

Memorandum

To: Drew Bohan
Executive Director

Date: November 21, 2018

Telephone: (916) 654-5013

From: **Kristen Driskell**
Deputy Director, Efficiency Division
California Energy Commission
1516 Ninth Street
Sacramento CA 95814-5512

Subject: **EXECUTIVE DIRECTOR RECOMMENDATION THAT THE CALIFORNIA ENERGY COMMISSION FINDS THAT CITY OF ARCATA'S LOCALLY ADOPTED ENERGY STANDARDS WILL REQUIRE REDUCTION OF ENERGY CONSUMPTION LEVELS PERMITTED BY THE 2016 BUILDING ENERGY EFFICIENCY STANDARDS**

Summary of Item

The California Public Resources Code and the *2016 Building Energy Efficiency Standards*¹ (2016 Energy Standards) establish a process that allows local governmental agencies, such as cities or counties, to adopt and enforce local energy standards for newly constructed buildings, additions, alterations, and repairs to existing buildings if the California Energy Commission finds that the local energy standards will require buildings to be designed to consume less energy than permitted by the 2016 Energy Standards. This process, described in Public Resources Code Section 25402.1(h)(2), and Section 10-106(b) of the 2016 Energy Standards, requires local governmental agencies to apply to the Energy Commission for this finding.

The local governmental agency must submit an application to the executive director of the Energy Commission, which must be approved before the local energy standards may be enforced. This application must contain:

- 1) The proposed energy standards.
- 2) The local governmental agency's findings and supporting analyses on the energy-savings and cost effectiveness of the proposed energy standards.
- 3) A statement or finding by the local government agency that the local energy standards will require buildings to be designed to save energy when compared to levels permitted by the California Code of Regulations, Title 24, Part 6.
- 4) Any findings, determinations, declarations or reports, including any negative declaration or environmental impact report, required pursuant to the California

¹ California Code of Regulations, Title 24, Part 1, Chapter 10, and Part 6.

Environmental Quality Act (CEQA), Public Resources Code, Section 21000 et seq. (2016 Energy Standards, § 10-106(b).).

The executive director must submit to the Energy Commission a written recommendation on the application after determining that the application is complete, making the complete application package available to interested parties, and providing a 60-day public comment period. (2016 Energy Standards, § 10-110(a) and (d).) The complete application package, any additional information considered by the executive director, and the executive director's recommendation shall be placed on the consent calendar and considered at the next business meeting after submission of the executive director's recommendation. (2016 Energy Standards, § 10-110(e).) The matter may be removed from the consent calendar at the request of any person. (*Ibid.*)

In reviewing the application, the Energy Commission must find whether the locally adopted energy standards will require a reduction of energy consumption beyond that permitted by the 2016 Energy Standards. (Public Resources Code § 25402.1(h)(2); 2016 Energy Standards, § 10-106(a).).

The City of Arcata has submitted a complete application package, including Ordinance 1507, which requires all new single-family construction to use only seventy percent of the energy budget permitted for compliance with the 2016 Building Energy Efficiency Standards (Energy Standards), which meets the 2016 CALGreen Tier 2 target, and all new low-rise multi-family buildings to use only eighty percent of the energy budget permitted for compliance with the 2016 Energy Standards.

A proposed executive director recommendation is attached.

Summary of Staff's Application Review

As detailed in the attached executive director recommendation, staff reviewed City of Arcata's application for its proposed local energy standards in Ordinance 1507. Staff found that the package contains all of the components required by Section 10-106(b) of the 2016 Energy Standards.

Specifically, the City's application contains:

- 1) Proposed energy standards.
- 2) Findings and supported analysis on the energy savings and cost effectiveness of the proposed energy standards.
- 3) Finding that the local energy standards will require buildings to be designed to save energy when compared to levels permitted by the California Code of Regulations, Title 24, Part 6.
- 4) CEQA determination and Notice of Exemption.

