

ORDINANCE NO. _____ (2022 SERIES)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN LUIS OBISPO, CALIFORNIA, AMENDING TITLE 8 (HEALTH AND SAFETY) OF THE SAN LUIS OBISPO MUNICIPAL CODE BY ADDING CHAPTER 8.10 REQUIRING ALL-ELECTRIC NEW BUILDINGS

WHEREAS, greenhouse gas accumulation in the atmosphere as the result of human activity is the primary cause of the global climate crisis; and

WHEREAS, in California alone, the initial impacts of climate change have resulted in unprecedented disasters with human, economic, and environmental costs; and

WHEREAS, the Intergovernmental Panel on Climate Change estimates that global emissions need to be reduced by 45 percent from 2010 levels by 2030, and 100 percent by 2050 to prevent global catastrophe; and

WHEREAS, the State of California enacted Senate Bill (SB) 32 to require greenhouse gas emissions to be reduced to 40 percent below 1990 levels by 2030 and Governor Brown issued Executive Order B-55-18 establishing a statewide target of carbon neutrality by 2045; and

WHEREAS, City of San Luis Obispo residents and businesses have repeatedly identified climate action as a top community priority; and

WHEREAS, the City of San Luis Obispo City Council has directed staff to evaluate strategies and options to achieve community-wide carbon neutrality by 2035; and

WHEREAS, Resolution 11159 (2020 Series) adopts the City of San Luis Obispo Climate Action Plan for Community Recovery, which includes a communitywide goal of carbon neutrality by 2035 and sector specific goal of no net new building emissions from onsite energy use by 2020; and

WHEREAS, the inventoried greenhouse gas emissions in the City of San Luis Obispo come from a variety of sources, primarily transportation and energy use in buildings and facilities; and

WHEREAS, as of January 2020, the community has access to clean electricity procured by Central Coast Community Energy; and

WHEREAS, as of January 2030, Central Coast Community Energy's electricity supply will be carbon neutral and procured through direct investments; and

WHEREAS, the remaining source of greenhouse gas emissions from energy use in buildings will come from the onsite combustion of fossil fuels, primarily natural gas; and

WHEREAS, the direct global warming impact of natural gas, which is primarily composed of methane, is considerably higher than previously thought; and

WHEREAS, between September 1, 2020 and September 1, 2021, the City received building permits for 121 residential units that could choose between all-electric and mixed- fuel design and of these units, only 51 (approximately 46 percent) were built all-electric, a rate that is inconsistent Resolution No. 11159 (2020 Series); and

WHEREAS, new natural gas connections pose substantial health and safety risks to the community by exacerbating climate change impacts; and

WHEREAS, new natural gas connections pose substantial health and safety issues due to seismic safety risks, indoor air quality risks, and by exacerbating climate change impacts; and

WHEREAS, in order to mitigate these risks in support of public health and safety, new sources of greenhouse gas emissions, in particular natural gas, need to be eliminated; and

WHEREAS, Resolution No. 11133 (2020 Series) establishes a policy preference for all-electric buildings and Resolution No. 11159 (2020 Series) resolves that there shall be “no net new building emissions from onsite energy use by 2020”; and

WHEREAS, California Constitution Article XI, Section 7 and Section 501 of the City Charter establish the City’s authority to make and enforce within its limits ordinances and regulations not in conflict with the constitution and laws of the State of California; and

WHEREAS, the Council expressly declares that this proposed Ordinance is reasonably necessary to protect public health and safety; and

WHEREAS, the requirements specified in this Ordinance were reviewed via public comment, through a robust outreach process; and

WHEREAS, on February 1, 2022, the City Council held a study session and provided direction to City Staff to conduct further outreach and to develop code amendments; and

WHEREAS, on June 8, 2022, the Planning Commission received an informational presentation on the proposed ordinance and provided feedback; and

WHEREAS, on June 22, 2022, the Planning Commission received adopted Resolution PC-1063-2022 recommending that the City Council adopt regulatory flexibility incentives; and

WHEREAS, on July 5, 2022, the City Council conducted a duly noticed Public Hearing to consider testimony and input on the proposed ordinance.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of San Luis Obispo as follows:

SECTION 1. Purpose. It is the purpose and intent of this Ordinance to update the Clean Energy Program for New Buildings to protect public health and safety by requiring all new buildings to be all-electric.

