

BOARD of SUPERVISORS



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## MEMORANDUM

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Date: September 12, 2024  
To: Planning Department/Planning Commission  
From: John Carroll, Assistant Clerk, Land Use and Transportation Committee  
Subject: Board of Supervisors Legislation Referral - File No. 240845  
Building Code - Gas Infrastructure for EPCA Appliances in New Construction

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- California Environmental Quality Act (CEQA) Determination  
(*California Public Resources Code, Sections 21000 et seq.*)
  - Ordinance / Resolution
  - Ballot Measure
- Amendment to the Planning Code, including the following Findings:  
(*Planning Code, Section 302(b): 90 days for Planning Commission review*)
  - General Plan
  - Planning Code, Section 101.1
  - Planning Code, Section 302
- Amendment to the Administrative Code, involving Land Use/Planning  
(*Board Rule 3.23: 30 days for possible Planning Department review*)
- General Plan Referral for Non-Planning Code Amendments  
(*Charter, Section 4.105, and Administrative Code, Section 2A.53*)  
(Required for legislation concerning the acquisition, vacation, sale, or change in use of City property; subdivision of land; construction, improvement, extension, widening, narrowing, removal, or relocation of public ways, transportation routes, ground, open space, buildings, or structures; plans for public housing and publicly-assisted private housing; redevelopment plans; development agreements; the annual capital expenditure plan and six-year capital improvement program; and any capital improvement project or long-term financing proposal such as general obligation or revenue bonds.)
- Historic Preservation Commission
  - Landmark (*Planning Code, Section 1004.3*)
  - Cultural Districts (*Charter, Section 4.135 & Board Rule 3.23*)
  - Mills Act Contract (*Government Code, Section 50280*)
  - Designation for Significant/Contributory Buildings (*Planning Code, Article 11*)

Please send the Planning Department/Commission recommendation/determination to John Carroll at [john.carroll@sfgov.org](mailto:john.carroll@sfgov.org).

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.

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

18

19 Section 1. General Findings.

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

25 (b) On \_\_\_\_\_, the Building Inspection Commission considered this  
ordinance at a duly noticed public hearing pursuant to Charter Section 4.121 and Building  
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.

12  
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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## **LEGISLATIVE DIGEST**

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

**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.**

### Existing Law

The Building Code prohibits the Department of Building Inspection (DBI) from issuing building permits for construction of new mixed-fuel buildings where the initial application for the permit was submitted on or after June 1, 2021. There are two exceptions allowing construction of new mixed-fuel buildings (buildings with natural gas infrastructure) for installation of cooking equipment in restaurants, or where all-electric design is physically or technically infeasible.

### Amendments to Current Law

The proposed legislation would allow DBI to issue permits for new construction that includes natural gas infrastructure solely to serve appliances covered by the Federal Energy Policy and Conservation Act (42 U.S.C. §§ 6201 et seq., “EPCA”) as long as the building complies with the DBI’s Design Guidelines for Electric-Ready Buildings. The proposed legislation would deem such buildings as all-electric and not subject to the limitations on new construction of mixed-fuel buildings.

### Background Information

Natural gas combustion, infrastructure, and transport create significant health, safety, and environmental risks for San Francisco. The City’s unique topography, high population density, stock of older wooden structures, seismic activity, and wind patterns make the City vulnerable to fast spreading fires triggered or strengthened by gas leaks and explosions. Further, natural gas service takes significantly longer to resume after major disruptions than electrical service. Indoor use of natural gas is also a significant contributor to indoor air pollution, the health impacts of which are exacerbated in denser developments with smaller dwelling units that make up a significant portion of the City’s housing stock. For these reasons, the City prohibited construction of Mixed-Fuel buildings in 2021.

FILE NO. 240845

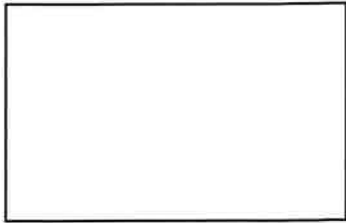
Since enacting that prohibition, the United States Court of Appeals for the Ninth Circuit determined in *California Restaurant Ass'n v. City of Berkeley*, 89 F.4th 1094 (9th Cir. Jan. 2, 2024), that EPCA preempts local laws that would prohibit installation of appliances covered by EPCA. The proposed legislation would explicitly allow natural gas infrastructure for EPCA-covered appliances in otherwise electric-ready buildings to address this issue.

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**Introduction Form**

*(by a Member of the Board of Supervisors or the Mayor)*



I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee (Ordinance, Resolution, Motion or Charter Amendment)
- 2. Request for next printed agenda (For Adoption Without Committee Reference)  
*(Routine, non-controversial and/or commendatory matters only)*
- 3. Request for Hearing on a subject matter at Committee
- 4. Request for Letter beginning with "Supervisor \_\_\_\_\_ inquires..."
- 5. City Attorney Request
- 6. Call File No. \_\_\_\_\_ from Committee.
- 7. Budget and Legislative Analyst Request (attached written Motion)
- 8. Substitute Legislation File No. \_\_\_\_\_
- 9. Reactivate File No. \_\_\_\_\_
- 10. Topic submitted for Mayoral Appearance before the Board on \_\_\_\_\_

The proposed legislation should be forwarded to the following (please check all appropriate boxes):

- Small Business Commission     Youth Commission     Ethics Commission
- Planning Commission     Building Inspection Commission     Human Resources Department

General Plan Referral sent to the Planning Department (proposed legislation subject to Charter 4.105 & Admin 2A.53):

- Yes                       No

*(Note: For Imperative Agenda items (a Resolution not on the printed agenda), use the Imperative Agenda Form.)*

Sponsor(s):

Mandelman

Subject:

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

Long Title or text listed:

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.

Signature of Sponsoring Supervisor: