



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



September 24, 2024

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

**SUBJECT:** Second public hearing regarding an 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 use of all-electric appliances and equipment for new construction and large additions/alterations; consideration of a Resolution instituting an incentive program for voluntary use of all-electric appliances and equipment for certain building permits; and find that the Ordinance and Resolution are exempt from the California Environmental Quality Act; all Supervisorial Districts

**RECOMMENDATIONS:**

1. Adopt the proposed Ordinance amending the Ventura County Building Code (VCBC) regarding all-electric requirements, included as Exhibit 1, to become effective on October 24, 2024; and 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.
2. Adopt a Resolution, included as Exhibit 3, establishing an incentive program to encourage voluntary use of all-electric appliances and equipment for certain Building Permits.
3. Determine that adoption of the proposed Ordinance amending the VCBC Amendments and Resolution establishing an incentive program to encourage voluntary use of all-electric appliances and equipment are exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15060(c)(1).
4. Direct the Clerk of the Board to publish an Ordinance summary as required by law.

**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.

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, 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, with a recommended sunset date of December 31, 2025 on the incentive program. Your Board conducted introduction and first reading of the Ordinance on September 10, 2024. Second reading and adoption of the Ordinance is before your Board for consideration today, along with a Resolution to establish the voluntary compliance incentive program.

## **DISCUSSION:**

### **Proposed Ordinance Amending the VCBC**

The proposed amendments include changes to Article 10 of the current edition of the VCBC, which was adopted in November 2022. Article 10 amended Chapters 4 and 5 of the California Green Building Standards Code (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 (refer to Exhibit 3). The specific change would reduce by 50% the cost for Expedited Plan Review service for Building Permit applicants for new construction projects electing to voluntarily incorporate all-electric appliances and equipment, as originally mandated in the 2022 VCBC. New construction projects are defined in the Resolution as new residential and non-residential buildings, additions exceeding 50% of the area of an existing building, and alterations exceeding 50% of the estimated value of the existing building.

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 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%.

As an example, 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 in offering this incentive.

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**

Between January 1, 2023 and March 28, 2024, 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. As noted above, only projects of a certain size and type trigger all-electric 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. Of these 116 qualifying project permits, 102 were for residential projects and 14 were for non-residential projects.

Between March 29, 2024, when the County stopped mandating all-electric components in certain qualifying building permits, and July 23, 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 7 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 of the 167 total qualifying project Building Permits.

With the recommended adoption of the incentive program for voluntary compliance with the all-electric requirements, the number of requests for Expedited Plan Review for



qualifying projects is anticipated to increase approximately eight-fold. 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 \$16,835 in potential lost revenue equates to approximately 0.4% of the Building Division's ~\$4,000,000 annual budget. Additionally, as stated previously, there is no impact to the General Fund. While the cost of offering this incentive is relatively minor, with the inclusion of the incentive program, staff anticipates an appreciable increase in the number of Building Permit applications that voluntary include provisions for all-electric design.

### **CALIFORNIA ENVIRONMENTAL QUALITY ACT:**

The proposed Ordinance and associated Resolution are not 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 and adoption of an incentive program for voluntary compliance do 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 these actions, 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 was 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
- Exhibit 3: Proposed Resolution for Incentive Program

RESOLUTION NO. 24-134

**A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF VENTURA ADOPTING AN INCENTIVE PROGRAM TO ENCOURAGE VOLUNTARY COMPLIANCE WITH ALL-ELECTRIC APPLIANCES AND EQUIPMENT IN CERTAIN BUILDING PERMIT APPLICATIONS**

**WHEREAS**, Section 4.509 of Chapter 4 and Section 5.509 of Chapter 5 of Article 10 of the current Ventura County Building Code (VCBC) contain provisions for all-electric appliances and equipment in new construction intended for the reduction of greenhouse gases, as adopted by the Ventura County Board of Supervisors in 2022; and

**WHEREAS**, Section 4.509 of the VCBC as adopted by Ventura County includes a requirement that: all newly constructed residential buildings shall be designed and constructed to be all-electric buildings having no natural gas burning appliances or equipment with certain exceptions and specifies that qualifying additions were those exceeding 50% of the area of the existing building and that qualifying alterations were defined as those exceeding 50% of the estimated value of the existing building; and

**WHEREAS**, Section 5.509 of the VCBC as adopted by Ventura County includes a requirement that: all newly constructed non-residential buildings shall be designed and constructed to be all-electric buildings having no equipment or appliances that use natural gas with certain exceptions and specified that qualifying additions were those exceeding 50% of the area of the existing building and that qualifying alterations were defined as those exceeding 50% of the estimated value of the existing building; and

**WHEREAS**, a similar all-electric requirement imposed by the City of Berkeley was legally challenged in federal court, and the Ninth Circuit Court of Appeal ruled in *California Restaurants Association v. City of Berkeley* (9th Cir. 2024) 89 F.4th 1094, that the City of Berkeley's all-electric requirement was preempted by federal law and could therefore not be imposed by the City of Berkeley; and

**WHEREAS**, the VCBC's all-electric provisions set forth in Sections 4.509 and 5.509 are similarly preempted by federal law and cannot be imposed by the County of Ventura; and

**WHEREAS**, in order to comply with the aforementioned legal authority, the Ventura County Board of Supervisors is amending the all-electric provisions of Sections 4.509 and 5.509 to make compliance with the provisions voluntary instead of mandatory; and

**WHEREAS**, the Ventura County Board of Supervisors finds a public benefit in incentivizing the voluntary use of all-electric equipment in new construction in order to continue reducing the production in greenhouse gases in new construction; and

**WHEREAS**, the County of Ventura's expedited review of building plans during the permitting process is a service that can be sought by applicants for larger projects, for which the corresponding fee for such service is 35% of the Plan Review fees; and

**WHEREAS**, a 50% reduction in this fee to 17.5% of the Plan Review Fees, is likely to make for an attractive incentive to using all-electric equipment in new construction projects voluntarily; and

**WHEREAS**, the types of construction projects that would be eligible to participate in this incentive program would be new residential and non-residential buildings seeking a building permit, additions of at least 50% of the area of an existing residential or non-residential building, and alterations that exceed 50% of the estimated value of the existing building; and

**WHEREAS**, this incentive program would sunset on December 31, 2025, unless extended by the Board of Supervisors by subsequent action;


**NOW, THEREFORE, BE IT RESOLVED** that the Ventura County Board of Supervisors hereby resolves that a 50% reduction in the fee charged for expedited plan review services shall be provided for building permit applications pertaining to new residential and non-residential buildings seeking a building permit, additions of at least 50% of the area of an existing residential or non-residential building, and alterations that exceed 50% of the estimated value of the existing building, provided that: (1) such building permit application is submitted prior to January 1, 2026; and (2) the applicant voluntarily specifies on their plans and permit documents the installation of all-electric appliances and equipment to the extent that would have been required under original, 2022 versions Sections 4.509 and 5.509 of the VCBC (i.e., gas appliances may be included in eligible projects if identified in the exceptions listed in Sections 4.509.2 and 5.509.2, subparts 1 through 4, respectively) which are attached hereto as Exhibit A and incorporated herein by this reference.

Upon motion of Supervisor Lopez, seconded by Supervisor LaVere, and duly carried, the Board hereby adopts the foregoing resolution on this 24th day of September, 2024.

  
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Kelly Long  
Chair, Board of Supervisors  
County of Ventura

ATTEST:

Dr. Sevet Johnson  
Clerk of the Board of Supervisors  
County of Ventura, State of California

By:   
\_\_\_\_\_  
Deputy Clerk of the Board