Staff made City of Arcata's complete application available to interested parties and provided a 60-day public comment period for the complete applications, including the local ordinance and cost-effectiveness analysis. (2016 Energy Standards, § 10-110(a).) The applications were posted on the webpage for Local Ordinances

Exceeding the *2016 Energy Standards*². The submitted application was also docketed on the Energy Commission's website under 16-BSTD-07 for a 60-day public comment period, which concludes on December 10, 2018. The complete application, including the local ordinance and cost-effectiveness analysis, will also be made available on the Energy Commission website as part of the back-up materials for the proposed agenda item when presented to the Energy Commission for action.

In addition, staff reviewed the application to determine whether the standards will require the diminution of energy consumption levels permitted by the 2016 Energy Standards.

Project Manager

Ingrid Neumann, Building Standards Office

Staff Position

Staff recommends that the Energy Commission find that City of Arcata's proposed energy standards will require the reduction of energy consumption levels permitted by the 2016 Energy Standards. (Public Resources Code, § 25402.1(h)(2); 2016 Energy Standards, § 10-106(a).).

City of Arcata has been informed that the approved ordinance will be enforceable during the time that the 2016 Energy Standards are effective. If the statewide standards are subsequently revised or amended (as they are regularly on a three-year cycle) the ordinance will no longer be enforceable. If the City wishes to enforce either of these local energy standards, or other local energy standards revised in response to the updated statewide standards, pursuant to Public Resources Code Section 25402.1(h)(2), and Section 10-106 of the 2016 Energy Standards, the City must submit a new application.

Oral Presentation Outline

Staff will be available at the December 10, 2018, business meeting to provide a brief summary if requested and to answer questions.

Business Meeting Participants

Ingrid Neumann, Building Standards Office

Executive Director Action Requested

Recommendation by the executive director that the Energy Commission find that City of Arcata's locally adopted energy standards will require the diminution of energy consumption levels permitted by the 2016 Energy Standards.

Commission Action Requested

² <http://www.energy.ca.gov/title24/2016standards/ordinances/>.

Finding by the Energy Commission that City of Arcata's locally adopted energy standards will require the diminution of energy consumption levels permitted by the 2016 Energy Standards.

STATE OF CALIFORNIA

Energy Resources Conservation And Development Commission

In the matter of	)	RESOLUTION NO: 18-12-10-10
)	
<i>City of Arcata's Locally</i>	)	Executive Director's
<i>Adopted Energy Standards</i>	)	Recommendation that the
	)	California Energy Commission Find
	)	that City of Arcata's Locally
	)	Adopted Energy Standards Will
	)	Require the Diminution of Energy
	)	Consumption Levels Permitted by
	)	the <i>2016 Building Energy</i>
	)	<i>Efficiency Standards</i>
)	
	)	November 21, 2018

I. **EXECUTIVE SUMMARY**

Local governmental agencies may adopt and enforce local energy standards provided the California Energy Commission finds that the standards will require buildings to be designed to consume less energy than permitted by the *2016 Building Energy Efficiency Standards*¹ (2016 Energy Standards). (2016 Energy Standards, § 10-106(a).) The local governmental agency must submit an application to the executive director of the Energy Commission, which must be approved before the local energy standards may be enforced. (2016 Energy Standards, § 10-106(b).) This application must contain:

- 1) The proposed energy standards.
- 2) The local governmental agency's findings and supporting analyses on the energy-savings and cost effectiveness of the proposed energy standards.
- 3) A statement or finding by the local government agency that the local energy standards will require buildings to be designed to save energy when compared to levels permitted by the California Code of Regulations, Title 24, Part 6.
- 4) Any findings, determinations, declarations or reports, including any negative declaration or environmental impact report, required pursuant to the California Environmental Quality Act (CEQA), Public Resources Code, Section 21000 et seq. (2016 Energy Standards, § 10-106(b).).

The City of Arcata has submitted a complete application package, including Ordinance 1507, which requires all new single-family construction to use only seventy percent of the energy budget permitted for compliance with the 2016 Building Energy Efficiency Standards (Energy Standards), meeting the 2016 CALGreen Tier 2 target, and all new low-rise multi-family buildings to use only eighty percent of the energy budget permitted for compliance with the 2016 Energy Standards.

¹ California Code of Regulations, Title 24, Part 1, Chapter 10, and Part 6.