SECTION 2. Action. The Ordinance is hereby adopted by the City of San Luis Obispo to be codified under Chapter 8.10 as specified in Exhibit A. The Council hereby adopts the recitals herein as separate and additional findings of fact in support of adoption of the Ordinance.

SECTION 3. Severability. If any word, phrase, sentence, part, section, subsection or other portion of this amendment or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this amendment, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City of San Luis Obispo hereby declares that it would have passed this Ordinance and each section, subsection sentence, clause, and phrase of this amendment, irrespective of the fact that any one or more sections, subsection, sentences, clauses, or phrases is declared invalid or unconstitutional.

SECTION 4. Findings. The City Council finds that each of the changes or modifications to measures referred to herein are reasonably necessary because of local climatic, geological, or topographical conditions in the area encompassed by the boundaries of the City of San Luis Obispo, and the City Council adopts the following findings in support of local necessity for the changes or modifications:

1. Scientific evidence has established that natural gas combustion, extraction, and transportation produce significant greenhouse gas emissions that contribute to global warming and climate change.
2. As a city located on the California Central Coast, San Luis Obispo is vulnerable to the effects of sea level rise and resultant flooding within the San Luis Creek watershed, and human activities releasing greenhouse gases into the atmosphere cause increases in worldwide average temperature, which contribute to melting of glaciers and thermal expansion of ocean water – resulting in rising sea levels.
3. San Luis Obispo is already experiencing the repercussions of excessive greenhouse gas emissions as rising sea levels and severe weather events threaten the City's nearby shoreline and infrastructure and cause significant erosion leading to infrastructure failures including the Mud Creek slide resulting in closure of Highway 1 for repairs, and economic impacts to surrounding communities.

4. San Luis Obispo is situated along a wildland-urban interface and has been identified as a Community at Risk from wildfire and is extremely vulnerable to wildfires and firestorms, and human activities releasing greenhouse gases into the atmosphere cause increases in worldwide average temperature, drought conditions, vegetative fuel, and length of fire seasons—contributing to the likelihood and consequences of fire.
5. The City of San Luis Obispo is situated at the base of a watershed of the Santa Lucia Mountains and flooding of San Luis, Chorro, Stenner, Old Garden, and Brizzolara Creeks results in conditions rendering fire department vehicular traffic unduly burdensome or impossible, as witnessed in major floods that occurred in 1952, 1961, 1969, 1973, 1978, 1982, and 1995. Furthermore, flood conditions described above create the potential for overcoming the ability of the fire department to aid or assist in fire control, evacuations, rescues, and other emergency task demands inherent in such situations. The resulting overburdening of fire department personnel may cause a substantial or total lack of protection against fire for the buildings and structures located in the City of San Luis Obispo. The afore-described conditions support the imposition of fire protection requirements greater than those set forth in the California State Building Standards Code and, in particular, support the imposition of new development requirements for purpose of reducing the City's contributions to Greenhouse Gas Emissions resulting in a warming climate and related severe weather events.
6. The aforementioned flood and rain events result in conditions wherein stormwater can inundate the wastewater treatment system as witnessed in major floods that occurred in 1952, 1961, 1969, 1973, 1978, 1982, and 1995. Furthermore, rain events and flood conditions described above create a condition referred to as Inflow and Infiltration (I/I) that allow rain and flood waters to flow and/or seep into the wastewater system and overcome the ability of the wastewater collection system and Water Reclamation Facility (WRF) to convey and treat sewage. The resulting overburdening of the wastewater system can result in threats to public health, public and private property and water quality and violations and fines from the State of California, the Environmental Protection Agency (EPA) or others. To the extent that climate change has the potential to make these conditions worse, requirements to achieve reduced greenhouse gas emissions are necessary.
7. The City of San Luis Obispo is situated near three major faults each capable of generating earthquakes with a magnitude of 7.5. These are the San Andreas to the east of the City, the Nacimiento-Rinconada that crosses Hwy 101 north of the City then parallels the City to the east, and the Hosgri to the West. Other faults of importance are the Huasna and West Huasna to the Southeast of the City, the San Simeon to the Northwest, and the Edna and Edna Extended faults which enter the southern areas of the City. In as much as these faults are included as major California earthquake faults, which are subject to becoming active at any time, the City of San Luis Obispo is particularly vulnerable to devastation should such an earthquake occur. The potential effects include isolating the City of San Luis Obispo from the North and South due to the

