

ORDINANCE NO. 794

**ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF HILLSBOROUGH
AMENDING CHAPTER 15.10 (ENERGY CODE) OF TITLE 15 (BUILDINGS AND
CONSTRUCTION) OF THE HILLSBOROUGH MUNICIPAL CODE BY AMENDING
SECTION 15.10.030 AND REPEALING SECTION 15.10.050 (ENERGY REACH CODE)
IN ITS ENTIRETY PURSUANT TO CEQA GUIDELINE 15378**

The City Council of The Town of Hillsborough hereby finds and ordains as follows:

WHEREAS, the Town of Hillsborough, California (“Town”) is a municipal corporation, duly organized under the constitution and laws of the State of California; and

WHEREAS, on April 11, 2022, the City Council adopted Ordinance No. 783 amending Title 15 (Buildings and Construction) of the Hillsborough Municipal Code, Chapter 15.10 (Energy Code), and amending by reference the 2019 California Energy Code; and

WHEREAS, Ordinance No. 783 added a new Section 15.10.050 (Energy Reach Code) to Chapter 15 of Title 15 of the Hillsborough Municipal Code related to new low-rise residential construction to require, among other things, that space heating and water heating appliances be required to be electric and cooking and clothes drying appliances using natural gas or propane be required to be prewired for a future electric replacement appliance; and

WHEREAS, in *California Restaurant Association v. City of Berkeley*, a panel of the U.S. Court of Appeals for the Ninth Circuit held that an all-electric new construction ordinance adopted in the City of Berkeley was preempted by the federal Energy Policy and Conservation Act; and

WHEREAS, on January 2, 2024, the Ninth Circuit denied the City of Berkeley’s petition to rehear the case *en banc*, and, following this decision, the City did not exercise its right to appeal to the Supreme Court; and

WHEREAS, given that this ruling is now final and binding on all jurisdictions within the Ninth Circuit, the Town could be vulnerable to a legal challenge were it to enforce certain provisions of Section 15.10.050, and it is therefore in the Town’s best interest to repeal this section.

NOW, THEREFORE, the City Council of the Town of Hillsborough does ordain as follows:

Section 1. The recitals above are each incorporated by reference and adopted as findings by the City Council.

Section 2. Adoption of this Ordinance is not a project subject to the requirements of the California Environmental Quality Act, pursuant to 14 C.C.R. section 15378(b)(5), because it is an administrative governmental activity which will not cause a direct or indirect physical change in the environment.

Section 3. Chapter 15.10 (Energy Code) of Title 15 (Buildings and Construction) of the Hillsborough Municipal Code is hereby amended by repealing Section 15.10.050 (Energy Reach Code) in its entirety.

Section 4. Section 15.10.030 (Amendment of California Energy Code—Generally) of Chapter 15.10 (Energy Code) of Title 15 (Buildings and Construction) of the Hillsborough Municipal Code is hereby amended to read as follows:

“15.10.030 - Reserved.”

Section 5. This ordinance shall take effect 30 days following its adoption.

Section 6. No less than five days prior to the adoption of this Ordinance, the City Clerk published a summary of this Ordinance in accordance with Government Code section 36933. The City Clerk will certify to the passage of this Ordinance by the City Council of the Town of Hillsborough, California, and cause a summary to be published once within fifteen (15) days after its adoption in accordance with Government Code section 36933.



Attest: City Clerk



Mayor of the Town of Hillsborough

ORDINANCE NO. 794 of the Town of Hillsborough introduced on August 12, 2024, and adopted on September 9, 2024, by the following vote of the City Council:

AYES:	Councilmembers	<u>Chuang, Ragsdale, Royse, Cole, Krolik</u>
NOES:	Councilmembers	<u>None</u>
ABSENT:	Councilmembers	<u>None</u>
ABSTAIN:	Councilmembers	<u>None</u>