



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

May 18, 2023

via electronic mail to:  
[ann.davison@seattle.gov](mailto:ann.davison@seattle.gov)

Ann Davison  
Seattle City Attorney  
701 Fifth Avenue, Suite 2050  
Seattle, WA 98104

Dear Ms. Davison,

I represent the Building Industry Association of Washington and its over 8,000 members throughout the state including members residing and doing business in Seattle. I am writing to inform you that provisions of Ordinance 126279 that comprise your City's energy code, and passed by your jurisdiction, are no longer enforceable due to a recent and binding court decision. City of Seattle Ordinance 126279 – Section C403.1.4.

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). 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.

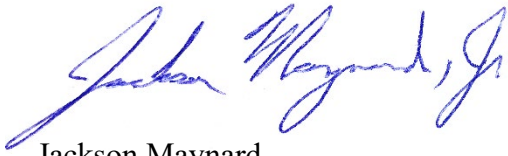
The Court further noted that by its plain text and structure, the Act's preemption provision encompasses building codes that regulate natural gas use by covered products. By preventing such appliances from using natural gas, the Berkeley building code violated the Act.

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 9<sup>th</sup> 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.

We would prefer to be advisory on this issue rather than adversarial, if possible. Because this matter is important to our members, we are keen to know how you intend to handle this. We would appreciate the courtesy of a response at your earliest convenience.

Sincerely,

A handwritten signature in blue ink that reads "Jackson Maynard, Jr." The signature is written in a cursive style with a large initial 'J' and a prominent 'M'.

Jackson Maynard  
General Counsel