Staff made the City of Arcata's complete application available to interested parties, and provided a 60-day public comment period for the complete application, including the local ordinance and cost-effectiveness analysis. (2016 Energy Standards, § 10-110(a).) The applications were posted on the Energy Commission webpage for local ordinances exceeding the 2016 Energy Standards. The submitted applications were also docketed on the Energy Commission's website under 16-BSTD-07 for a 60-day public comment period, which concludes on December 10, 2018. The complete application, including the local ordinance and cost-effectiveness analysis, will also be made available on the Energy Commission website as part of the back-up materials for the proposed agenda item when presented to the Energy Commission for action.

The City of Arcata's application contains the necessary components required by Section 10-106(b) of the 2016 Energy Standards. Also, the City of Arcata's locally adopted energy standards will require the diminution of energy consumption levels permitted by the 2016 Energy Standards. (Public Resources Code, § 25402.1(h)(2); 2016 Energy Standards, § 10-106(a).).

Therefore, I recommend that the Energy Commission find that the City of Arcata's locally adopted energy standards will require the diminution of energy consumption levels permitted by the 2016 Energy Standards.

II. THE CITY OF ARCATA'S APPLICATION MEETS THE REQUIREMENTS OF SECTION 10-106(B) OF THE 2016 ENERGY STANDARDS

1. Proposed energy standards.

On September 18, 2018, the City of Arcata's City Council approved the adoption of Ordinance 1507, which adopts amendments to Section 8100 of the City of Arcata's Municipal Code. This Ordinance requires all new single-family construction to use only seventy percent of the energy budget permitted for compliance with the *2016 Building Energy Efficiency Standards* (Energy Standards), meeting the 2016 CALGreen Tier 2 target, and all new low-rise multi-family buildings to use only eighty percent of the energy budget permitted for compliance with the 2016 Energy Standards, which exceeds the 2016 CALGreen Tier 1 target.

The 2016 CALGreen standards set targets for buildings' energy budgets as indicated below, depending on which Tier is selected.

- 1) Tier 1 – Buildings complying with the first level of advanced energy efficiency shall have an energy budget that is no greater than 85 percent of the Title 24, Part 6 Energy Budget permitted for compliance with the 2016 Energy Standards.
- 2) Tier 2 – Buildings complying with the first level of advanced energy efficiency shall have an Energy Budget that is no greater than 70 percent of the Title 24, Part 6 Energy Budget permitted for compliance with the 2016 Energy Standards.

The reduced energy budget targets may be met by using efficiency measures only or a combination of efficiency measures and the photovoltaic (PV) system compliance credit. The PV compliance credit is equivalent to 8.0 percent of the compliance margin for single family buildings or 4.4 percent of the compliance margin for low-rise multi-family buildings. The building official may exempt a covered building if the official determines there are sufficient practical challenges to make satisfaction of the requirements infeasible or if the building has satisfied the purpose and intent of this provision through the use of alternate on-site renewable electricity systems.

The cost-effectiveness study was heard and approved on the same date.

The City of Arcata submitted a complete application to the Energy Commission, which was received on September 25, 2018, and posted for the 60-day public comment period on October 11, 2018, as required by Section 10-110(a) of the 2016 Energy Standards. The comment period ends on December 10, 2018, and no comments have been received thus far. The City of Arcata is required to submit its proposed energy standards to the Energy Commission as part of its complete application. (Public Resources Code, § 25402.1(h)(2); 2016 Energy Standards, § 10-106(b)(1).)

2. Applicant's energy-savings and cost-effectiveness determinations and supporting analyses.

The City of Arcata submitted its determinations and supporting analysis on the energy savings and cost effectiveness of the proposed energy standards with its completed application, as required by Section 10-106(b)(2) of the 2016 Energy Standards. Staff confirmed that these materials were made publicly available and were considered by the Arcata City Council as a part of the adoption of the local ordinances. The Energy Commission does not independently re-analyze applicants' determinations of cost effectiveness where they have been subject to a public adoption process.

The City of Arcata staff assessed and adopted the cost-effectiveness study that was submitted with the City's completed application. The City of Arcata determined that the requirement of additional efficiency measures as described in Ordinance 1507 provided a benefit-to-cost ratio of between 1.16 and 1.37 for new low-rise residential construction.

