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City Attorneys Saving the World:
How Municipal Lawyers Can Help in the Fight Against Climate Change

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City Attorneys Saving the World:
How Municipal Lawyers Can Help in the Fight Against Climate Change

Around the world, signs of climate change have been abundant in 2022. Extreme rainfalls, record heatwaves, devastating droughts, and widespread wildfires fill the news with alarming regularity. International efforts to slow down the effects of harmful greenhouse gases have been insufficient. However, the frequency and intensity of climate-related disasters have led to a call to action in both the public and private sectors.

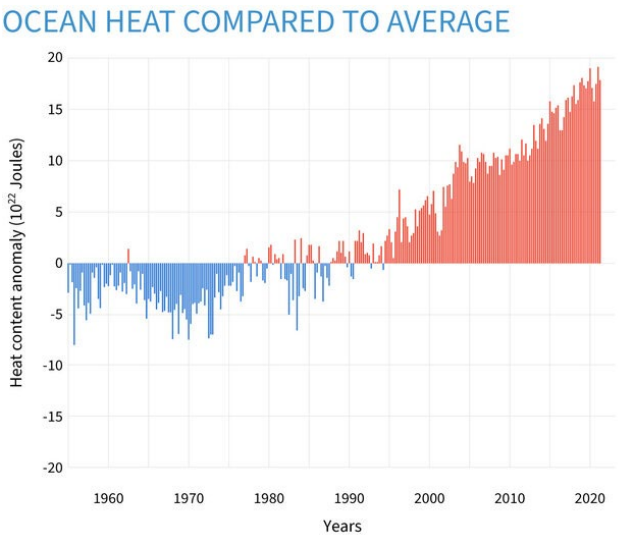
In the United States, new federal legislation funding broad initiatives to reduce greenhouse gas emissions has passed. At the state and local level, some governments have adopted climate action plans and net zero emissions targets. Yet there remains much to do.

Municipal lawyers who care about the environment and worry about climate change may think they have little or no ability to make a difference. However, they are in a key position to influence local government response to the climate crisis. Incorporating language into agreements and regulations governing procurement, project management, and land uses can dramatically improve a municipality's environmental impact. This paper provides information on the climate crisis and its potential local consequences for communities in the US. It also looks at ways local government attorneys can help carry out environmental goals and develop contracts and regulations that address climate.

WHAT THE FACTS SHOW

While concerns about climate change have existed for decades, recent statistics and news accounts indicate that its effects are accelerating. For example:

- **The ocean is warming.** Since the mid-1990s, the heat content of the world's oceans has consistently exceeded the average levels for the preceding four decades (see chart below).



Once heat energy is absorbed in the ocean, it can continue warming the earth for decades. (See NOAA: Climate Change: Ocean Heat Content.)

