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Memo

Date:	February 27, 2020
From:	Kevin C. Conroy Tad Heuer Andrew M. London
Regarding:	Brookline Fall 2019 Special Town Meeting Article 21

This memorandum provides our review and analysis of whether Article 21, adopted by the Town of Brookline (the "Town") at its Fall 2019 Special Town Meeting on November 20, 2019, is preempted by the Massachusetts State Building Code, G.L. c. 143, § 94(a) and 780 C.M.R. § 101.2 ("State Building Code"). Our conclusion is that this by-law amendment is preempted as a matter of law, for the reasons detailed below.

Article 21 would amend the Town's General By-Laws by adopting a new Article 8.39, entitled "Prohibition on New Fossil Fuel Infrastructure in Major Construction" ("Article 8.39"). Absent limited exceptions, Article 8.39 requires the Town's Building Commissioner to withhold building permits from new buildings (and significant renovations of existing buildings) if those buildings include new natural gas infrastructure for heat, hot water, or certain other purposes.

Article 8.39 is preempted by the State Building Code for a simple and straightforward reason: it requires the Town's Building Commissioner to *withhold* building permits for certain structures that are in full compliance with the State Building Code, notwithstanding his or her ministerial legal mandate to *issue* those very same building permits pursuant to the State Building Code.[1] Municipalities are not permitted to unilaterally impose additional local restrictions on the building inspector's statutory obligation to issue building permits in strict accordance with state law.

Nor can the Town assert that it otherwise lacked options for pursuing its desired result. In the event a municipality wishes to adopt a local enactment that is more restrictive than the State Building Code, state statute—G.L. c. 143, § 98—already establishes a process

[1] Article 8.39 is also independently preempted by G.L. c. 164, the public utilities statute. This memorandum does not address the interaction between G.L. c. 164 and Article 8.39 because it is our understanding that several natural gas companies have submitted a comment letter to the Attorney General's Office discussing preemption under G.L. c. 164 in significant detail. We agree with their analysis.

by which that municipality may request such permission from State Board of Building Regulations and Standards ("Board"). Alternatively, a municipality has the constitutional right to petition the Legislature for a home rule bill. Yet the Town here chose not to pursue either of these permissible options, and instead chose an impermissible preempted route.

I. BACKGROUND ON ARTICLE 8.39

On November 20, 2019, at a Special Town Meeting, the Town adopted, a new Article 8.39, entitled "Prohibition on New Fossil Fuel Infrastructure in Major Construction." Article 8.39 was a petitioned article, proposed by petitioners from various advocacy groups. Article 8.39 is substantively similar to draft ordinances that have been proposed around the country and in other communities in Massachusetts. So far, the Town is the only Massachusetts municipality to pass such an ordinance or by-law.

Article 8.39 prohibits the Town's Building Commissioner from issuing permits to New Buildings or Significant Renovations, which are otherwise entitled to a building permit under the State Building Code, 780 C.M.R. § 101 et seq., if the project includes the installation of new On-Site Fossil Fuel Infrastructure.[2] Article 8.39 includes a limited number of exceptions, including for cooking appliances, backup generators, and research laboratories or medical offices. In practice, Article 8.39 will prohibit the Building Commissioner from issuing building permits to nearly all new commercial and residential buildings and significant renovations that include new natural gas infrastructure for heat or hot water, even if those projects are in all other ways compliant with the State Building Code.

When voting on Article 8.39, members of the Town Meeting were well aware that state law likely preempted the proposed by-law. Associate Town Counsel Jonathan Simpson cautioned expressly that "there could be several statutes that may preempt what this bylaw is trying to do."[3,4] Yet, notwithstanding this warning from legal counsel, the warrant report on Article 8.39 informed Town Meeting members that the "only way to know for sure whether OAG will approve a by-law such as this, is to pass it at Town Meeting and submit it for OAG review." The warrant report concluded that even if OAG rejected the by-law, the Town "will have gained some clarity as to how to approach this issue in the future."

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[2] Article 8.39 defines "On-Site Fossil Fuel Infrastructure" as "fuel gas or fuel oil piping that is in a building, in connection with a building, or otherwise within the property lines of the of the premises, extending from a supply tank or from the point of delivery behind a gas meter (customer-side of gas meter)."

