



Building Industry Association of Washington
300 Deschutes Way SW, Ste. 300
Tumwater, WA 98501
(360) 352-7800 | BIAW.com/ROI

May 18, 2023

via electronic mail to:
amarriner@cob.org

Alan Marriner
Bellingham City Attorney
210 Lottie Street
Bellingham, WA 98225

Dear Mr. Marriner,

I represent the Building Industry Association of Washington and its over 8,000 members throughout the state including members residing and doing business in Bellingham. I am writing to inform you that provisions that comprise your City's energy code passed by your jurisdiction, are no longer enforceable due to a recent and binding court decision. City of Bellingham Ordinance 2022-02-004 – Section C403.1.4.

On April 17, 2023, the 9th Circuit Court of Appeals decided *California Restaurant Association v. City of Berkeley*, Case No. 21-16278 (9th Cir. R., April 17, 2023). 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 City ordinance referenced above similarly restricts the installation of natural gas infrastructure in residential and commercial construction and is thus preempted by the Energy Policy and Conservation Act. The restrictions effectively disincentivize natural gas lines from being installed due to exorbitant costs of installing infrastructure and making up credits in other areas of building construction that are required for full code compliance.

As you are aware, our state is under the jurisdiction of the 9th circuit, so a final decision will be binding in our state and on local governments, as well as the parties to the case in California.

Please advise how you intend to proceed and whether the City you represent will continue to enforce provisions of its energy code that are preempted by federal law. Because this greatly impacts members of my association located in your City, if I do not hear from you within the next two weeks, please be advised that my association will take whatever steps necessary under the law to protect their interests to address this matter.

Sincerely,

A handwritten signature in blue ink that reads "Jackson Maynard, Jr." in a cursive style.

Jackson Maynard
General Counsel