- potential for collapsing of freeway overpasses or a slide on both the Cuesta and Ontario Grades and the potential for horizontal or vertical movement of the Edna fault rendering surface travel across the southern extremities of the city unduly burdensome or impossible. Additional potential situations inherent in such an occurrence include loss of the City's two main water sources (the Salinas and Whale Rock reservoirs), broken natural-gas mains causing structure and other fires, leakage of hazardous materials, the need for rescues from collapsed structures, and the demand for first aid and other medical attention to large numbers of people. As a result, the City is pursuing a policy to discourage additional natural gas extensions and the related, expanded risk of gas leaks and explosions during seismic events for the protection of human life and the preservation of property in the event of such an occurrence.
8. That seasonal climatic conditions during the late summer and fall create numerous serious difficulties in the control and protection against fire situations in the City of San Luis Obispo. The hot, dry weather in combination with Santa Lucia (offshore) winds frequently results in wildland fires in the brush-covered slopes on the Santa Lucia Mountains, Morros, and the Irish Hills areas of the City of San Luis Obispo. The aforementioned areas surround the City. When a fire occurs in said areas, such as occurred in 1985 when the Los Pilitas fire burned six days and entered the City and damaged many structures, the entirety of local fire department personnel is required to control, monitor, fight and protect against such fire situations in an effort to protect life and preserve property and watershed land. The same climatic conditions may result in the concurrent occurrence of one or more fires in the more populated areas of the City without adequate fire department personnel to protect against and control such a situation. Therefore, the above-described findings support the imposition of measures reduce greenhouse gas emissions from carbon, and support reducing the amount of natural gas distributed and used throughout the City.
 9. As described in the City of San Luis Obispo Climate Action Plan for Community Recovery (2020), rapid actions are required to limit global warming and the resulting environmental threat posed by climate change, including a policy that calls for no net new emissions from new buildings. Actions that limit methane, which is the primary component of natural gas, can slow the rate of climate change and mitigate the related impacts.
 10. Natural gas combustion and gas appliances emit a wide range of air pollutants, such as carbon monoxide (CO), nitrogen oxides (NO_x, including nitrogen dioxide (NO₂)), particulate matter (PM), and formaldehyde, which according to a UCLA Study, have been linked to various acute and chronic health effects, and additionally exceed levels set by national and California-based ambient air quality standards. Therefore, the above-described findings support the imposition of measures to eliminate natural gas infrastructure in new buildings and development.
 11. All-electric new buildings benefit the health, safety, and welfare, of San Luis Obispo and its residents.

SECTION 5. Environmental Determination. This Ordinance was assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA) and CEQA Guidelines, and is found to be exempt from CEQA under the general rule, CEQA Guidelines Section 15061(b)(3), because it can be seen with certainty that the provisions contained herein would not have the potential for causing a significant effect on the environment. Further, this ordinance is also exempt from CEQA under the categorical exemptions in Sections 15307 and 15308 of the CEQA Guidelines in that the proposed Ordinance would institute regulatory requirements intended to protect the environment and natural resources, as the Ordinance will require the installation of less natural gas infrastructure and reduce the amount GHG gas emissions in the City that are produced from buildings, and reduce the risk of catastrophic infrastructure failure, including explosions and fires caused by breaks and leaks in the natural gas distribution system as a result of upset conditions due to deferred maintenance or following an earthquake.

SECTION 6. Violations. Violation of the requirements of this Ordinance shall be considered an infraction of the City of San Luis Obispo Municipal Code, punishable by all the sanctions prescribed in Chapters 1.12 and 1.24.