[3] Sustainable Buildings Warrant Article 21 at p. 11 (published November 19, 2019) available at: https://www.brooklinema.gov/DocumentCenter/View/20839/ARTICLE-21-as-voted-per-Town-Clerk?bidId=

[4] Nancy E. Glowa, the City Solicitor for the City of Cambridge, reviewed a similar proposal prohibiting natural gas in new construction in the City of Cambridge. Glowa concluded that, absent a home rule bill, the proposal would be preempted by G.L. c. 164, regulating public utilities, and G.L. c. 143, the State Building Code. *See* Attachment A, Letter from City Solicitor Nancy Glowa to City Manager Louis A. DePasquale (Dec. 11, 2019).

II. APPLICABLE STATE LAW

A. Massachusetts Constitutional Home Rule Amendment

Under the Home Rule Amendment to the Constitution of the Commonwealth, "[a]ny city or town may, by the adoption, amendment, or repeal of local ordinances or by-laws, exercise any power or function which the general court has power to confer upon it, which is not inconsistent with the constitution or laws enacted by the general court…" Art. 89, § 6 of the Amendments to the Massachusetts Constitution; *see also* G.L. c. 43B, §13 (Home Rule Procedures Act); *Boston Gas Company v. Newton*, 425 Mass. 697, 699 (1997) ("[m]unicipalities may not adopt by-laws or ordinances that are inconsistent with State law").

In assessing whether a local enactment is inconsistent with state law, Courts will consider "whether there was either an express legislative intent to forbid local activity on the same subject or whether the local regulation would somehow frustrate the purpose of the statute so as to warrant an inference that the Legislature intended to preempt the subject." *Boston Gas Co. v. Somerville*, 420 Mass. 702, 704 (1995). The Supreme Judicial Court has held that it can infer that the Legislature intended to preempt the entire field of a topic "when legislation on the subject is so comprehensive that a local enactment would frustrate the statute's purpose." *Boston Gas Co. v. Somerville*, 420 Mass. 702, 704 (1995).

If a municipality wishes to adopt a local enactment that is inconsistent with state law, the Home Rule Amendment provides a remedy. Section 8 of the Home Rule Amendment provides the Legislature with the power to enact special laws "on petition filed or approved by the voters of a city or town, or the mayor and city council, or other legislative body, of a city, or the town meeting of a town, with respect to a law relating to the city or town." Art. 89, § 8 of the Amendments to the Massachusetts Constitution.

B. State Statutes and Regulations Establishing the State Building Code

G.L. c. 143 empowers the State Board of Building Regulations and Standards ("State Board") to adopt and administer the State Building Code and regulate issuance of all building permits by municipalities. The State Board has done so by adopting 780 C.M.R. § 101 et seq. The purpose of the State Building Code is to ensure "[u]niform standards and requirements for construction and construction materials." G.L. c. 143, § 95(a). The State Building Code also seeks to eliminate "restrictive, obsolete, conflicting, and unnecessary building regulations and requirements which may increase the cost of construction and maintenance over the life of the building . . . or *which may provide unwarranted preferential treatment of types of classes of materials, products or methods of construction without affecting the health, safety, and security of the occupants or users of buildings.*" G.L. c. 143, § 95(c) (emphasis supplied).

Local building commissioners and inspectors are required to enforce the State Building Code as to any building or structure within the city or town in which they are

appointed. G.L. c. 143, §§ 3 & 3A.[5] The State Building Code includes both required and prohibited construction practices. If a building includes the required elements and does not include any prohibited elements, the building inspector is *required* to issue the building permit.[6] Nor are building commissioners and inspectors afforded legal discretion in this regard; that authority is expressly reserved by state statute to the State Building Code Appeals Board, which is empowered to order a building inspector to administer the State Building Code according to its terms, and alone is authorized to issue variances from the State Building Code. G.L. c. 143, § 100.

The Legislature has also affirmatively created a petition procedure, G.L. c. 143, § 98, that allows a municipality to petition the State Board of Building Regulations and Standards for the special authority to adopt rules and regulations imposing more restrictive standards than those established by the State Building Code.

III. ARTICLE 8.39 IS PREEMPTED BY STATE LAW

Article 8.39 is invalid under the Home Rule Amendment because it interferes with the uniform administration of the State Building Code. If a proposed structure is compliant with the State Building Code, the local building commissioner—who is required to enforce the code per G.L. c. 143, § 3—cannot withhold a building permit that otherwise must issue to a compliant structure. Article 8.39 is inconsistent with the State Building Code because it forces the Town's Building Commissioner to withhold permits that the State Building Code requires the Building Commissioner to issue.

