

Berkeley Nixes Natural Gas Ban, But Shift To Electric Rolls On

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In the article “Berkeley Nixes Natural Gas Ban, But Shift To Electric Rolls On,” *Law360* reports that the city of Berkeley, California, has recently decided to retract a controversial ban on natural gas infrastructure in new constructions, following a settlement with the California Restaurant Association. This settlement comes in the wake of a Ninth Circuit ruling in April 2023, which found the 2019 ban preempted by federal regulations on energy use and efficiency. The ruling overturned a previous trial court decision, and a rehearing was later dismissed.

Sheppard Mullin Real Estate, Energy, Land Use and Environmental partner Whitney Hodges noted that the deadline to launch a facial challenge of the remaining statutes has passed. Of the dozens of California cities that have banned natural gas hookups in new construction, which include San Francisco, San Jose and Los Angeles, Hodges remarked, “I think they’re going to be reticent to actually enforce them against individual developments, given that there’s precedent out there that would support even an as-applied challenge. A lot of these jurisdictions, it would behoove them to start rewriting with their ordinances to perhaps set overall efficiency standards that work towards a reduction in natural gas use.”

However, Hodges emphasized that the Ninth Circuit’s ruling explicitly allows jurisdictions the opportunity to transition away from natural gas through laws that promote electrification, as opposed to those that impose bans on natural gas use. “The Ninth Circuit said the EPCA expressly allows jurisdictions to adopt local building codes to set overall efficiency standards that would favor electric over natural gas appliances.”

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