June 14, 2023

Dear Mayor and City Council,

On 7/6/19 the Berkeley City Council unanimously passed an ordinance banning natural gas in all new large construction projects submitted on or after January 1, 2020, despite urging of developers to exempt first floor retail for restaurants and commercial kitchens. As a result of this total ban, the California Restaurant Association (CRA) sued the City of Berkeley and the ordinance was overturned on 4-17-23 by a unanimous 3-0 decision by the Ninth Circuit Court of Appeals. The City in now requesting a en banc rehearing from 11 judges of the Ninth Circuit Court. In the meantime, we are told by the City the ordinance is still being enforced.

While the goals of the ban of natural gas are worthy in reducing the consumption of fossil fuels and moving to renewable electricity, we believe for the following reasons the Council should NOW compromise and remove restriction of gas in retail to allow restaurants using natural gas as determined by them and not the City:

1. Natural gas for cooking in restaurants and commercial kitchens makes up only a tiny fraction of energy use in an otherwise all-electric mixed-use building.

2. All-electric commercial kitchens and restaurants can be done, but are not common, and particularly challenging with wok-based Asian cooking or flame broiled cooking. As stated by the CRA, “Natural gas appliances are crucial for restaurants to operate effectively and efficiently, as they allow for a wide variety of cuisines and innovations in the restaurant industry...”. As stated by leading restauranteur, “the real underlying issue is that that electric cooking is not effective in producing the same quality of food, particularly for Asian restaurants. Open flame provides indirect heat required for caramelization during the wok cooking process. The natural gas ban for new commercial spaces will deter new Asian restaurants from even considering leasing spaces because they already know without natural gas the quality of their food will be severely impacted.”

3. Having an exemption process does not work. By the time the developer/owner has hired a broker to lease retail spaces, the project has already been constructed with no natural gas. Gas lines need to be added early in the construction process when the foundation is being poured, typically a year or two before the start of retail leasing process. Adding lines later is time consuming, disruptive and cost prohibitive. As one developer has stated, “PG&E is unable to process electric or gas applications in a timely manner already (months long delays for projects already) and the idea that they’ll be able to pivot from all electric to gas on the ground-floor after construction starts would only be considered feasible by people who have no experience in building anything.
4. If a developer believes no-natural gas connection makes his space non-competitive for restaurant use, then they are also not likely to invest in an expensive ventilation system with air shafts to roof required for most cooking. Adding a natural gas connection and a ventilation system at later date becomes doubly cost and time prohibitive.

5. No-gas restaurants puts Berkeley new mixed-use projects a serious competitive disadvantage to other cities without this requirement, or older buildings with grandfathered gas connections.

6. With the rise of the Internet based shopping, restaurants are one of the few viable uses of ground floor retail.

7. A compromise now by Council in rescinding retail natural gas ban, is likely to result in CRA withdrawing their lawsuit. As the Court decision now stands the 1975 federal law prohibits a natural gas ban on ALL floors of construction which is unfortunate. All-electric is now feasible for residential heating, hot water and kitchens. If the City had not included retail space in natural gas ban ordinance, the CRA would have had no reason to sue the City.

8. The City’s appealing court decision the en banc Ninth Circuit, and possible beyond, will be timely and expensive, and there is a very good chance the City will be unsuccessful in overturning court decision.

In the meantime, several mixed-use projects in Berkeley are being required to go forward with no natural gas in all retail spaces. This is very unfortunate. This will increase the likelihood of long-term vacancy in these since spaces, with restauranteurs unwilling to lease new space without gas and ventilations systems. And due to displacement of interest, there is a general lack of other prospective retail uses.

Hence, we recommend the City Council immediately revise ordinance to allow natural gas in retail spaces, or at minimum to suspend the requirement for two to three years to allow marketplace to demonstrate viability of all-electric commercial kitchens. In doing so the City should also consider negotiating with the CRA to withdraw their lawsuit. Hopefully in doing so, the rest of ban remains for residential spaces with the City achieving the overall goals reducing significantly greenhouse gases.

Respectfully,

Berkeley Alliance of Business Organizations
Berkeley Chamber of Commerce
Downtown Berkeley Association
 Telegraph Business Improvement District
Visit Berkeley

Cc: City Manager, City Attorney, City Clerk, Planning Department, Office of Economic Development