The Legislature's intent that G.L. c. 143 preempt local ordinances is well established. The State Building Code "applies state-wide." 780 C.M.R. § 102.2.2. The State Building Code also intentionally and expressly supersedes inconsistent local laws: when municipal bylaws and ordinances conflict with the State Building Code, the State Building Code "shall govern." *Id.*; *see also* G.L. c. 143, § 98 (establishing special affirmative procedures by which a municipality can petition the Board to adopt local rules and regulations that are more restrictive than the state building code); *Hashimi v. Kalil*, 388 Mass. 607, 609 (1983) ("The word 'shall' is ordinarily interpreted as having a mandatory or imperative obligation.").

Consistent with legislative intent, the SJC has invalidated municipal ordinances that impose additional local requirements on obtaining a building permit beyond those contained in the State Building Code. In *St. George Greek Orthodox Cathedral of Western Mass, Inc. v. Fire Dep't of Springfield*, the SJC held that the State Building Code preempted a Springfield ordinance limiting the approved types of fire detection systems that could be installed in the City. 462 Mass. 120 (2012). The SJC explained that "the Legislature intended to occupy a

[5] "The building commissioner or inspector of buildings shall be the administrative chief in a city or town responsible for administering and enforcing the state building code . . . ."

[6] Courts have recognized the non-discretionary nature of building permits, which can be subject to writs of mandamus. *See, e.g.*, *Ouellette v. Building Inspector of Quincy,* 362 Mass. 272 (1972) (upholding writ of mandamus requiring building inspector to issue building permit).

field by promulgating comprehensive legislation and delegating further regulation to a State board," that "the Board's regulations . . . set a Statewide standard as to what products and practices where permissible . . . ," and "where the Legislature demonstrates its express intention to preempt local action, inconsistent local regulations are invalid under the Home Rule Amendment." *St. George*, 462 Mass. at 128-129.

Faced with the difficulty of distinguishing *St. George*, the proponents of the measure and the Sierra Club resort to the argument that the State Building Code does not preempt Article 8.39 because Article 8.39 has a different *purpose* than the State Building Code—specifically, that Article 8.39 was enacted to address climate change, not to address uniform standards of construction. As a preliminary matter, the mere intent of a proponent is not dispositive of whether that enactment is inconsistent with state law. Indeed, allowing proponents to unilaterally determine the preemptive effect of their own proposed local amendments would mean, for example, that a local by-law making otherwise-mandatory building sprinklers optional could survive legal challenge simply by proponents alleging that their "intent" was to encourage water conservation, an issue entirely distinct from fire suppression requirements. Put bluntly, this is not how preemption works.

Nor may the proponents and Sierra Club argue that Article 8.39 "exist[s] outside the bounds of the Building Code's intended reach,"[7] because the execution of Article 8.39 is inextricably and wholly dependent on a procedure *established by the State Building Code*: "no permits shall be issued by the Town for the construction of New Buildings or Significant Rehabilitations that include the installation of new On-Site Fossil Fuel Infrastructure." The proponents and Sierra Club cannot have their cake and eat it too, by taking advantage of the requirement under the State Building Code that an applicant obtain a building permit as the mechanism to enforce Article 8.39, but then refusing to accept that building commissioners lack the legal authority to condition building permit approvals on provisions that exist outside the parameters of that very same State Building Code.

The proponents and the Sierra Club next argue that because nothing in the State Building Code *requires* gas infrastructure in structures, municipalities may impose additional requirements to receive building permits beyond those imposed by the State Building Code. This is false.

The legal conflict between Article 8.39 and the State Building Code has nothing whatsoever to do with whether gas infrastructure is affirmatively allowed by the State Building Code, or affirmatively prohibited, or not mentioned at all. The legal preemption conflict for the purposes of G.L. c. 40, § 32 exists because of the intrusion of local Article 8.39 upon the state statutory obligations of the Building Commissioner. The State Building Code requires a building commissioner, as a ministerial and non-discretionary act, to issue a building permit to a building when the building complies with the State Building Code. The local by-law here requires the same building commissioner to refuse that same building permit, for a reason found nowhere in the State Building Code. In such circumstances, the

[7] Letter from J. Raymond Miyares to Assistant Attorney General Margaret J. Hurley (Jan. 16, 2020), at 10.