The City's determinations of cost effectiveness were adopted by the governing body of the City at a public meeting of the city council on September 18, 2018. (Public Resources Code, § 25402.1(h)(2).)

3. Applicant's finding that the local energy standards will require buildings to be designed to save energy when compared to levels permitted by Title 24, Part 6.

Section 10-106(b)(3) requires local governmental agencies to submit a statement or finding "that the local energy standards will require buildings to be designed to consume no more energy than permitted by Part 6." The statement of increased stringency was provided in cover letter dated September 21, 2018, by Mark Andre, Environment Services Director of the City of Arcata, submitted to the Energy Commission.

4. California Environmental Quality Act Assessment.

The last requirement of Section 10-106(b) of the 2016 Energy Standards concerns the California Environmental Quality Act (CEQA) assessment, Public Resources Code Section 21000 et seq. Section 10-106(b)(4) requires the City to submit, with its application, "any findings, determinations, declarations or reports, including any negative declaration or environmental impact report, required pursuant to [CEQA]."

In adopting local ordinances such as this one, the City is required to comply with CEQA. (See Public Resources Code, §§ 21080(a), 21063; California Code Regulations, Title 14, §§ 15020-15022, 15379.) Even though the Energy Commission has the authority to approve local energy standards under Section 25402.1(h)(2) of the Public Resources Code, and Section 10-106 of the 2016 Energy Standards, the lead agency for local energy standards is the City because it will implement and enforce these standards (California Code Regulations, Title 14, §§ 15050, 15051).

The Energy Commission staff has reviewed and considered City of Arcata's CEQA findings in the cover letter submitted with the approval application. The City of Arcata found with certainty that implementation of the ordinance is intended for the protection of the environment and therefore the adoption of the ordinance was categorically exempt from the CEQA, pursuant to both Sections 15061(b)(3) and 15308 of the CEQA Guidelines, codified in Title 14 of the California Code of Regulations. The City of Arcata also submitted a Notice of Exemption with their application package that had been signed and filed with the Humboldt County Clerk's Office on September 24, 2018, by Julie Neander, Acting Environmental Services Director.

The Energy Commission found, on June 10, 2015, that the 2016 revision of the Energy Standards would have no net adverse impact on the environment and therefore adopted a negative declaration for the 2016 Energy Standards. (See Notice of Determination at http://www.energy.ca.gov/title24/2016standards/rulemaking/documents/15-day_language/2015-06-11_Notice_of_Determination.pdf.)

Because all locally adopted standards must require the diminution of energy consumption levels permitted by the 2016 Energy Standards, there is no possibility that any ordinance that proposes to exceed such standards will have a significant effect on the environment. Therefore, approving the City of Arcata's application to enforce its locally adopted energy standards is exempt under the "common sense" provision of CEQA. (California Code Regulations Title 14, § 15061(b)(3).) Also, a finding by the Energy Commission that the City of Arcata's locally adopted energy standards will require the diminution of energy

consumption levels permitted by the 2016 Energy Standards is a ministerial project and is therefore exempt from CEQA pursuant to Public Resources Code Section 21080(b)(1) and Section 15268 of Title 14 of the California Code of Regulations.

III. THE CITY OF ARCATA'S LOCALLY ADOPTED ENERGY STANDARDS WILL REQUIRE THE DIMINUTION OF ENERGY CONSUMPTION LEVELS PERMITTED BY THE 2016 ENERGY STANDARDS

The Energy Commission is required to find whether the City's locally adopted energy standards will require the diminution of energy consumption levels permitted by the 2016 Energy Standards. (Public Resources Code, § 25402.1(h)(2); see also 2016 Energy Standards, § 10-106(a).)

Requiring increased energy efficiency ensures a diminution of energy consumption. The proposed energy provisions do not otherwise modify any of the requirements in Title 24, Part 6. The modifications to the energy provisions proposed by the City therefore require buildings to be designed to consume no more energy than permitted by the 2016 Energy Standards.

