

ENERGYWIRE

Washington state hits the brakes on landmark gas ban

The delay raises questions about whether additional cities will stand by their efforts to wind down natural gas use in buildings after a key federal court ruling.



BY: **DAVID IACONANGELO** | 05/25/2023 06:56 AM EDT



A Washington state coalition including fossil fuel groups and builders has sued to strike down the first statewide mandates for electric space and water heat. The Seattle skyline is pictured. | Donald Miralle/Getty Images

ENERGYWIRE | Washington state building code officials voted Wednesday to delay the first statewide mandate for electric heat pumps in new buildings, dealing a blow to a landmark restriction on natural gas.

The decision comes after a federal court overturned the nation's first gas ban for new buildings, which was passed in 2019 in Berkeley, Calif. That court — the 9th U.S. Circuit Court of Appeals — also handles appeals from Washington.

The Washington State Building Code Council voted 8-2 to delay the mandate for 120 days. It also approved a second motion to begin the process of revising the building codes to reduce the risk of them being overturned.

"We need to comply with their ruling or else leave ourselves and our building officials open to legal risk," said Kjell Anderson, the SBCC member who authored the motion to delay, during the Wednesday meeting.

"This is pretty serious, and I think we need to be thoughtful about our response to the Berkeley ruling," he added.

The delay raises questions about whether additional cities, particularly within the 9th Circuit, will stand by their efforts to wind down natural gas use in buildings. Dozens of cities — and Washington and New York state — followed in Berkeley's footsteps after it passed its 2019 ban, which set a national precedent.

SBCC approved the electric heat pump mandate last year, as part of new building energy codes. The [codes outlaw](#) the use of natural gas systems for space and water heat in many new homes and commercial buildings, although they contain broad exemptions for backup heat and for structures located in the colder eastern region of Washington state, among other carve-outs.

The codes were set to go into effect on July 1.

In April, judges in the 9th Circuit ruled that Berkeley's [ban was preempted](#) by the federal Energy Policy and Conservation Act, or EPCA. While the city has indicated it will ask for a rehearing, the ruling has already emboldened natural gas advocates to push back against efforts to replace gas heaters and appliances with electric ones.

In Washington state, the SBCC is facing a new lawsuit over its now-delayed mandate, asserting that it violates federal law. [The lawsuit](#) was filed Monday by a coalition including three gas utilities, a propane trade group and several homebuilder and labor associations. It seeks a permanent injunction against enforcement of the codes' restrictions against natural gas in new buildings.

"By banning the use of EPCA-covered gas appliances, the Washington State Energy Code interferes with commercial and consumer energy choice; jeopardizes jobs; impairs commerce; and increases building and energy costs for Washington residents and businesses," wrote the coalition's lawyers in the lawsuit, which was filed in the U.S. District Court for the Eastern District of Washington.

The Building Industry Association of Washington, one of the groups in the coalition, linked the lawsuit to the Berkeley ruling.

"All we are asking is that the court apply the same law in Washington state as the 9th Circuit did in California," said Jackson Maynard, general counsel for the BIAW.

Maynard is also executive director of the nonprofit Citizen Action Defense Fund, one of the plaintiffs in the lawsuit. The other plaintiffs are gas utilities Avista Corp., Cascade Natural Gas Corp. and Northwest Natural Gas Co.; the National Propane Gas Association; the Spokane Homebuilder's Association; the Washington State Association of UA Plumbers, Pipefitters, and HVAC/R Service Technicians; building-contractor advocates at Inland Northwest Associated General Contractors; three contracting companies; and an individual homeowner.

Some members of the SBCC cited the lawsuit as an additional reason to revisit the building codes. Environmentalists applauded the council's decision to ensure the new codes' resiliency.

Dylan Plummer, a senior campaign representative at the Sierra Club, said SBCC was "taking no chances and adding extra insulation to the new construction codes."

But he blasted the natural gas industry for using the 9th Circuit's decision as an opportunity to attempt undoing "any and all state and local actions to ensure new buildings are climate-friendly."

"This is the national fossil fuel industry playbook coming to Washington state to try and roll back the progress that local communities and elected officials made to deliver safer, healthier homes and buildings," he said in comments before Wednesday's vote.

Rachel Koller, managing director of Shift Zero, called the lawsuit "misguided." Shift Zero, whose members include environmentalists, green-building advocates, architects, and Seattle city officials, championed the state's building codes when they were approved last year.

Koller noted that thousands of public comments had been submitted as part of the updated building codes. Electric heat pumps, she said, are "already the go-to in new construction today for performance, efficiency, lower energy bills and clean air, and updating building codes accordingly is common sense."

"It's only May and we've already had days of record-breaking heat. Washingtonians want to transition to clean, electric heating and cooling in their homes," she said.

Washington: A key battleground

Throughout the United States, state Republican lawmakers and gas interests have tried to head off city gas bans by arguing that state law preempts local authority on the issue. The American Gas Association estimates that 24 states have enacted such state preemption laws.

Now, natural gas advocates are taking aim at state-level restrictions in Washington by claiming that federal law preempts them.

But they are also using other tactics.

Monday's lawsuit wasn't the first for the Washington State Building Code Council. In February, a coalition of 22 groups and individuals made up largely of building and construction interests sued the SBCC in a state superior court, seeking to have the codes' electric heat pump requirements declared invalid.

Earlier this month, the Building Industry Association of Washington also sent letters of warning to three Washington cities — Seattle, Shoreline and Bellingham — that have enacted their own restrictions on gas in new buildings. The letters warned city attorneys that their gas restrictions were "no longer enforceable" due to the 9th Circuit's decision on the Berkeley law.

"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," wrote BIAW's Maynard.

Seattle's city attorney's office said it was still reviewing the letter, while Shoreline's city attorney's office did not respond to E&E News' inquiry.

Bellingham's deputy city attorney, James Erb, said in an email his city was "currently drafting our response to the letter from BIAW."

But he also suggested that the city was not rushing to make changes to align its laws with the 9th Circuit judges' ruling.

"Because the decision of the 9th Circuit is not yet final, we have not taken any action in response to the ruling," wrote Erb, adding that he was "closely following the developments in the litigation regarding the City of Berkeley's ordinance."

 YOUR ACCOUNT MANAGEMENT TEAM

Fred Williams

Sr. Account Manager, E&E Strategic Accounts

fwilliams@eenews.net

