



September 10, 2024

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

SUBJECT: Public Hearing on First Reading of Ordinance Amending the 2022 Ventura County Building Code at Article 10, Chapters 4 and 5 to Repeal Mandatory All-Electric Requirements for Certain Building Permits and to Instead Institute Voluntary Compliance with All-Electric Requirements; Seek Board Direction Regarding Establishment of Incentive Program to Encourage Voluntary Compliance with All-Electric Requirements

RECOMMENDATIONS:

1. Conduct a public hearing on and introduce the proposed ordinance amending the Ventura County Building Code regarding all-electric requirements, included as Exhibit 1; read in title only and waive further reading; and schedule the adoption of the ordinance for September 24, 2024.
2. On September 24, 2024, adopt the proposed ordinance; find that the action is not subject to the California Environmental Quality Act (CEQA) pursuant CEQA Guidelines section 15060(c)(1); ratify Board Resolution No. 22-168's express findings regarding the amendments to the California Green Building Standards Code with respect to the amended all-electric requirements as set forth in Exhibit 1, and direct that the findings be filed with the California Building Standards Commission as needed.
3. Direct staff to prepare a resolution for consideration and adoption by the Board at the September 24, 2024 meeting, establishing an incentive program to encourage voluntary compliance with all-electric provisions for certain Building Permits.

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 recommendations align 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 an important 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, ovens, and clothes dryers 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 provisions were incorporated into the VCBC as a local amendment to the California Green Building Standards Code (CGBSC). The CGBSC 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 amendment to the CGBSC 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 restaurants and outdoor equipment, such as gas-fired pool and spa heaters, fire pits, and outdoor cooking appliances.

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 (*CRA v. Berkeley*), 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 it has discontinued enforcement of the VCBC Reach Code provisions pertaining to all-electric buildings. The unenforceable provisions of VCBC Reach Code must also be repealed pursuant to the proposed ordinance.

B&S staff presented the concept for bringing the VCBC into compliance with *CRA v. Berkeley* decision to your Board on July 23, 2024, as well as the concept for including an incentive for voluntary use of all-electric equipment and appliances in new construction. The voluntary incentive is recommended to have a sunset date of December 31, 2025, the end of the effective period for the current VCBC. Extending this voluntary compliance program would be possible, unless the program is rendered moot by new Statewide requirements as part of the triennial State Building Code update. Your Board was supportive of the concept of revising the VCBC to address the *CRA v. Berkeley* decision and the establishment of an interim voluntary compliance incentive program. As such, this Board Letter recommends the adoption of an ordinance incorporating the specific recommended changes to the VCBC. If directed by your Board, staff will bring forth a resolution to establish the voluntary compliance incentive program when the second reading of the ordinance is considered for adoption at the September 24, 2024 Board meeting.

DISCUSSION:

Proposed Ordinance Amending the VCBC

The proposed amendment includes changes to Article 10 of the VCBC. Article 10 amends Chapters 4 and 5 of the CGBSC by requiring that new buildings as well as additions and alterations above a certain threshold in size, be constructed with all-electric appliances and equipment, with some exceptions.

The proposed amendments to the VCBC in response to the *CRA v. Berkeley* decision include the deletion of all mandatory requirements for new construction projects and alterations and additions above a certain threshold in size to include the incorporation of all-electric appliances and equipment and instead, allows for voluntary incorporation of all-electric appliances and equipment. The specific changes are to Sections 4.509 and 5.509 of the VCBC for residential and non-residential construction, respectively, as noted in Exhibit 1. The change removes all mandatory language for all-electric appliances and equipment and adds language to make these installations voluntary. The proposed changes to the VCBC are indicated in legislative format with strike-through and underline revisions in Exhibit 2.

Incentive Program and Proposed Resolution Establishing this Incentive Program

The proposed incentive program would be implemented through the adoption of a resolution stipulating the specifics of the incentive (the reduction in the Expedited Plan Review surcharge) and the terms for qualifying for the incentive. As such, there would not need to be a revision to the Building and Safety Division's Fee Schedule. The specific change would reduce by 50% the cost for Expedited Plan Review service for Building Permit applicants electing to voluntarily incorporate all-electric appliances and equipment, as originally mandated in the 2022 VCBC.

Expedited Plan Review is an optional service for Building Permit applicants desiring a shortened turnaround-time for the Building Permit plan review process. There is an additional fee or surcharge for those applicants wanting to avail themselves of this service, and this surcharge is established at 35% of the cost of the normal calculated plan review fee. For those applicants that pay the Expedited Plan Review service surcharge, the turnaround time for each round of Building Permit plan review is typically cut by about half. The recommended incentive program would reduce by 50% the cost of the Expedited Plan Review service for those Building Permit applicants voluntarily including all-electric appliances and equipment as part of their construction projects. The surcharge for those applicants who choose to voluntarily incorporate all-electric construction design would be reduced from 35% to 17.5%.