SECTION 7. Effective Date. This Ordinance shall be effective as of January 1, 2023.

SECTION 8. A summary of this ordinance, together with the names of Council members voting for and against, shall be published at least five (5) days prior to its final passage, in The New Times, a newspaper published and circulated in this City. This ordinance shall go into effect at the expiration of thirty (30) days after its final passage.

INTRODUCED on the _____ day of _____, 2022, **AND FINALLY ADOPTED** by the Council of the City of San Luis Obispo on the _____ day of _____, 2022, on the following vote:

AYES:
NOES:
ABSENT:

Mayor Erica A. Stewart

ATTEST:

Teresa Purrington
City Clerk

APPROVED AS TO FORM:

J. Christine Dietrick
City Attorney

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Luis Obispo, California, on _____.

Teresa Purrington
City Clerk

O _____

Exhibit A**Chapter 8.10
ALL-ELECTRIC NEW BUILDINGS****8.10.010 PURPOSE AND INTENT**

The purpose of this chapter is to prohibit the installation of new natural gas infrastructure to ensure that new buildings and associated uses:

- A. Are consistent with Resolution No. 11133 (2020 Series) stating that, “It is the policy of the City that new buildings should be all-electric”;
- B. Implement Resolution No. 11159 (2020 Series) resolving that there shall be “no net new building emissions from onsite energy use by 2020”;
- C. Implement the Climate Action Plan for Community Recovery and the associated goal of communitywide carbon neutrality by 2035;
- D. Protect public health and safety by avoiding issues related to seismic safety risk, indoor air quality risk, and impacts associated with climate change.

8.10.020 APPLICABILITY AND EFFECTIVE DATE

- A. The effective date of this ordinance shall be January 1, 2023.
- B. The provisions contained in Chapter 8.10 are applicable to Newly Constructed Buildings, including those that are built after a demolition, whose Building Permit applications have been submitted on or after January 1, 2023.
- C. The provisions contained in Chapter 8.10 do not apply to Additions or Alterations. Residential subdivisions in process of permitting or constructing initial public improvements for any phase of a final map recorded prior to January 1, 2020, are exempt, unless compliance is required by an existing Development Agreement. Additional exemptions and exceptions to this Chapter are identified in Sections for outdoor cooking and heating.
- D. This Chapter shall in no way be construed as amending California Energy Code requirements under California Code of Regulations, Title 24, Part 6, nor as requiring the use or installation of any specific appliance or system as a condition of approval.

8.10.030 DEFINITIONS

The following words and phrases, whenever used in this Chapter, shall have the meanings defined in this section unless the context clearly requires otherwise:

- A. “ACCESSORY DWELLING UNIT” means an Accessory Dwelling Unit as defined in City of San Luis Obispo Municipal Code Section 17.156.004.
- B. “ALL-ELECTRIC BUILDING” means a building that has no natural gas plumbing installed within the building and that uses electricity as the source of energy for all space heating, water heating, cooking appliances, and clothes drying appliances.

- C. "COMMERCIAL KITCHEN EQUIPMENT" means equipment intended for use in "Eating and Drinking Establishments," including but not limited to commercial cooking appliances (see California Fire Code, Chapter 2, Definitions) domestic cooking appliances, and high-capacity dishwashers,
- D. "CRITICAL FACILITIES" means a facility that is critical for the health and welfare of the population and is especially important following hazard events. Critical facilities include essential facilities, transportation systems, lifeline utility systems, high potential loss facilities and hazardous material facilities.
- E. "EATING AND DRINKING ESTABLISHMENTS" means businesses primarily engaged in serving prepared food and/or beverages for consumption on or off the premises as defined in the San Luis Obispo Municipal Code 17.156.012.
- F. "MANUFACTURING AND INDUSTRIAL FACILITY" means a building with the occupancy classification as defined in the California Building Code, Chapter 3, Section 306, Group F.
- G. "MIXED-FUEL BUILDING" means a building that is plumbed for the use of natural gas as fuel for space heating, water heating, cooking or clothes drying appliances.
- H. "NATURAL GAS INFRASTRUCTURE" means natural gas or fuel gas piping, other than service pipe, in or in connection with a building, structure or within the property lines of premises, extending from the point of delivery at the gas meter as specified in California Plumbing Code and Mechanical Code.
- I. "NEWLY CONSTRUCTED BUILDING" means a building or space that has never been used or occupied for any purpose.
- J. "PROCESS" means an activity or treatment that is not related to the space conditioning, lighting, service water heating, or ventilating of a building as it relates to human occupancy.
- K. "PROCESS LOAD" means an energy load resulting from a Process.

