



# How to Move All-Electric Buildings Forward Post-Berkeley Ruling

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Everyone deserves to live in safe, affordable, healthy homes that run on clean electricity and are free of indoor air pollution from methane gas.

Methane gas pollution is typically highest in low-income communities of color that are already disproportionately burdened with pollution from other sources. Every policy, plan, and funding source adopted and allocated without building electrification (BE) requirements or strong incentives results in unnecessary gas infrastructure. This exacerbates the climate crisis and worsens air quality for the region's most vulnerable communities.

The harm fossil fuels present for communities across the San Diego region is clear, confirming the need for an improved path forward through BE. BE is a cost-effective, efficient, and equitable strategy to improve public health and the climate. All communities need the benefits of BE to improve quality of life in the places we live, work, and learn.



The original policy approach requiring new construction to be built without gas infrastructure was through the adoption of a local all-electric ordinance, also known as a reach code. In early 2023, more than 70 all-electric ordinances had been passed in California, including Encinitas and Solana Beach, with additional electrification ordinances adopted in other parts of the United States.

Unfortunately, in April 2023, the Ninth Circuit Court of Appeals issued a ruling in California Restaurant Association v. City of Berkeley, overturning a lower federal district court's decision and revoking the City of Berkeley's ban on methane gas infrastructure in newly constructed buildings. The Ninth Circuit ruling created high legal risk for jurisdictions pursuing or enforcing an all-electric ordinance, thus limiting the momentum for this policy approach and prompting cities in the region to stop the ordinance adoption process. Notably, if a rehearing is granted for this case, jurisdictions will be permitted to adopt and enforce an all-electric ordinance until a final ruling is made.

The good news is that while all-electric ordinances are a key strategy to help combat the climate crisis, they are not a silver bullet. Despite the challenges presented by the Ninth Circuit ruling, impactful opportunities are available now to move BE forward. This memo outlines significant actions that jurisdictions can take immediately to electrify communities throughout the San Diego region. Based on the opportunities identified, each jurisdiction should assess which actions will provide the greatest impact based on local conditions and implement accordingly.

## OPPORTUNITIES FOR BUILDING ELECTRIFICATION

### CITIES AND COUNTY

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#### **Heat Pump Replacement Policy**

While the Building Energy Efficiency Standards set by the State of California Energy Code continue to improve through increased efficiency and electrification measures, the next State code update in 2025 will not require fully electric new construction. It is essential for jurisdictions to advocate for electrification policy at the State level, including in future code updates. Simultaneously, cities cannot wait for the State to take action and must take advantage of existing opportunities to fill policy gaps supporting BE.

For example, cities can adopt a policy that requires all air conditioning units to be replaced upon burnout with heat pump appliances, as was adopted in the City of San Mateo. Since heat pumps provide both heating and cooling through one all-electric system, residents would have a healthier, electric alternative to their gas furnace. This policy does not require a fuel switch because AC units are typically electric. Therefore, the Berkeley case does not impact a jurisdiction's ability to adopt this policy and the long-term cost-savings from an efficient appliance are significant.

## All-Electric Housing Policy

Developing housing policies that include meaningful incentives for electrification and energy efficiency is essential to creating safe, healthy, and sustainable homes. The region can prioritize all-electric housing through city policy and cross-jurisdictional collaboration. An opportunity for BE integration is the County and City of San Diego's 2022 resolution to expand the region's affordable housing supply by 10,000 homes using government land by 2030. These 10,000 affordable homes must be all-electric to maximize community benefits, reduce GHG emissions, and improve the quality of life for residents.

The County of San Diego also has an opportunity to prioritize BE in the development of the [Housing Blueprint](#), a roadmap to help guide the County's ongoing response to the housing crisis. With sustainability as a key component, the Housing Blueprint objectives must include incentives for newly constructed and renovated homes to be all-electric.

Another opportunity to prioritize BE in housing policy is for the City of San Diego to incorporate BE incentives by amending the [Complete Communities: Housing Solutions](#). The Housing Solutions can include incentives for all-electric homes similar to the current incentives aimed at encouraging the building of affordable homes near high-frequency transit. Integrating BE into this policy will help the City to meet climate, transportation and housing targets simultaneously.

## CALGreen Tier 1 and Tier 2 Measures

The CALGreen voluntary measures, also known as Tier 1 and Tier 2, are notable opportunities for local governments to reduce building emissions while providing flexibility to developers. Jurisdictions can include Tier 1 and/or Tier 2 measures as a requirement in their building code. This increases building efficiency and will contribute to overall emissions reductions. For example, [Marin County](#) adopted CALGreen Tier 1 requirements in 2022 for newly constructed buildings and additions/alterations. CALGreen has established criteria under the Tier 1 and Tier 2 measures so cities can pull from existing measures to update their building code rather than develop new measures independently. This opportunity requires less staff capacity and fewer resources to implement.

## Electric-Preferred Incentive

Another option that jurisdictions can explore is the adoption of an electric-preferred ordinance for new construction/renovations. While the Berkeley case has temporarily limited the ability to adopt and enforce an all-electric requirement, an electric-preferred ordinance is a viable option. This requires that a developer comply with additional energy performance levels if they choose to install gas. If they build all-electric instead, the developer is only required to meet California Energy Code standards. This can effectively incentivize developers to go all-electric without mandating it, particularly where the cost-effectiveness is high. Additional parameters may be added as incentivization, such as expedited permitting for all-electric builds. However, given that this will take time to develop and the State building code update is approaching, cities may find that pursuing other opportunities will provide a greater impact.

