

Massachusetts Attorney General Strikes Down Municipality's Attempt to Ban Gas Installations in Buildings

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On July 21, 2020, Massachusetts Attorney General Maura Healey struck down a by-law passed by the Town of Brookline that would have disallowed most construction that included “fossil fuel infrastructure.” The Attorney General’s decision can be found [here](#). This by-law would have prevented gas installations in new or substantially renovated buildings and would have required heat, hot water, and appliances to be all electric starting in 2021, with certain exemptions.

The Attorney General’s Municipal Law Unit is tasked with review of town by-laws to assure they don’t conflict with state laws or the state constitution. This review is limited, and usually by-laws are approved unless there is a direct conflict. The Attorney General acknowledged the climate change policy behind the Brookline by-law, but confirmed that local laws cannot: (1) conflict with the state building code, (2) conflict with the state gas code, or (3) conflict with state law giving the Department of Public Utilities control over gas distribution.

The Supreme Judicial Court (SJC) previously held that the Massachusetts building code preempts inconsistent local laws. See [*St. George Greek Orthodox Cathedral of W. Massachusetts, Inc. v. Fire Dep’t of Springfield*](#), 462 Mass. 120, 128-130 (2012). In that case the city of Springfield disallowed installation of fire detection systems allowed by the building code. The SJC concluded that local governments cannot limit equipment options provided by the building code and struck down the city ordinance.

The *St. George* decision also confirmed that related state codes such as the fire, plumbing, and gas codes, preempt local law. The court noted that the building code specifically incorporates these other specialized codes to create a “comprehensive system of regulation at the State level.” *St. George* at 128, n.13. In reviewing the Brookline by-law, the Attorney General acknowledged that the state plumbing code creates statewide standards for gas installation, and local laws cannot conflict with these rules and regulations. See [M.G.L. c. 142, § 13](#).

In her decision, the Attorney General also noted that under state law the Department of Public Utilities exclusively regulates the sale and distribution of gas in Massachusetts. No local government can directly order a utility to stop installing gas in buildings because this would interfere with state regulatory authority. Because the Brookline by-law attempts to achieve the same result indirectly, it is unlawful. The Attorney General noted that a Boston ordinance ordering utilities to fix gas leaks was

recently invalidated by a court for the same reason.

Local governments have broad authority to take actions that will help reduce the use of fossil fuels. However, state law is clear that municipalities cannot reduce fossil fuel use by regulating utilities or altering state building, gas, and related codes.

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