

*Regular Meeting of the
Building Inspection Commission
September 18, 2024*

Agenda Item 5



September 13, 2024

Building Inspection Commission
49 South Van Ness Avenue
San Francisco, CA 94103

Re: Building Code – Gas Infrastructure for Energy Policy and Conservation Act (EPCA) Appliances in New Construction

The September 11, 2024 regular meeting of the full Code Advisory Committee (CAC) voted unanimously to make a recommendation to the Building Inspection Commission to approve the changes to the San Francisco Building Code which allow for EPCA Appliances in New Construction.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Thomas Fessler".

Thomas Fessler
DBI Technical Services
Secretary to the Code Advisory Committee

cc. Patrick O'Riordan, C.B.O. Director
Neville Pereira, Deputy Director
Christine Gasparac, Deputy Director
Janey Chan, Manager
J. Edgar Fennie, Chair, Code Advisory Committee

Attach: File No. 240845

**Building Inspection Commission
September 18, 2024**

Agenda Item #5 – File No. 240845

Ordinance amending the Building Code to allow new construction that complies with the Design Guidelines for Electric-Ready Buildings to install gas infrastructure to serve appliances covered by the Energy Policy and Conservation Act (EPCA); adopting findings of local conditions under the California Health and Safety Code; affirming the Planning Department’s determination under the California Environmental Quality Act; and directing the Clerk of the Board of Supervisors to forward this ordinance to the California Building Standards Commission upon final passage.

Background

Ordinance 237-20, passed and enacted in 2020, required all new construction that applied for initial building permits on or after June 1, 2021 to meet specified electrification requirements. This includes all indoor and outdoor space-conditioning, water heating, cooking and clothes drying equipment must be all-electric, a prohibition on the installation of natural gas infrastructure except for specified circumstances, and other various requirements.

In Berkeley, a natural gas ban which was challenged by the California Restaurant Association (CRA). CRA won their legal challenges on the basis of federal preemption.

The Energy Policy and Conservation Act (EPCA), a federal law passed in 1975, implemented a wide range of policies designed to address the 1973 oil crisis. One of these provisions established the Energy Conservation Program, which gave the Department of Energy the ability to create minimum energy conservation standards for consumer products, creating a federal baseline for common products. Once that standard is established for a specific product, “...no State regulation concerning energy efficiency, energy use, or water use of such covered product shall be effective with respect to such product...” [42 U.S.C. § 6297(c)]

In the case of Berkeley, banning natural gas infrastructure was viewed as an insufficient workaround to federal preemption. According to the 9th Circuit Court, “Berkeley can’t bypass preemption by banning natural gas piping within buildings rather than banning natural gas products themselves”.

Existing Law

Current law requires that DBI not issue permits for construction of any new mixed-fuel buildings after June 1, 2021. This requirement has limited exceptions, including for physical or technical infeasibility, and specified commercial food service use.

Ordinance's Proposed Changes to Existing Law

The proposed legislation seeks to conform San Francisco's ordinance with the 9th Circuit Court ruling. The proposed legislation states that new construction including natural gas infrastructure solely to serve appliances covered by EPCA, so long as it complies with the Design Guidelines for Electric-Ready Buildings, shall be permitted and treated as an 'All-Electric' building within the relevant code sections.

Department's Proposed Amendments

The Department is not recommending changes to the ordinance.

Code Advisory Committee Recommendation

The Code Advisory Committee met on September 11, 2024 and unanimously recommended approval of the ordinance.

1 [Building Code - Gas Infrastructure for EPCA Appliances in New Construction]

2

3 **Ordinance amending the Building Code to allow new construction that complies with**
4 **the Design Guidelines for Electric-Ready Buildings to install gas infrastructure to serve**
5 **appliances covered by the Energy Policy and Conservation Act (EPCA); adopting**
6 **findings of local conditions under the California Health and Safety Code; affirming the**
7 **Planning Department’s determination under the California Environmental Quality Act;**
8 **and directing the Clerk of the Board of Supervisors to forward this Ordinance to the**
9 **California Building Standards Commission upon final passage.**

10 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
11 **Additions to Codes** are in *single-underline italics Times New Roman font*.
12 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
13 **Board amendment additions** are in double-underlined Arial font.
14 **Board amendment deletions** are in ~~strikethrough Arial font~~.
15 **Asterisks (* * * *)** indicate the omission of unchanged Code
16 subsections or parts of tables.

