



# Moving Toward Carbon Neutrality: Banning Natural Gas Connections

By Nash Hall, University of Michigan

## Q: Can Michigan communities ban natural gas connections in new or existing buildings?

Under current legislation, it would be difficult for a Michigan community to ban natural gas connections in new or existing buildings. A court would likely conclude that conflicting state statutes preempt any such municipal ordinances. Until state law is modified to give municipalities more flexibility in enacting their own construction code ordinances, natural gas hookup bans will be vulnerable to preemption challenges in state courts.

However, the winds of change are blowing. In the past year, several municipalities in California and Massachusetts have enacted ordinances banning or restricting the use of natural gas hookups for appliances and home heating in new buildings. The goal is to reduce over time the amount of natural gas demanded by their residents, thereby reducing the amount of methane and carbon dioxide released by homes and businesses while shifting them toward all electric appliances that can operate off the state electrical grid. At the same time, state electrical grids are becoming cleaner and more renewable. The end result is homes and businesses using the same appliances they are used to, powered by clean electricity.

Organizations in Michigan have taken notice and begun advocating their municipal governments to enact similar ordinances. For instance, the Climate Mobilization - Ann Arbor recently submitted a draft ordinance to the Ann Arbor City Energy Commission and the City Attorney for review and, ideally, enactment by the City Council. While the City has not officially responded to the submission, such requests and calls for Michigan municipalities to take strong action against the climate crisis will only grow in the coming months and years, as Michiganders experience ever more damage and suffering from the crisis.

In preparing to respond to those requests—and ban natural gas hookups—Michigan municipalities should understand their legal powers and options for ordinances addressing the construction of buildings.

Wind Turbine. Photo by RawFilm on Unsplash



MICHIGAN DEPARTMENT OF ENVIRONMENT, GREAT LAKES, AND ENERGY



GRAHAM SUSTAINABILITY INSTITUTE UNIVERSITY OF MICHIGAN

### Acknowledgement

This material is based upon work supported by the Department of Energy and the Michigan Energy Office (MEO) under Award Number EE00007478.

The Clean Energy in Michigan series provides case studies and fact sheets answering common questions about clean energy projects in Michigan.

Find this document and more about the project online at [graham.umich.edu/climate-energy/energy-futures](http://graham.umich.edu/climate-energy/energy-futures).

In general, home rule municipalities have great leeway to enact ordinances for the health, safety, and welfare for their residents. Courts in Michigan tend to respect the home rule status, giving municipalities wide deference in enacting ordinances that might otherwise be disallowed under Michigan law.<sup>i</sup> However, the deference ends when a state statute preempts the local ordinance.

When considering potential statutory preemption of ordinances governing natural gas hookups in buildings, the primary statute of concern is the Stille-Derossett-Hale Single State Construction Code Act.<sup>ii</sup> The Act enables the state government to form the State Construction Board, adopt codes necessary to govern building design and construction, and delegate enforcement of those codes to governmental subunits like municipalities and counties.

The Act severely restricts the ability of municipalities to enact construction regulations. Specifically, it states that “construction regulations adopted by a governmental subdivision shall be considered repealed and invalid, except as provided in section 8.”<sup>iii</sup> While the reference to Section 8 may previously have offered an avenue for exemption, section 8 was repealed and replaced in 1999 with section 8a, which makes clear that “[t]his act and the code apply throughout the state.”<sup>iv</sup>

Michigan courts have not had the opportunity to interpret the Act’s restrictions on construction regulations in the context of a municipal ordinance, but they would likely use the preemption analysis laid out above. It’s also possible that a natural gas ban, enacted not as a local construction code but through some other means, may be a work-around, but would likely also face a legal challenge. Either way, taking the issue to court could mean it is years before cities are able to implement the ban.

The most straight-forward option for Michigan communities interested in transitioning away from natural gas would be for the state legislature to amend the Construction Code Act explicitly stating that it is in the discretion of municipalities to adopt construction regulations that are more stringent than state regulations in reducing greenhouse gas emissions. Another option is for the legislature, in updating the construction code, to include provisions that support local net-zero goals.

---

i Const 1963, art 7; § 22; Home Rule City Act, MCL § 117.1 et seq.; **Rental Property Owners Ass’n v Grand Rapids**, 455 Mich. 246, 253 (1997)

ii MCL § 125.1501 et seq

iii MCL § 125.1524

iv MCL § 125.1508a(1)