gas Infrastructure” means ~~shall be defined as~~ fuel gas piping, other than service pipe, in or in connection with a building, structure or within the property lines of premises, extending from the point of delivery at the meter, service meter assembly, outlet of the service regulator, service shutoff valve, or final pressure regulator, whichever is applicable, as specified in the California Mechanical Code and Plumbing Code.
- L. “Newly Constructed” means ~~shall be defined as~~ a building that has never before been used or occupied for any purpose where an application for a building permit was made on or after January 1, 2020 for Low Rise Residential Buildings and detached Accessory Dwelling Units; and on or after August 1, 2021 for all other buildings. ~~and that has never before been used or occupied for any purpose~~

M. “Process” means an activity or treatment that is not related to the space conditioning, lighting, service water heating, or ventilating of a building as it relates to human occupancy.

N. “Process Load” means an energy load resulting from a Process.

SECTION 4. Section 17.845.030 of Chapter 17.845 of Title 17 of the San José Municipal Code is amended to read as follows:

**17.845.030 Prohibited Natural Gas Infrastructure in Newly Constructed Buildings**

- A. Natural Gas Infrastructure shall be prohibited in Newly-Constructed Buildings, and the Director shall not issue permits for mixed-fuel buildings except in compliance with this Chapter.~~Constructed Low Rise Residential Buildings and Accessory Dwelling Units.~~
- B. Natural Gas Infrastructure shall not be extended to any system or device within a building for which an equivalent all-electric system or design is available.
- C. The requirements of this Section shall be deemed objective planning standards under Government Code Section 65913.4 and objective development standards under Government Code Section 65589.5.

SECTION 5. Section 17.845.040 of Chapter 17.845 of Title 17 of the San José Municipal Code is amended to read as follows:

**17.845.040 Exception for Hospitals, Attached Accessory Dwelling Units, and Facilities with a Distributed Energy Resource**

A. The requirements of this Chapter shall not apply to either a Hospital or an attached Accessory Dwelling Units in an existing mixed-fuel building.

B. The requirements of this Chapter shall not apply to a facilities with a physical connection to the electrical grid and a Distributed Energy Resource for necessary operational requirements to protect the public health, safety, or economic welfare in the event of an electric gird outage, until December 31, 2024, such time as low or zero carbon fuels are commercially for the supply pipeline. The Director will report to Council no later than December 31, 2023 on low and zero carbon fuel availability with analysis of the availability of fuel substitutes for natural gas and whether or not to transition this section to a Hardship Exemption, effective January 1, 2025.

SECTION 6. Chapter 17.845 of Title 17 of the San José Municipal Code is amended to add section 17.845.045 to be numbered, titled, and to read as follows:

**17.845.045 Limited Exemption for Manufacturing and Industrial Facilities and Food Service Establishments**

A. On or before December 31, 2022, an applicant for a Newly Constructed Manufacturing and Industrial Facility may request a limited exemption under this Section for the area of its building with Process Loads.

B. On or before December 31, 2022, an applicant for a Newly Constructed Food Service Establishment may request a limited exemption under this Section for the area of its building with Cooking Equipment or a Commercial Kitchen.

- C. To receive a limited exemption, the applicant must submit a written application to the Director.
- D. In making a determination in response to an application for a limited exemption, if the Director determines that the applicant is eligible for an exemption, then the Director may issue a decision requiring compliance with less than the full extent of the requirements of this Chapter, provided such requirements meet or exceed the electrification readiness requirements in San José Municipal Code Chapter 24.12.
- E. The Director's decision shall contain a statement verifying the eligibility of the project, as well as the reduced compliance level requirements that must be achieved. The Director's decision shall become a condition of the development or building permit issued for the project.
- F. The Director's decision shall be mailed or electronically mailed to the applicant to the address shown on the application.

SECTION 7. Section 17.845.050 of Chapter 17.845 of Title 17 of the San José Municipal Code is amended to read as follows:

**17.845.050 Hardship Exemption**

- A. If an applicant for a Newly Constructed ~~Building Low Rise Residential Building or Accessory Dwelling Unit~~ believes that ~~circumstances regarding~~ the type of project or physical site conditions or necessary operational requirements make it a hardship or infeasible to meet the requirements of this Chapter, or the project meets the City's adopted sustainability and environmental policies,

then the applicant may request an exemption or modification from the Director. The burden shall be on the applicant to demonstrate the grounds for any exemption.

- B. In making a determination in response to an application under Subsection A above, if the Director determines that the facts offered in support of an application demonstrate that the purposes of this Chapter will have been achieved to the maximum extent reasonably allowed by the circumstances, then the Director may issue a decision requiring compliance with less than the full extent of the requirements of this Chapter but to the fullest extent reasonably achievable given the circumstances, provided such requirements meet or exceed ~~those~~ the electrical readiness requirements in San José Municipal Code Chapter 24.12.
- C. The Director's decision shall contain a statement of the facts upon which the decision was based, as well as the reduced compliance level requirements that must be achieved. The Director's decision shall become a condition of the development or building permit issued for the project.
- D. The Director's decision shall be mailed or electronically mailed to the applicant to the address shown on the application.

SECTION 8. Section 17.845.060 of Chapter 17.845 of Title 17 of the San José Municipal Code is amended to read as follows:

**17.845.060 Director's Decision**

The Director's decision on a request for an exemption as specified in this Chapter Section 17.845.050 is final, conclusive, and appealable under the provisions of California Code of Civil Procedure Section 1094.6.

PASSED FOR PUBLICATION of title this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

\_\_\_\_\_  
SAM LICCARDO  
Mayor

ATTEST:

\_\_\_\_\_  
TONI J. TABER, CMC  
City Clerk