## LOCAL AIR POLLUTION CONTROL DISTRICT

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### Zero Emission Appliance Standard

The San Diego [Air Pollution Control District](#) (APCD) works to maintain and improve air quality in the region. APCD has an opportunity to reduce gas appliance emissions contributing to poor air quality and health outcomes by adopting a zero nitrogen oxide (NOx) appliance standard, also referred to as a zero emission appliance standard. This policy has been adopted by the [Bay Area Air Quality Management District](#) (BAAQMD), which is implementing a phased approach to restrict the sale and installation of gas water heaters and furnaces. [According to BAAQMD](#), “emissions from natural gas building appliances account for a similar amount of NOx pollution as passenger vehicles in the Bay Area.”

Recently, the [South Coast Air Quality Management District](#) (SCAQMD) adopted similar regulations to restrict the use of gas appliances in commercial kitchens. Additional rules from SCAQMD will be implemented including restrictions on commercial gas water heating at the end of 2023 and on residential gas water and space heating by April 2024. Because these policies take a regional approach, resources required for implementation can be streamlined across local governments, and the positive impact on communities through improved air quality is significant.

It is clear that the State is also moving in this direction as the [California Air Resources Board](#) committed to developing regulations by 2030 to require a zero emission appliance standard for new appliances throughout California.



## HOUSING AUTHORITIES AND SCHOOL DISTRICTS

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### School District Electrification

School districts are at the core of their communities and present critical opportunities for decarbonization. With opportunities to electrify not only new buildings but existing facilities, housing, buses, fleets and energy, the potential for emissions reductions and community benefits at school districts are enormous.


The San Diego Unified School District (SDUSD) adopted an all-encompassing electrification resolution in April 2023, committing to phase out the use of fossil fuels in all district infrastructure, including buildings, buses, and maintenance vehicles, prioritizing investments at schools in Communities of Concern. SDUSD is mitigating multiple intersecting issues through a resolution that not only electrifies new and existing buildings but also develops a green jobs curriculum, transitions to Power100 at San Diego Community Power by 2024, and increases charging infrastructure for electric vehicles. With support from historic State and Federal climate funding targeting schools, these commitments are replicable at school districts throughout the region.



## Housing Authority Electrification

The main objective of housing authorities is to increase, improve, and preserve a jurisdiction's housing stock, especially for very low and low-income residents. Of the eighteen jurisdictions in the San Diego region, seven have a housing authority, including the County of San Diego, City of San Diego, Oceanside, Chula Vista, Carlsbad, Encinitas, and National City. In order to prioritize the health of residents and the climate, all housing authorities can commit to electrifying new and existing housing authority-owned and operated properties. Given that housing authorities have full control of the properties under their ownership, this opportunity can be pursued and implemented rapidly and effectively, setting an example for housing developers, jurisdictions, and other entities.

Opportunities also exist for housing authorities to prioritize BE requirements and incentives in funding streams allocated to affordable housing developers, such as annual Notice of Funding Availability (NOFA) guidelines. Opportunities include:



The County of San Diego's Innovative Housing Trust Fund (IHTF), for example, is a part of the County's NOFA and provides gap financing to developers that create or preserve affordable housing. According to the [2021-2022 San Diego County Annual Report](#), over \$50 million in IHTF funds have been awarded to increase the region's inventory of affordable housing. An additional \$25 million was approved by the Board of Supervisors for innovative housing solutions, which may include the IHTF and other housing-related efforts.

The San Diego Housing Commission (SDHC) administers the City of San Diego's [Affordable Housing Fund](#) (AHF), which consists primarily of two permanent, renewable sources of funds from the Inclusionary Housing Fund, which is funded from fees charged to residential development; and the Housing Trust Fund, which is funded from fees charged to commercial development. Approximately \$50.7 million is expected to be available in the [FY 2024 AHF Annual Plan](#).

## **Housing Ballot Measures**

BE can be required or strongly incentivized in all state and local housing funding streams. For example, the Strategic Growth Council's [Affordable Housing and Sustainable Communities \(AHSC\) Program](#), California's largest affordable housing program, has a requirement that all funded projects are all-electric. The AHSC's requirement can be replicated in all housing funding streams. Aligning housing funding to include BE can streamline and improve housing funding processes while helping to meet climate and housing affordability goals.

For example, housing ballot measures led by jurisdictions can create sustainable, local revenue sources, making them competitive for the state and federal funding needed to produce affordable housing. All future housing ballot measures can include language that prioritize electrification in new construction. This aligns with the guidelines and scoring metrics in statewide grants and tax credit requirements, such as the AHSC program. Existing building retrofit projects can also be prioritized for awarded funds.

## **ADAPTING TO A CHANGED LANDSCAPE**

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Although the Ninth Circuit ruling halted all-electric ordinance adoption, it is evident that ample opportunities exist to move BE forward. Existing BE has been identified by the [Independent Budget Analyst](#) as the most consequential climate action strategy in the City of San Diego, providing immense emissions reductions. All jurisdictions must continue to look at the big picture and develop plans to equitably retrofit existing buildings to be all-electric in parallel with new construction. Each new building developed with gas infrastructure is a hazard and expense as the region moves to electrify its existing building stock. The Berkeley ruling has changed the policy landscape and strategy, but the momentum for BE should ultimately be left unchanged, as no jurisdiction can meet its climate goals without it.





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## Conclusion & Recommendation

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