8.10.040 ALL-ELECTRIC NEW BUILDINGS REQUIREMENT

- A. All Newly Constructed Buildings shall be All-Electric Buildings. Natural Gas Infrastructure is prohibited in Newly Constructed Buildings and in onsite systems related to Newly Constructed Buildings.
- B. The requirements of this Section shall be deemed objective planning standards under Government Code section 65913.4 and objective development standards under Government Code Section 65589.5.

8.10.050 TECHNICAL EXEMPTIONS

- A. Notwithstanding Section 8.10.040, for purposes of this Section, provision of Natural Gas Infrastructure for certain end uses is allowed when no all-electric alternative is commercially available or viable. End uses eligible for technical exemptions are:
- a. Back-up power for Critical Facilities necessary to protect public health or safety in the event of an electric grid outage.
 - b. Process Loads in a Newly Constructed Manufacturing and Industrial Facility. For Manufacturing and Industrial facilities with unknown tenants, exemptions may be provided pending review of initial tenant occupancy.
- B. Notwithstanding Section 8.10.040, for purposes of this Section, provision of Natural Gas Infrastructure for certain end uses is allowed through December 31, 2025 when no all-electric alternative is commercially available or viable. End uses eligible for technical exemptions are:
- a. Commercial Kitchen Equipment in a Newly Constructed Eating and Drinking Establishment.
 - b. Water heating or space heating in a newly constructed attached Accessory Dwelling Unit in which new services are provided by systems from an existing mixed fuel building.
 - c. A swimming pool that is provided as a public amenity.
- C. Concurrent with the Building Permit application, project applicants seeking a technical exemption as identified in 8.10.050A and 8.10.050B must submit an exemption application to the Community Development Director for approval. The submittal must include a description of how the purpose and intent of this Chapter, as outlined in 8.10.010, is addressed to the maximum extent feasible. The Director's decision shall become a condition of the development or building permit issued for the project.

8.10.060 PUBLIC INTEREST EXEMPTION

- A. Notwithstanding the requirements of this Chapter and the Council's Clean Energy Program for New Buildings, and other public health and safety hazards associated with Natural Gas Infrastructure, minimally necessary and specifically tailored Natural Gas Infrastructure may be allowed in a building otherwise subject to the requirements of this Chapter if the Community Development Director makes all of the following findings:
- a. The physical site conditions, necessary operational requirements, or the public health or safety risks in the event of an electric grid outage make it infeasible to meet the requirements of this Chapter.
 - b. The project meets the City's adopted sustainability and environmental policies and is consistent with Purpose and Intent of this Chapter, as outlined in 8.10.010.

- c. The project has mitigated adverse health, safety, or general welfare impacts as they relate to new Natural Gas Infrastructure to persons residing or working on the site or in the vicinity to the greatest extent feasible.
 - d. The grant of an exemption pursuant to this Section will not constitute a grant of special privilege—an entitlement inconsistent with the limitations upon other similarly situated properties in the vicinity with the same zoning.
- B. Concurrent with the Building Permit application, project applicants seeking a public interest exemption as identified in 8.10.060A must submit an exemption application to the Community Development Director for approval. The burden shall be on the applicant to demonstrate the grounds for an exemption and the submittal must include sufficient evidence for the Community Development Director to make the findings required in 8.10.060A. The Director's decision shall become a condition of the development or building permit issued for the project.

18.10.070 IMPLEMENTATION AND ENFORCEMENT

- A. In addition to any other remedy authorized by this code, any violation of the provisions of this chapter is considered an infraction of the City of San Luis Obispo Municipal Code, punishable by all the sanctions prescribed in Chapters 1.12 and 1.24.