State Building Code is unambiguous: the State Building Code controls and preempts. The Legislature, by the terms of the statute, has stated its intent to create "uniform" building standards throughout the Commonwealth, thereby preempting local regulation across the field.[8] G.L. c. 143, § 95(a) (the purpose of the Building Code is to ensure "[u]niform standards and requirements for construction and construction materials"); *see also St. George*, 462 Mass. at 130 ("If all municipalities in the Commonwealth were allowed to enact similarly restrictive ordinances and bylaws, a patchwork of building regulations would ensue").

Nor is there any argument that the Legislature was unaware that municipalities might desire for local variation from the State Building Code, or that the Legislature had tacitly endorsed the unilateral "local supplementation" approach taken by the Town here. To the contrary, G.L. c. 143, § 98 establishes an express mechanism for some localized requirements without creating an inconsistency that necessitates preemption. As discussed above, § 98 provides that a municipality may petition the Board for the right to adopt "rules and regulations imposing more restrictive standards than those established by the state building code… in such city or town." The Board is authorized to issue such approvals when the local enactment is "reasonably necessary because of special conditions prevailing within such city or town." Indeed, in 1989 the Legislature amended § 98 to create a narrow exception, allowing municipalities to adopt certain rules on fire protection systems that are more restrictive than those established by the State Building Code.[9] In doing so, the Legislature demonstrated that it intended the scope of § 98 to be broad and comprehensive, by intentionally limiting the scope of its applicability to only one specific instance.[10] The Legislature's intent to limit the means by which a municipality may establish more restrictive local standards is even acknowledged by the Sierra Club's comment letter, which concedes

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[8] The cases the Sierra Club cites to support its argument—that the Building Code merely acts as a floor for local regulation—are inapposite. These cases relate to additional *zoning* restrictions that may apply to construction, which are governed by a separate state statute (G.L. c. 40A), or to local *procedural* requirements, which are not substantive provisions of the State Building Code. *Heavey v. Bd. of Appeals of Chatham*, 58 Mass. App. Ct. 401 (2003) (deciding whether a plot of land was entitled to a "small lot" exemption under G.L. 40A, §6 and constituted a buildable lot for zoning purposes); *Cumberland Farms v. Planning Bd. of Bourne*, 56 Mass. App. Ct. 605 (2002) (holding that a zoning appeal pursuant to G.L. c. 40A, § 17 provided adequate procedural avenue to challenge planning board's denial of a site plan approval application). As emphasized by the leading land use treatise in the Commonwealth, "The building permit mandated by [the zoning statute, G.L. c. 40A, § 7] *should not be confused with the building permit required by the State Building Code. They involve two separate inquiries . . . .*" (emphasis supplied). Mark Bobrowski, HANDBOOK OF MASSACHUSETTS LAND USE AND PLANNING LAW, 3d Ed., § 7.03 (2011).

[9] 1989 Mass. Acts c. 515.

[10] *See In re A Grand Jury Subpoena*, 447 Mass. 88, 95-96 (2006) (where the Legislature amended G.L. c. 233, § 20 to add a child-parent privilege for grand jury subpoenas and left the paragraph on spousal privilege unchanged, the Legislature did not intend to expand the spousal privilege to grand jury subpoenas).

that G.L. c. 143, § 98 is a "special process through which localities can get the Code amended in its application to their territory." [11]

In short, instead of utilizing the orderly statutory process the Legislature has provided for municipalities seeking to deviate from the requirements of the State Building Code (and thereby authorizing a local building commissioner to grant building permits notwithstanding a discrepancy between the State Building Code and the new local requirements), the Town sought to circumvent that process entirely. Where the Legislature has affirmatively established both the process for such municipal requests and the scope that such requests may take, a municipality may not disregard such limitations without contravening G.L. c. 43B, § 13.

Finally, G.L. c. 143, § 98 is not the only option available to the Town to adopt the policy expressed in Article 8.39. In the event the Town is unwilling or unable to obtain approval from the Board under § 98, the Home Rule Amendment permits the Town to obtain authorization directly from the Legislature by means of a home rule petition.[12] What the Town may not do, however, is use Town Meeting as a means of circumventing the comprehensive and robust procedures established by the state for departing from the uniformity of the State Building Code.

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For the foregoing reasons, we conclude that Article 8.39 is preempted by the State Building Code.

[11] Letter from Sierra Club to Assistant Attorney General Margaret J. Hurley (Jan. 24, 2020) at 7.

