

ORDINANCE NO.

**AN ORDINANCE OF THE CITY OF SAN JOSE ADDING A
NEW CHAPTER 17.845 TO TITLE 17 OF THE SAN JOSE
MUNICIPAL CODE TO PROHIBIT NATURAL GAS
INFRASTRUCTURE IN NEW SINGLE-FAMILY, LOW-RISE
RESIDENTIAL BUILDINGS, AND DETACHED
ACCESSORY DWELLING UNITS**

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. Fires: 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. 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
 3. Drought: Prolonged period of drought as a result of climate change may deplete reservoirs and the groundwater basin serving San José; and
 4. 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
 5. 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
 6. 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 the City Council considers and adopts as findings the analysis contained in Kerrie

Romanow and Rosalynn Hughey's Memorandum dated August 21, 2019 and the staff presentation at the September 17, 2019 City Council meeting; and

- G. 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
- H. 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. This Ordinance is in alignment with the cost effectiveness studies and therefore the City Council finds them to be cost-effective; and

- D. 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 PP19-067; 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. A new Chapter 17.845 is added to Title 17 of the San José Municipal Code, to be numbered, entitled, and to read as follows:

CHAPTER 17.845

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

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.

17.845.20 Definitions

- A. “Accessory Dwelling Unit” shall mean a detached secondary unit as specified in San José Municipal Code Section 20.200.325.
- B. “Director” shall mean the Director of Planning, Building, Code Enforcement or his or her designee.

- C. “Low Rise Residential Building” shall mean a building which is three stories or less with a multifamily or single-family residential occupancy and shall not include a hotel or motel.
- D. “Natural Gas” shall have the same meaning as “Fuel Gas” as defined in California Plumbing Code and Mechanical Code.
- E. “Natural Gas Infrastructure” 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.
- F. “Newly Constructed” shall be defined as a building where an application for a building permit was made on or after January 1, 2020 and that has never before been used or occupied for any purpose.

17.845.030 Prohibited Natural Gas Infrastructure in Newly Constructed Buildings

- A. Natural Gas Infrastructure shall be prohibited in Newly 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.

17.845.040 Exception for Attached Accessory Dwelling Units

The requirements of this Chapter shall not apply to attached Accessory Dwelling Units in existing mixed-fuel buildings.

17.845.050 Hardship Exemption

- A. If an applicant for a Newly Constructed Low Rise Residential Building or Accessory Dwelling Unit believes that circumstances regarding the type of project or physical site conditions 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 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.

17.845.060 Director's Decision

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

17.845.070 Annual Review

The City shall review annually the requirements of this ordinance for ongoing consistency with California Energy Commission regulations under California Code of Regulations Title 24, Part 6, and the Commission's code adoption cycle.

SECTION 2. This Ordinance shall become effective on January 1, 2020.

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PASSED FOR PUBLICATION of title this _____ day of _____, 2019, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk