

April 20, 2023

via electronic mail to:  
[sbcc@des.wa.gov](mailto:sbcc@des.wa.gov)

State Building Code Council  
1500 Jefferson St SE  
Olympia, WA 98501

Dear State Building Code Council,

Please accept this letter as a petition to delay the implementation of the Washington State Energy Codes until July 1, 2024. Considering a recent ruling of the 9<sup>th</sup> District Court, pending litigation and other requests for delay, we urge support of this request to provide this council with ample time to restart rulemaking proceedings.

On April 17, 2023, the 9<sup>th</sup> Circuit Court of Appeals decided *California Restaurant Association v. City of Berkeley*, Case No. 21-16278 (9<sup>th</sup> Cir. R., April 17, 2023), a copy of which is linked [here](#). The Court reversed the district court's dismissal of the California Restaurant Association's action alleging that the Energy Policy and Conservation Act ("the Act") preempts the City of Berkeley's regulation that prohibits the installation of natural gas piping within newly constructed buildings. The panel also held that the federal Energy Policy and Conservation Act preempts the Berkeley ordinance. The Act expressly preempts state and local regulations concerning the energy use of many natural gas appliances, including those used in household and restaurant kitchens. The Court further noted that by its plain text and structure, the Act's preemption provision encompasses building codes that regulate natural gas use by covered products. By preventing such appliances from using natural gas, the Berkeley building code violated the Act.

The latest revisions to the Washington State Energy Code also similarly restrict the installation of natural gas infrastructure in residential and commercial construction and are thus preempted by the Energy Policy and Conservation Act. As detailed in a recent lawsuit filed by a coalition challenging the codes, the rule changes either expressly or practically ban several natural gas appliances that are regulated by federal law. For example, natural gas furnaces meeting the federal minimum efficiency standards are banned for use under the state's commercial energy code. Additionally, these furnaces are also heavily restricted in the residential energy code. The restrictions effectively disincentivize natural gas lines from being installed due to exorbitant costs of running gas infrastructure and chasing energy credits required for full code compliance.

As you are aware, our state is under the jurisdiction of the 9<sup>th</sup> circuit, so a final decision will be binding in our state as well as the parties to the case in California.

To afford the Council, affected industries, local governments, and other stakeholders time to assess the effects of this significant decision, as well as to avoid further costly and expedited

court proceedings, we respectfully request that the Council pause implementation of the rules as allowed under RCW 19.27A.160.

Sincerely,

*Associated Builders and Contractors – Western Washington Center*

*Associated General Contractors of Washington*

*Association of Washington Business*

*Avista*

*Building Industry Association of Clark County*

*Building Industry Association of Washington*

*Building Owners & Managers Association*

*Central Washington Home Builders Association*

*Kitsap Building Association*

*Master Builders Association of King and Snohomish Counties*

*NAIOP Washington State*

*Northwest Hearth, Patio & Barbeque Association*

*Olympia Master Builders Association*

*Plumbing Heating Cooling Contractors*

*Rental Housing Association*

*Rowley Properties*

*Skagit/Island Counties Builders Association*

*Southwest Washington Contractors Association*

*Wallace Properties*

*Washington Business Properties Association*

*Washington Food Industry Association*

*Washington Hospitality Association*

*Washington Landlord Association*

*Washington Realtors*

*Washington Self-Storage Association*