[12] While a home rule bill could eliminate preemption of Article 8.39 under state law, the federal Energy Policy and Conservation Act of 1975, as amended ("EPCA"), also preempts Article 8.39. 42 U.S.C. §§ 6291-6309. The EPCA establishes national energy conservation standards for covered residential and commercial appliances and equipment. The EPCA contains an express preemption provision which provides that state and local regulations "concerning energy efficiency, energy use, or water use" of a covered product are preempted, except in limited circumstances not applicable here. 42 U.S.C. § 6297. Under the EPCA, covered products include, among other items, heating systems and hot water heaters. 42 U.S.C. § 6292.

Attachment A

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CITY OF CAMBRIDGE
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December 11, 2019

Louis A. DePasquale
City Manager
City of Cambridge
795 Massachusetts Avenue, City Hall
Cambridge, Massachusetts 02139

Re: Response to Awaiting Reports No. AR 19-124 (Order No. O-3 of 10/7/19) seeking a Report on the Legal Authority of the City to Ban the Use of Natural Gas in Newly Constructed Buildings and AR 19-133 (Order No. O-19 of 10/7/19) seeking a Review of Proposed Amendments to the Municipal Code

Dear Mr. DePasquale:

I write in response to Awaiting Reports Nos. AR 19-124 (Order No. O-3 of October 7, 2019) seeking a report on the legal authority of the City of Cambridge (the "City") to ban the use of natural gas in newly constructed buildings and AR 19-133 (Order No. O-19 of October 7, 2019) seeking a report on the review of proposed amendments to the Municipal Code (the "Proposed Ordinance") prohibiting natural gas in newly constructed buildings, with some exceptions. For the reasons outlined below, I am of the opinion that the City Council may adopt an ordinance prohibiting the use of natural gas infrastructure in newly constructed or partially reconstructed buildings if it submits a Home Rule Petition to the Commonwealth's Legislature seeking special legislation permitting the City to prohibit the installation of natural gas utilities in new construction and such legislation is enacted by the Legislature. Unless a Home Rule Petition is approved by the Legislature of the Commonwealth, under Section 6 of Article 89 of the Commonwealth's Constitution (the "Home Rule Amendment"), any ordinance enacted by the City prohibiting natural gas in new construction would likely be ruled by a court to be invalid as preempted by G. L. c. 164 which is a comprehensive statute regulating the provision of gas and electricity in the Commonwealth, in addition to regulations promulgated thereunder by the Commonwealth's Department of Public Utilities, and further, void as preempted by G. L. c. 143 and State Building Code regulations promulgated thereunder.

I. LEGAL ANALYSIS.

A. Home Rule Powers Under the Massachusetts Constitution

The Home Rule Amendment to the Constitution of the Commonwealth provides at Section 6 "Governmental Powers of Cities and Towns" thereof that "any city or town may, by the adoption, amendment, or repeal of local ordinances or by-laws, exercise any power or function which the general court has power to confer upon it, which is not inconsistent with the constitution or laws enacted by the general court in conformity with the powers reserved to the general court by section 8 . . ." See Art. 89, § 6 of the amendments to the Massachusetts Constitution; see also Bloom v. Worcester, 363 Mass. 136, 145 (1973). Section 8 of the Home Rule Amendment expressly provides that "the general court shall have the power to act in relation to cities and towns, but only by general laws which apply alike to all cities or to all towns, or to all cities and towns, or to a class of not fewer than two, and by special laws enacted (1) on petition filed or approved by the voters of a city or town, or the mayor and city council, or other legislative body, of a city, or the town meeting of a town, with respect to a law relating to that city or town . . . ." Art. 89, § 8 of the amendments to the Massachusetts Constitution.

B. Preemption by Existing Comprehensive Statutes (G. L. c. 164 and 143)

Consistent with the Home Rule Amendment, the Supreme Judicial Court has held that "municipalities may not adopt by-laws or ordinances that are inconsistent with State law. Boston Gas Company v. Newton, 425 Mass. 697, 699 (1997) citing Boston Gas Company v. Somerville, 420 Mass. 702 (1995). "To determine whether a local ordinance is inconsistent with a statute, [the Supreme Judicial Court] has looked to see whether there was either an express legislative intent to forbid local activity on the same subject or whether the local regulation would somehow frustrate the purpose of the statute so as to warrant an inference that the Legislature intended to preempt the subject." Id. at 704. In some circumstances, the Supreme Judicial Court infers that the Legislature intended to preempt the field because legislation on the subject is so comprehensive that any local enactment would frustrate the statute's purpose. Id. citing Somerville, 429 Mass. at 706.

