



July 23, 2024

Board of Supervisors  
County of Ventura  
800 South Victoria Avenue  
Ventura, CA 93009

**SUBJECT:** Receive and File Information Regarding Recent Ninth Circuit Court of Appeals Decision Invalidating Current Mandatory Ventura County Building Code Provisions for All-Electric, in Lieu of Natural Gas, Appliances and Equipment in New Construction; Request for Board to Provide Direction to Staff On the Repeal of Mandatory Ventura County Building Code Provisions for All-Electric Appliances and Equipment in New Construction, and to Provide Direction to Staff Regarding Future Board Consideration of a Voluntary Incentive for All-Electric Appliances and Equipment through a Waiver of a Portion of the Expedited Plan Review Fee through December 31, 2025, and Such Other Direction as the Board May Deem Appropriate

## **RECOMMENDATIONS**

1. Receive and file information regarding recent Ninth Circuit Court of Appeals decision invalidating the current mandatory Ventura County Building Code (VCBC) requirement for all-electric, in lieu of natural gas, appliances and equipment in new construction.
2. Direct staff to take all necessary steps to return to the Board to propose the repeal of the current VCBC requirements for all-electric equipment and appliances in new construction.
3. Direct staff to propose to your Board, for its consideration, a voluntary incentive program to encourage builders and developers to use all-electric appliances and equipment in new construction by waiving a portion of the Expedited Plan Review Fee through December 31, 2025, when such service is requested by the builder and when all-electric appliances and equipment are installed, and to return to your Board with an estimate of the anticipated revenue loss from such a fee waiver.
4. Provide alternate staff direction as desired by the Board.

### **Fiscal/Mandates Impact**

Mandatory:	No
Source of Funding:	N/A
Funding Match Required:	No
Impact on Other Departments:	No impact on the General Fund or other Departments or Agencies

This item was prepared by County staff as part of our normal course of business. There are no significant costs or fiscal impact resulting from the current item.

### **Strategic Plan**

Staff's recommendation aligns with County Strategic Plan Priority *Reliable Infrastructure and Sustainability* Goal 3: "Invest in sustainable infrastructure, renewable energy, and preservation of our natural resources." The recommended retention of all-electric design for construction projects as a voluntary measure with an associated incentive would help the County meet its sustainability and greenhouse gas reduction objectives.

### **Background**

The Board of Supervisors approved the current edition of the Ventura County Building Code (VCBC), Ordinance No. 4608 on November 1, 2022. This code included the requirement for all-electric appliances and equipment in new construction, sometimes referred to as the "Reach Code," with some exceptions. The new provisions became effective for building permit applications submitted on or after January 1, 2023.

The Reach Code's requirement for all-electric buildings was also part of the County's greenhouse gas emissions reduction strategy as outlined in the Climate Action Plan (Appendix B) of the General Plan, and a key measure in the County's strategy for meeting its long-term greenhouse gas reduction goals. Under the 2022 VCBC Reach Code, water heaters, space heaters, cooking ranges, and ovens in new construction were required to be all-electric to reduce greenhouse gas emissions, which are a product of combustion in natural gas-fired equipment. These provisions were consistent with the County's 2020 General Plan, which included implementation programs COS-S (Building Code Update) and HAZ-AA (Prohibit Natural Gas Infrastructure in New Residential and New Commercial Development).

The Reach Code amendments were incorporated into the VCBC as an amendment to the California Green Building Code (CGBC). The CGBC is a State-mandated code intended for the preservation of natural resources through mindful design and construction of new buildings. Numerous cities and counties in California adopted similar Reach Code provisions. These local amendments to the State code essentially prohibited most natural gas appliances and equipment in new construction, although the County adopted local exceptions to allow for the use of natural

gas equipment in certain purposes and applications, including for restaurants and for outdoor equipment, such as gas-fired pool and spa heaters, fire pits, and outdoor ovens.

In light of the Ninth Circuit Court of Appeals decision in *California Restaurants Association v. City of Berkeley* (9th Cir. 2024) 89 F.4th 1094, which held that the federal Energy Policy and Conservation Act expressly preempts the City of Berkeley's 2019 ordinance prohibiting installation of natural gas piping in newly constructed buildings, VCBC's mandatory requirements for all-electric appliances and equipment in new construction are no longer legally enforceable. Accordingly, after the Ninth Circuit's decision became final and binding, the Building and Safety Division (B&S) discontinued the enforcement of VCBC Reach Code provisions in March 2024. B&S has also informed the public on its website that has discontinued enforcement of the VCBC Reach Code. To avoid any public confusion, it is also advisable that unenforceable VCBC Reach Code provisions be repealed. B&S seeks the Board's direction to take necessary steps to repeal VCBC Reach Code provisions.

### **Discussion of Proposed Incentive for Voluntary Use of All-Electric Equipment**

In conjunction with any forthcoming Board repeal of unenforceable VCBC Reach Code provisions, the Board may also consider adopting a voluntary incentive program to encourage the voluntary use of all-electric equipment and appliances in new construction.

The benefits of using all-electric appliances and equipment in lieu of gas-fired equipment to reduce the future production of greenhouse gases are explained and supported in more detail in the County's greenhouse gas emissions reduction strategy as outlined in the Climate Action Plan (Appendix B) of the General Plan. An incentive program would be expected to result in additional voluntary installations of all-electric appliances and equipment and would help the County to meet its greenhouse gas reduction goals.

Staff recommends that your Board consider directing staff to return to the Board with the option of implementing a temporary reduction through December 31, 2025 (end of effective period for current VCBC) of Expedited Plan Review Fee, to encourage the use of all-electric equipment in new construction. A partial reduction of fees paid by some developers seeking expedited review of their projects by Building & Safety (B&S) may be a significant incentive for them to incorporate all-electric appliances and equipment in projects requiring a building permit. An expedited review service can be currently requested by builders when extenuating project circumstances exist, such as unusually tight project deadlines. This existing service is approved by B&S for customers who desire a faster than normal turnaround time for the B&S review.

The B&S building permit plan check review typically involves a thorough engineering and architectural review of detailed structural calculations and construction drawings, soils reports, and other related construction documents to ensure the building design meets, or exceeds, minimum safety standards for construction. This review usually takes between three and six weeks, depending on the size and scope of the project. An expedited review is typically done in approximately half that time. Upon your Board's direction, staff will return to the Board with a

recommendation for a temporary reduction in the Expedited Plan Review Fee to be charged through December 31, 2025, to encourage the voluntary use of all-electric appliances and equipment in new construction. As part of its proposal, staff will also provide the Board with a summary of the anticipated revenue effects of such any fee reduction.

This item has been reviewed by the County Executive Office, the Auditor Controller's Office, and County Counsel. If you have any questions concerning this matter, please call me at (805) 654-2787.



Ruben M. Barrera, CBO, Building Official  
Resource Management Agency  
Building and Safety Division