

RESOLUTION NO. 1238-24**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE SUSPENDING ENFORCEMENT OF SUNNYVALE MUNICIPAL CODE SECTIONS 16.42.030 THROUGH 16.42.080 RELATED TO ALL-ELECTRIC REQUIREMENTS FOR NEW AND SUBSTANTIALLY RECONSTRUCTED BUILDINGS**

WHEREAS, on November 1, 2022, the City of Sunnyvale adopted Ordinance 3202-22, which amended Title 16 (Buildings and Construction) of the Sunnyvale Municipal Code (“SMC”) by adopting the 2022 uniform fire and building codes; and

WHEREAS, SMC sections 16.42.030 through 16.42.080, adopted through Ordinance 3202-22, impose all-electric requirements on most types of new residential and non-residential construction and prohibit certain natural gas appliances in construction subject to the all-electric requirements, including outdoor equipment such as outdoor grills, firepits, and pool heaters; and

WHEREAS, in early 2024 the United States Court of Appeals for the Ninth Circuit issued its decision *California Restaurant Association v. City of Berkeley*, 89 F.4th 1094 (9th Cir. 2024), finding that the Energy Policy and Conservation Act (EPCA), 42 U.S. Code sect. 6201 et. seq., applies to regulations addressing natural gas appliances and building codes that concern the use of natural gas, and holding that the state and local governments are preempted from adopting local regulations, including building codes, concerning the energy use of covered natural gas appliances; and

WHEREAS, because SMC sections 16.42.030 through 16.42.080 expressly regulate the use of natural gas appliances, the City Council finds that suspending enforcement of these code sections is necessary and appropriate considering the decision in *California Restaurant Association v. City of Berkeley*.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SUNNYVALE THAT:

1. The City of Sunnyvale hereby suspends enforcement of all local Sunnyvale laws and regulations imposing all-electric requirements on new or substantially reconstructed buildings or otherwise prohibiting use or installation of gas appliances, including but not limited to Sunnyvale Municipal Code sections 16.42.030 through 16.42.080.
2. The suspension on enforcement described in Section 1 above shall apply to all applications for building permits or other development project entitlements including, without limitation, currently pending applications, new applications filed after adoption of this Resolution, requests for modification of pending applications, and applications for modification of previously-issued permits or entitlements.

Adopted by the City Council at a regular meeting held on May 21, 2024, by the following vote:

AYES: KLEIN, SRINIVASAN, MELTON, CISNEROS, DIN, MEHLINGER, SELL
NOES: NONE
ABSTAIN: NONE
ABSENT: NONE
RECUSAL: NONE

ATTEST:

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DAVID CARNAHAN
City Clerk

(SEAL)

APPROVED:

DocuSigned by:

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LARRY KLEIN
Mayor

APPROVED AS TO FORM:

DocuSigned by:

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REBECCA L. MOON
City Attorney