The Supreme Judicial Court has stated that the purpose of G. L. c. 164 is to ensure uniform and efficient utility services to the public. Id. In Boston Gas Company v. Newton, the Supreme Judicial Court reviewed whether an ordinance adopted by the City of Newton imposing a monetary cost on public utility companies as a prerequisite to acquiring excavation permits in addition to an inspection and maintenance fees in some circumstances was invalid with respect to maintenance and inspection fees under Section 6 of Article 89 of the Massachusetts Constitution. Newton, 425 Mass at 698. The Supreme Judicial Court ruled that "given the comprehensiveness of the statute [G. L. c. 164] and the remedies provided therein, we conclude that the statute does not permit a municipality to charge the fees in question." Id. at 704–705. The Supreme Judicial Court also stated that "we have long held that a municipality required by statute to participate in a scheme established by statute is entitled to cover reasonable expenses incident to the enforcement of the rules," and thus, ruled that only the portion of the ordinance requiring a fee for processing a permit application was permissible. Id. 706–707 citing Southview Coop. Hous. Corp. v. Rent Control Board of Cambridge, 396 Mass. 395, 400 (1985).

In a similar case, Boston Gas Company v. Somerville, the Supreme Judicial Court reviewed the validity of an ordinance enacted by the City of Somerville which required utility companies performing excavation work to hire a city contract representative selected by the City of Somerville to provide services at specified rates, to use certain materials and paving techniques, and to be responsible for the excavation site for three years beyond the final treatment of the site. Somerville, 420 Mass. at 704–705. In that case, the Supreme Judicial Court ruled that "the manufacture and sale of gas and electricity by public utilities is governed by G. L. c. 164" and that "given the comprehensive nature of this statute, we conclude that the Legislature intended to preempt local entities from enacting legislation in this area." Id. citing Boston Edison Company v. Boston, 390 Mass. 772, 774 (1984).

The Proposed Ordinance would also likely be held invalid by a court as preempted by the provisions of G. L. c. 143, which is a state statute governing, among other things, the inspection and regulation of all buildings in the Commonwealth and empowers the State Board of Building Regulations and Standards to adopt and administer the Massachusetts State Building Code. See St. George Greek Orthodox Cathedral of Western Massachusetts, Inc. v. Fire department of Springfield, 462 Mass. 120, 121 (2012). Specifically, the Proposed Ordinance would prohibit the issuance of a building permit where natural gas infrastructure appears on the construction plans for any new building or a building being reconstructed with few exceptions. However, G. L. c. 143 and the State Building Code promulgated thereunder regulate the issuance of building permits by municipalities in the Commonwealth.

In St. George Greek Orthodox Cathedral of Western Massachusetts, Inc., the Supreme Judicial Court reviewed the validity of an ordinance of the City of Springfield requiring all buildings in that city to utilize a "city approved radio box" under the State Building Code. St. George Greek Orthodox Cathedral of Western Massachusetts, Inc., 462 Mass. 120, 121–122 (2012). In ruling that the Springfield ordinance was invalid, the Supreme Judicial Court reasoned that "the Legislature intended to occupy a field by promulgating comprehensive legislation and delegating further regulation to a State board," "the Board's regulations . . . set a Statewide standard as to what products and practices were permissible . . .", and "where the Legislature demonstrates its express intention to preempt local action, inconsistent local regulations are invalid under the Home Rule Amendment." Id. at 128–129. The Springfield "ordinance would frustrate the achievement of the stated statutory purpose of having centralized, Statewide standards in this area." Id. at 129. Moreover, the Supreme Judicial Court reasoned that "if all municipalities in the Commonwealth were allowed to enact similarly restrictive ordinances and bylaws [as that enacted by Springfield], a patchwork of building regulations would ensue." Id. at 130. Therefore, in the absence of special legislation as to the City, an ordinance, the effect of which would prohibit the issuance of a building permit where gas infrastructure appears on plans for new construction or reconstruction of a building in most circumstances, would likely be held invalid by the courts as preempted by the provisions of G. L. c. 143 and the State Building Code.

II. CONCLUSION.

For the reasons set forth above, I am of the opinion that prior to adopting the Proposed Ordinance, the City Council must first submit, and the State Legislature must pass, special

legislation as to the City empowering the City Council to prohibit natural gas infrastructure in newly constructed or reconstructed buildings in the City. If the City Council so desires, we would be happy to prepare a draft Home Rule Petition for the City Council's review and consideration.

Very truly yours,

Nancy E. Glowa
City Solicitor