A typical 2,000 sq ft single-family residence has a plan check fee of \$2,721, and hence the current 35% surcharge for Expedited Plan Review would be $\$2,721 \times 0.35$ or \$952. Under the proposed incentive program, for an applicant voluntarily incorporating all-electric construction design, the mandatory plan check fee would remain \$2,721, but the surcharge for voluntary Expedited Plan Review would be reduced to $\$952 \times 0.50$ or \$476. Importantly, this incentive program is not a subsidy to the basic Building Permit fees. Rather it is a reduction to a surcharge that if paid, speeds up the turnaround time for review of the construction plans and documents. The work required for the plan review process is the same, and hence, there is no impact to the County General Fund.

B&S staff at the July 23, 2024 Board meeting on this item, recommended a 50% reduction of the Expedited Plan Review surcharge as the incentive program for applicants electing to incorporate all-electric construction. The staff recommendation remains a 50% reduction in this surcharge as the appropriate percentage to induce participation. A lower amount such as a 25% reduction would not be anticipated to be an adequate incentive for voluntary compliance, and a higher reduction, such as 75%, would likely lead to a large number of applications seeking Expedited Plan Review and as such, would be anticipated to result in staffing and workload challenges that could undermine the effect of the expedited review.

Summary of All-Electric Permits Issued since 2023

A total of 116 Building Permits in unincorporated Ventura County were required to incorporate all-electric appliances and equipment since the new Reach Code requirements took effect. Only projects of a certain size and type trigger Reach Code requirements, and these are termed “qualifying projects.” Qualifying projects include new construction projects and alterations and additions above a certain threshold in size. This includes Building Permits that were issued between January 1, 2023 and March 28, 2024. Of these 116 qualifying project permits, 102 were for residential projects and 14 were for non-residential projects.

On March 29, 2024, as a result of the *CRA v. Berkeley* decision, the County stopped mandating all-electric components in certain qualifying building permits. Between March 28, 2024 and approximately the end of July 2024, a total of 51 qualifying project Building Permits were issued for projects that would have been required to be all-electric, but were not mandated to do so in response to the County’s non-enforcement of the Reach Code requirements in the wake of the *CRA v. Berkeley* decision. Of these 51 permits, 44 were for residential projects, and 14 were for non-residential projects. Over the entire January 1, 2023 to July 23, 2024 period, an average of 3 permits per month, or approximately 4% of all permit applications with plans, requested and paid for Expedited Plan Review. This corresponds to approximately 7 permits, (7 / 167) of the 167 total qualifying project Building Permits. The number of Expedited Plan Review for qualifying projects is anticipated to increase 8-fold as the incentive program becomes more widely used. The estimated average cost to the County (in the form of lost revenue) with a 50% reduction of these fees is projected to equate to approximately \$16,835 per year, assuming a similar rate of service requests for expedited reviews. The anticipated increase for the number of Building Permit applications that seek Expedited Plan Review would result in a greater number of buildings with all-electric appliances and equipment.

CALIFORNIA ENVIRONMENTAL QUALITY ACT:

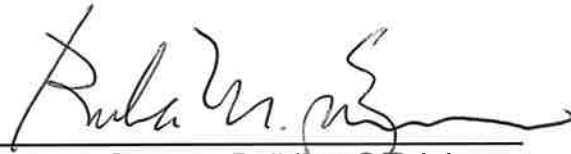
The proposed ordinance is not a subject to CEQA environmental impact review pursuant to CEQA Guidelines section 15060(c)(1) because the County’s repeal of the VCBC’s mandatory all-electric requirements does not involve the exercise of a County discretionary power but rather is a mandatory action required to comply with federal law. As explained above, the County is required by law to comply with the recent *CRA v. Berkeley* decision by repealing the VCBC’s all-electric requirement pursuant to the proposed ordinance. Although CEQA environmental review is not required for this legislative action, the repeal of the all-electric requirement is not anticipated to have a significant environmental impact. While the proposed amendments would decrease the number of construction projects mandated to incorporate all-electric appliances and equipment, the establishment of an incentive program to encourage incorporation of such appliances and equipment together with the cost savings of utilizing electric rather than

gas-fired appliances and equipment would minimize the impact of the proposed amendment. Given the relatively low number of construction projects that were subject to the prior mandatory all-electric requirements in unincorporated Ventura County, and the establishment of the incentive program and existence of other economic incentives to include electric appliances and equipment, a significant increase in greenhouse gas emissions resulting from the combined effect of the revised ordinance and establishment of the incentive program is not anticipated.

PUBLIC REVIEW PROCESS:

A draft copy of the ordinance to repeal the previously mandated requirements for all-electric equipment in the 2022 VCBC has been posted on the Building and Safety website in August 2024 for public review and comment.

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.

A handwritten signature in black ink, appearing to read 'Ruben M. Barrera', written over a horizontal line.

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

Exhibits

- Exhibit 1: Proposed Revised 2022 VCBC (Ordinance) – Clean Copy
- Exhibit 2: Proposed Revised 2022 VCBC (Ordinance) – Legislative Version