

Energy Policy and Conservation Act/Berkeley, California, Building Code: Federal Appellate Court Confirms Preemption in Rehearing Decision



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

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The United States Court of Appeals Ninth Circuit (“Ninth Circuit”) addressed in a January 2nd Order and Amended Opinion (“Order”) a challenge to a Berkeley, California, building code provision that prohibited the installation of natural gas piping within newly constructed buildings. See *California Restaurant Association v. City of Berkeley*, No. 21-16278.

The question addressed was whether the federal Energy Policy and Conservation Act (“EPCA”) preempted state and local regulations (such as the Berkeley building code) that had the effect of preventing the use of natural gas appliances.

The Ninth Circuit in an April 17th Opinion held that the ordinance was preempted because it prohibited natural gas piping into such buildings which rendered the gas appliances useless. It held that the EPCA preempted state and local regulations concerning the energy use of natural gas appliances which prohibits natural gas piping into new buildings, thereby preventing such appliances from using natural gas.

The Ninth Circuit in the January 2nd Order denied the City of Berkeley’s Request for Review by the full Ninth Circuit Court of Appeals. As a result, the panel’s decision was reaffirmed.

A link to the April 17th Opinion and blog post discussing it can be found [here](#). The January 2nd Order can be found [here](#).