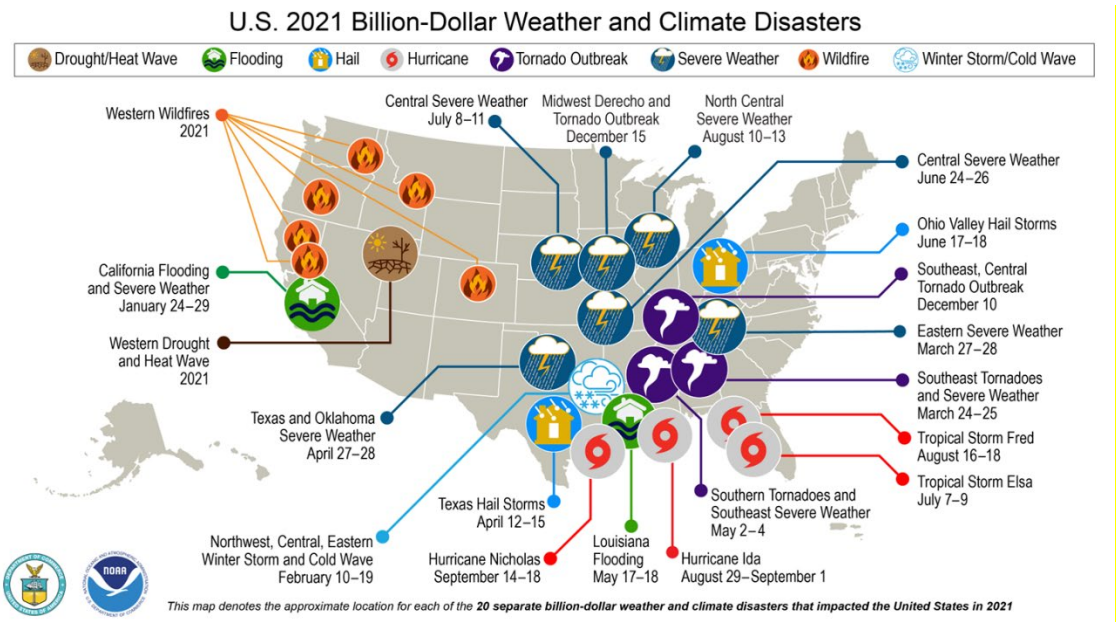
- **Glaciers and ice sheets are melting.** Eleven people died in July 2022 when a glacier collapsed in the Italian Alps. A lack of winter snow and abnormally high summer temperatures combined to create the unstable conditions. Himalayan glaciers have also shrunk dramatically. In Pakistan, accelerated glacial melt combined with monsoon rains in 2022 to create flooding that killed more than 1,300 people and left hundreds of thousands homeless. At the same time, losses from the world's largest ice sheet in Antarctica have doubled previous estimates over the past 25 years. (See Reuters: Glaciers vanishing at record rate in Alps; Satellite imagery shows Antarctic ice shelf crumbling faster than thought; and Pakistan looks 'like a sea' after floods, PM says.)
- **Sea levels are rising.** Higher sea levels create greater damage from storm surges, high tide flooding, coastal erosion, and wetland loss. Between 2000 and 2020, the frequency of flooding at many US coastal locations has more than doubled in places such as New York City; Norfolk, Virginia; Miami, Florida; and Charleston, South Carolina. (See NOAA: 2022 Sea Level Rise Technical Report.) In other parts of the world, rising sea levels are threatening the future of the Maldives in the Indian Ocean, along with cities such as Lagos, Nigeria; Dhaka, Bangladesh; Rotterdam, The Netherlands; and Alexandria, Egypt (see World Economic Forum: These 11 sinking cities could disappear by 2100).
- **Temperatures are setting records.** In 2022, new high temperature records were set in cities in:
  - Australia in January;
  - India in March;
  - France, Norway, and Japan in June and the United Kingdom in July;
  - China in July and August; and
  - The US in June, July, and September.

  The ten warmest Junes on record have all occurred since 2010, with June 2022 being the sixth warmest (see NOAA: June 2022 was Earth's 6th-warmest on record).

Recent Signs of Climate Change in the US

Billion-Dollar Disasters

According to the National Oceanic and Atmospheric Administration (NOAA), 20 separate weather and climate disasters hit the US in 2021, at a cost of $145 billion (see map below). The number of billion-dollar disasters in 2021 was second only to 2020, when 22 separate events occurred.



Continuing Pattern in 2022

Massive weather and climate disasters have continued to hit the US in 2022, including events such as:

- A Nor'easter leaving more than two feet of snow in Boston in January.
- Flooding that closed Yellowstone National Park for the first time in 34 years in June.
- Massive wildfires in California in July.
- A drought covering more than 93% of Texas, causing water shortages and widespread loss of pastures, crops, and cattle.
- A thousand-year flooding event in Kentucky in late July and early August, resulting in 39 deaths, followed by flooding that shut down the municipal water system in Jackson, Mississippi in August.
- Back-to-back hurricanes in September, with Hurricane Fiona hitting Puerto Rico and Hurricane Ian flooding much of Florida before moving up the east coast.

WHAT THE FUTURE HOLDS

The Intergovernmental Panel on Climate Change (IPCC) of the United Nations issued its Sixth Assessment Report in 2022, calling for drastic action to ward off the increasingly dangerous impacts of climate change. Reuters News reported on key takeaways from the report, as shown below:

Widespread damage is already occurring

- People and other animals are already dying in heatwaves, storms, and other disasters fueled by global warming.

We are breaching limits of adaptation

- There is a limit to how much we can adapt; eventually, conditions become so extreme that the associated risks are "intolerable."

Nature is in big trouble

- Every world region faces a high risk of more species losses and extinctions. At 1.5°C warming, scientists expect 3-14% of the world's species on land could vanish.

Humans and society will struggle, too

- There is a rising risk of disease spread through spoiled food, tainted water, or pathogen-carrying insects such as mosquitoes.

The world is running out of time

- "Any further delay... will miss a brief and rapidly closing window of opportunity to secure a liveable and sustainable future for all."

(From Reuters: Key takeaways from the IPCC report on climate impacts and adaptation and IPCC: Climate Change 2022.)

The Paris Agreement and the Significance of 1.5° Celsius

In November 2016, the international treaty known as the Paris Agreement went into effect after it was ratified by 55 countries producing at least 55 percent of the world's GHG emissions, including the US. The US withdrew from the Paris Agreement during the Trump Administration but re-entered into the Agreement in 2021. Nearly 200 nations are now part of the Agreement. Participants must periodically submit plans for curbing their emissions and report on their progress. Additionally, developed nations agree to help developing nations meet goals. Many municipal governments and hundreds of private companies across the world have also pledged to reduce their GHG emissions in furtherance of the Paris Agreement's goals.

