



Item No. 10

Town of Atherton

CITY COUNCIL STAFF REPORT – PUBLIC HEARING

**TO: HONORABLE MAYOR AND CITY COUNCIL
GEORGE RODERICKS, CITY MANAGER**

FROM: ANDREAS BOOHER, ASSISTANT CITY ATTORNEY

DATE: JUNE 19, 2024

**SUBJECT: CONSIDER ORDINANCE AMENDING CHAPTER 15.19 OF THE
ATHERTON MUNICIPAL CODE (GREEN BUILDING CODE)**

RECOMMENDATION

It is recommended that the Town Council introduce by title only and waive the first reading of an Ordinance ("Ordinance"), repealing and replacing Section 15.19.030 of the Atherton Municipal Code ("AMC") for consistency with federal law, as articulated by the Ninth Circuit Court of Appeals ruling in California Restaurant Association v. City of Berkeley.

BACKGROUND

On April 17, 2023, a three-judge panel of the Ninth Circuit Court of Appeals ruled in California Restaurant Association v. City of Berkeley ("Berkeley decision"), that a Berkeley ordinance requiring all-electric new buildings was pre-empted by the federal Energy Policy and Conservation Act of 1975 (EPCA) and was therefore invalid. In May 2023, due to the Ninth Circuit Court's ruling, the Town suspended enforcement of the all-electric building requirement for new buildings. On January 2, 2024, the Ninth Circuit Court of Appeals declined to have the case re-heard by the full panel of Ninth Circuit Court judges. In March 2024, the City of Berkeley settled the case with CRA, meaning the Ninth Circuit decision stands and effectively bans local jurisdictions from requiring new buildings be all-electric.

As soon as it became clear that the CRA decision would stand, the Town stopped enforcing those provisions of Chapter 15.19 that conflicted with the decision. Namely, this means that the Town stopped requiring newly constructed buildings to be all-electric by prohibiting the installation of natural gas infrastructure.

Staff now recommends repealing and replacing Section 15.19.030 to remove electrification requirements to bring the Atherton Municipal Code in line with the CRA decision.

ANALYSIS

The California Environmental Quality Act, Public Resources Code section 21000, et seq., ("CEQA") requires the Town to examine the potential environmental impacts from the "projects,"

as that term is defined in CEQA, that the Town approves. CEQA, however, provides for certain categories of projects that are exempt from CEQA review. As set forth in the CEQA Guidelines, the approval of the proposed ordinance would be exempt from CEQA review under the Class 7 and Class 8 exemptions. (CEQA Guidelines, §§ 15307 and 15308.) Class 7 exemptions apply to actions taken by regulatory agencies for the protection of natural resources and Class 8 exemptions apply to actions taken by regulatory agencies for the protection of the environment. The reach code protects both natural resources and the environment by encouraging reductions in the use of fossil fuels, which would reduce the environmental impacts associated with the production, transport, and use of fossil fuels. The reach code also protects both natural resources and the environment by encouraging the reduction in the amount of greenhouse gas emissions, thereby reducing the well-documented impacts to natural resources and the environment from climate change.

FISCAL IMPACT

There is no fiscal impact.

GOAL ALIGNMENT

This Report and its contents are in alignment with the following Council Policy Goals:

- Goal Area F – Be Forward-Thinking, Well-Managed, and Well-Planned

POLICY FOCUS

None

PUBLIC NOTICE

Public notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting in print and electronically. Information about the project is also disseminated via the Town's electronic News Flash and Atherton Online. There are approximately 1,200 subscribers to the Town's electronic News Flash publications. Subscribers include residents as well as stakeholders –to include, but be not limited to, media outlets, school districts, Menlo Park Fire Protection District, service providers (water, power, and sewer), and regional elected officials.

COMMISSION/COMMITTEE FEEDBACK/REFERRAL

This item has not been before a Town Committee or Commission

ATTACHMENTS

1. Ordinance Amending Section 15.19.030 of the Atherton Municipal Code