



The Ninth Circuit held that a Berkeley ordinance prohibiting natural gas infrastructure in new buildings was preempted by the Energy Policy and Conservation Act ("EPCA"), 42 U.S.C. § 6297(c), which regulates the energy use of natural gas appliances used in household and restaurant kitchens. *California Restaurant Association v. City of Berkeley*, 65 F. 4th 1045 (9th Cir., 2023).

In 2019, the Berkeley City Council adopted an ordinance banning all natural gas infrastructure, including piping, in newly constructed buildings. The stated purpose of the ordinance was to "eliminate obsolete natural gas infrastructure and associated greenhouse gas emissions in new buildings where all-electric infrastructure can be most practicably integrated, thereby reducing the environmental and health hazards produced by the consumption and transportation of natural gas."

The Ninth Circuit held that the ordinance was preempted by the express terms of the EPCA, which regulates energy use, including "the quantity of [natural gas] directly consumed by" consumer appliances at their place of use. The court rejected Berkeley's argument that the ordinance did not regulate "energy use" because it banned natural gas rather than prescribing an affirmative "quantity of energy" to be used by appliances.

The court observed that the EPCA was concerned with the end-user's ability to use installed covered products at their intended final destinations, and therefore preempted local regulations that would directly prohibit all use of covered natural gas appliances in new buildings. Berkeley could not do the same thing *indirectly* "by merely moving up one step in the energy chain and banning natural gas piping within those buildings." The ability to use covered products would be "meaningless if consumers can't access the natural gas available to them within the City of Berkeley."

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