14

15 Be it ordained by the People of the City and County of San Francisco:

16

17 Section 1. General Findings.

18 (a) The Planning Department has determined that the actions contemplated in this
19 ordinance comply with the California Environmental Quality Act (California Public Resources
20 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
21 Supervisors in File No. ____ and is incorporated herein by reference. The Board affirms this
22 determination.

23 (b) On _____, the Building Inspection Commission considered this
24 ordinance at a duly noticed public hearing pursuant to Charter Section 4.121 and Building
25 Code Section 104A.2.11.1.1.

1 Section 2. Findings Regarding Local Conditions.

2 (a) California Health and Safety Code Sections 17958.7 and 18941.5 provide that local
3 jurisdictions may enact more restrictive building standards than those contained in the
4 California Building Code, provided that the local jurisdictions make express findings that each
5 change or modification is reasonably necessary because of local climate, geologic, or
6 topographical conditions and that the local jurisdictions file the local amendments and
7 required findings with the California Building Standards Commission before the local changes
8 or modifications can go into effect.

9 (b) The Board of Supervisors hereby finds and declares that the following
10 amendments to the San Francisco Building Code are reasonably necessary because of local
11 climatic, topological, and geological conditions as discussed below.

12 (1) The topography of San Francisco creates increased risk of fire due to
13 high density of buildings on very small lots and high population density. It is necessary and
14 appropriate to limit and impose safety measures on new natural gas infrastructure that
15 otherwise increases acute and cumulative fire risk across the City.

16 (2) San Francisco's geologic and topographic conditions produce increased
17 risk for earthquake-induced failure and consequent fire due to local hazardous seismic
18 microzones, slide areas, and local liquefaction hazards. Natural gas infrastructure may
19 rupture, fail, and/or explode due to earthquake-induced structural failure. After seismic
20 events, natural gas infrastructure will take significantly longer to resume service compared to
21 electrical infrastructure. It is necessary and appropriate to reduce fire risk and increase
22 resiliency by limiting the construction of new natural gas infrastructure, requiring essential
23 building systems be Electric Ready to run on electricity during natural gas service disruptions,
24 and imposing safety requirements for any natural gas infrastructure.

1 (3) San Francisco’s climate and topography create wind patterns and
2 periodic seasonal high temperatures that produce smog and ozone that exacerbate the
3 respiratory ailments of residents. Natural gas combustion is a major source of indoor air
4 pollution that further exacerbates the effects of regional pollution for the City’s residents and
5 can be particularly acute given the City’s dense population and smaller dwelling units.
6 Studies have shown children living in homes with natural gas stoves have a 42% increased
7 risk of experiencing asthma symptoms and those impacts may be exacerbated in a compact
8 city such as San Francisco where low-income households are more likely to have more
9 people living in smaller spaces with less ventilation. It is reasonable and appropriate to
10 decrease pollution exposure and resulting human health impacts by utilizing All-Electric
11 construction, and ensuring proper ventilation for any new natural gas infrastructure.

12 (4) The United States Court of Appeals for the Ninth Circuit determined in
13 *California Restaurant Ass’n v. City of Berkeley*, 89 F.4th 1094 (9th Cir. Jan. 2, 2024), that the
14 Federal Energy Policy and Conservation Act, 42 U.S.C. §§ 6201 et. seq. (“EPCA”), preempts
15 local laws that do not provide a pathway for installation of appliances covered by EPCA. The
16 Board of Supervisors hereby finds that buildings for which permit applicants seek to install gas
17 infrastructure solely to service EPCA-covered appliances in new construction shall be
18 considered All-Electric Buildings, and not Mixed-Fuel Buildings, provided the new construction
19 will be Electric Ready and will minimize building safety issues associated with natural gas
20 infrastructure.