IV. CONCLUSION

After considering the application, I determined that the City of Arcata's application contains the necessary components required by Section 10-106(b) of the 2016 Energy Standards. I also determined that the City of Arcata's locally adopted energy standards will require the diminution of energy consumption levels permitted by the 2016 Energy Standards. (Public Resources Code, § 25402.1(h)(2); 2016 Energy Standards, § 10-106(a).)

Accordingly, I recommend that the Energy Commission find that the City of Arcata's locally adopted energy standards will require the diminution of energy consumption levels permitted by the 2016 Energy Standards.

DREW BOHAN
Executive Director
California Energy Commission

Date

STATE OF CALIFORNIA

STATE ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

RESOLUTION OF THE CALIFORNIA ENERGY COMMISSION FINDING THAT CITY
OF ARCATA'S LOCALLY ADOPTED ENERGY STANDARDS REQUIRE THE
DIMINUTION OF ENERGY CONSUMPTION LEVELS PERMITTED BY THE
2016 BUILDING ENERGY EFFICIENCY STANDARDS

WHEREAS, on September 18, 2018, the City of Arcata adopted Ordinance No. 1507 to establish locally adopted energy standards; and

WHEREAS, Public Resources Code Section 25402.1(h)(2), and California Code of Regulations, Title 24, Section 10-106(b), establish a process for local governments to apply to the California Energy Commission if they wish to enforce locally adopted energy standards; and

WHEREAS, the City of Arcata submitted an application to the Energy Commission for the ordinance that met all of the documentation requirements pursuant to Public Resources Code Section 25402.1(h)(2), and California Code of Regulations, Title 24, Section 10-106(b), on September 25, 2018; and

WHEREAS, the City of Arcata, in its application to the Energy Commission, indicated that implementation of the ordinance is intended for the protection of the environment and therefore the adoption of the ordinance was exempt from the California Environmental Quality Act (CEQA) codified in California Public Resources Code Section 21000 et seq. CEQA, pursuant to Sections 15061(b)(3) and 15308 of the CEQA Guidelines, codified in Title 14 of the California Code of Regulations; and

WHEREAS, the Energy Commission has analyzed whether the ordinance will require the diminution of energy consumption levels permitted by the *2016 Building Energy Efficiency Standards* (2016 Energy Standards); and

WHEREAS, the Energy Commission has considered the City of Arcata's application, the executive director's recommendation, and all comments submitted on the application.

THEREFORE BE IT RESOLVED, the Energy Commission finds that the City of Arcata's Ordinance will require the diminution of energy consumption levels permitted by the 2016 Energy Standards; and

THEREFORE BE IT FURTHER RESOLVED that the Energy Commission finds:

- (1) That there is no possibility that approving the City of Arcata's application to enforce its locally adopted energy standards will have a significant effect on the environment, and is therefore exempt from CEQA pursuant to Section 15061(b)(3) and 15308 of Title 14 of the California Code of Regulations; and
- (2) That its determination that the City of Arcata's locally adopted energy standards will require buildings to be designed to consume less energy than permitted by the 2016 Energy Standards is a ministerial project and is therefore exempt from CEQA pursuant to Public Resources Code Section 21080(b)(1) and Section 15268 of Title 14 of the California Code of Regulations.

THEREFORE BE IT FURTHER RESOLVED, the Energy Commission applauds the City of Arcata for seeking to achieve additional energy demand reductions, energy savings, and other benefits exceeding those of the 2016 Energy Standards; and

THEREFORE BE IT FURTHER RESOLVED, that on December 10, 2018, the Energy Commission approves the City of Arcata's application to enforce its locally adopted energy standards; and

THEREFORE BE IT FURTHER RESOLVED, that the Energy Commission directs the executive director to take all actions necessary to implement this resolution, including but not limited to filing the appropriate notices with the Office of Planning and Research. (See, e.g., California Code Regulations., Title 14, § 15062.)

CERTIFICATION

The undersigned Secretariat to the commission does hereby certify that the foregoing is a full, true, and correct copy of a Resolution duly and regularly adopted at a meeting of the Energy Commission held on December 10, 2018.

AYE:

NAY:

ABSENT:

ABSTAIN:

Cody Goldthrite
Secretariat