21
22 Section 3. Chapter 1A of the San Francisco Building Code is hereby amended by
23 revising Section 106A (specifically Section 106A.1.17), to read as follows:

24 **SECTION 106A – PERMITS**

25 * * * *

1 **106A.1.17 Mixed-Fuel Buildings.** The Building Official shall not issue permits for
2 construction of any new Mixed-Fuel Building that submitted an initial application on or after
3 June 1, 2021. Permits for new construction, ~~the that submit~~ initial applications for which were
4 submitted on or after that date, may only be obtained for All-Electric Buildings or Projects. New
5 construction that includes natural gas infrastructure solely to serve appliances covered by the Federal
6 Energy Policy and Conservation Act (42 U.S.C. §§ 6201 et seq.) and that complies with the Design
7 Guidelines for Electric-Ready Buildings published by the Department of Building Inspection shall be
8 considered an All-Electric Building or Project for purposes of this subsection 106A.1.17. For
9 purposes of this subsection, the initial application shall be the first site or building permit
10 application associated with the project.

11 * * * *

12
13 Section 4. Effective Date. This ordinance shall become effective 30 days after
14 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
15 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
16 of Supervisors overrides the Mayor’s veto of the ordinance.

17
18 Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
19 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
20 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
21 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
22 additions, and Board amendment deletions in accordance with the “Note” that appears under
23 the official title of the ordinance.

1 Section 6. Severability. If any section, subsection, sentence, clause, or phrase of this
2 ordinance, or any application thereof, is held to be invalid by a court of competent jurisdiction,
3 such decision shall not affect the validity of the remaining portions or applications of the
4 ordinance. The Board of Supervisors hereby declares that it would have passed this
5 ordinance, and each section, subsection, sentence, clause, or phrase of this ordinance,
6 irrespective of whether any one or more sections, subsections, sentences, clauses, or
7 phrases of the ordinance, or applications thereof, be declared invalid.

8
9 Section 7. Directions to Clerk. Upon final passage of this ordinance, the Clerk of the
10 Board of Supervisors is hereby directed to transmit this ordinance to the California Building
11 Standards Commission pursuant to the applicable provisions of State law.

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13 APPROVED AS TO FORM:
14 DAVID CHIU, City Attorney

15 By: /s/ Robb Kapla
16 ROBB KAPLA
17 Deputy City Attorney

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File No. 240845 – All-Electric & EPCA Appliances

Tate Hanna, Legislative Affairs Manager

September 18, 2024

Existing Federal Law

In 1975, Congress passed the Energy Policy and Conservation Act (EPCA) in response to the 1973 oil crisis.

The EPCA, among other provisions, allows the Department of Energy to set minimum energy conservation standards for consumer products, setting a federal baseline for common products.

Once a standard is established, that standard preempts any local regulation regarding energy efficiency, energy use, or water use of the specified product.

Existing Local Law

In 2020, the Board of Supervisors passed Ordinance 237-20 which requires all new construction projects applying for a building permit after June 1, 2021 to meet specified electrification requirements, including all-electric heating and air-conditioning, water heating, and a ban on natural gas piping, among other provisions.

This ordinance has limited exceptions, including allowing gas piping and infrastructure in specified circumstances, including some commercial food service usage.

Proposed Ordinance

File No. 240845 seeks to conform San Francisco's all-electric ordinance to the 9th Circuit Court ruling by clarifying that natural gas infrastructure may be installed in instances where it is solely to serve appliances covered by the Energy Policy and Conservation Act.

These buildings, so long as they comply with the Design Guidelines for Electric-Ready Buildings, shall be permitted and treated as an 'All-Electric' Building within the relevant code sections.

DBI & CAC Recommended Action

The Department recommends approval of the ordinance.

The Code Advisory Committee met on September 11, 2024 and recommended unanimous approval of the ordinance.



THANK YOU