The overall goal of the Paris Agreement is to:

- Limit global warming well below 2 degrees Celsius (3.6 degrees Fahrenheit) above pre-industrial levels.

- Pursue efforts to limit the increase to 1.5 degrees Celsius (2.7 degrees Fahrenheit).

The planet is currently at 1.1 degrees Celsius above pre-industrial levels and scientists warn that the window is closing to reach the Paris Agreement's 1.5-degree goal. Given the frequency of climate disasters under current conditions, even an increase to 1.5 degrees will have major environmental and socioeconomic impacts. However, the IPCC warns that if temperatures are allowed to increase to 2 degrees, the consequences will be extremely severe. For example:

- 99 percent of the world's coral reefs would disappear, devastating the marine food chain.
- The West Antarctic ice sheet would be lost.
- Sea level rise would submerge large portions of coastal cities around the world.

(See KQED: Straight Talk on Temperature: Here's What 1.5 Degrees C Means.)

The Effects on State and Local Governments

Mitigating climate change is difficult and costly. However, failing to take adequate steps will result in economic, environmental, and human costs that far outweigh mitigation costs. State and local governments must be prepared to deal with problems such as:

- **Rapid increases in sea levels.** On average, NOAA predicts that sea levels along US coastlines will rise 10 to 12 inches between 2020 levels and 2050. (To see the impacts of different scenarios for coastal areas in the US, see NOAA: Sea Level Rise Viewer.)
- **High tide flooding.** High tide flooding (HTF) occurs when ocean water at high tide covers low-lying areas. With rising sea levels, a full moon or changes in prevailing winds or currents can produce flooding that once only occurred during storms. HTF typically results in water spilling into streets and bubbling up from storm drains, requiring municipal response and remediation efforts. NOAA projects that the number of HTF days will increase dramatically in places such as those shown below:

Location	High Tide Flood Days 2021	Projected 2050
Boston, MA	7	50-70
Baltimore, MD	8	65-105
St. Petersburg, FL	0	70-110
Corpus Christi, TX	4	110-150
San Francisco, CA	0	6-20

(See NOAA: Tides and Currents.)

- **The disproportionate impact of weather disasters on minorities and lower-income populations.** While weather catastrophes can affect people of all races and income levels, where people live has a significant effect on their vulnerability. For example:

    - Hurricanes threaten more counties with large African-American populations than any other community type.

    - Droughts disproportionately affect Hispanic populations in more rural areas.

    - Extreme rainfall events happen more frequently in largely African-American counties, working class counties, and blue-collar suburbs.

    (See American Communities Project: Mapping Climate Risks by County and Community.)

State and Local Governments Seek Compensation

Some state and local governments have sued fossil fuel companies for environmental harm from the effects of climate change. These lawsuits typically seek damages based on claims of public or private nuisance, trespass, or violation of state consumer protection laws. The proceedings thus far have mostly centered around jurisdiction. The defendants attempt to remove the cases to federal court to argue that federal law preempts the lawsuits (with the additional effect of delaying the case). Although the US Supreme Court has addressed the jurisdictional issue, it has not fully resolved the matter (*BP P.L.C. v. Mayor & City Council of Baltimore*, 141 S. Ct. 1532 (2021)). However, four of the US Courts of Appeals circuits have denied the companies' efforts to remove the cases to federal court (see, for example, *Mayor and City Council of Baltimore v. BP P.L.C.*, 31 F.4th 178 (4th Cir. 2022); *City of Hoboken v. Chevron Corp.*, 45 F.4th 699 (3d Cir. 2022)).)

Climate Migration

As climate change and weather disasters make some areas increasingly dangerous, large segments of the population may shift to safer locations. In some cases in the US, hurricanes and wildfires have caused some residents to relocate to new areas, sometimes in another part of the country but sometimes relatively close. However, the likelihood, timing, and impact of mass migrations is difficult to estimate, since:

- Migration may happen gradually in response to some climate issues and rapidly in response to others. Rising temperatures and droughts may result in a slow but steady pattern of population shifts, while more immediate catastrophes that result in widespread losses of life and property may cause a mass exodus.

- Even in areas threatened by adverse climate and weather events, many people are willing to accept the risks. For example, many coastal areas are still seeing significant growth and development, even as hurricanes happen with regularity and coastlines are retreating.

However, in planning for the future, communities may need to acknowledge the potential for:

- **Permanent migration away from the area.** Some parts of the world that are heavily populated may eventually become undesirable or even uninhabitable due to factors such as extreme temperatures or disappearing coastlines.

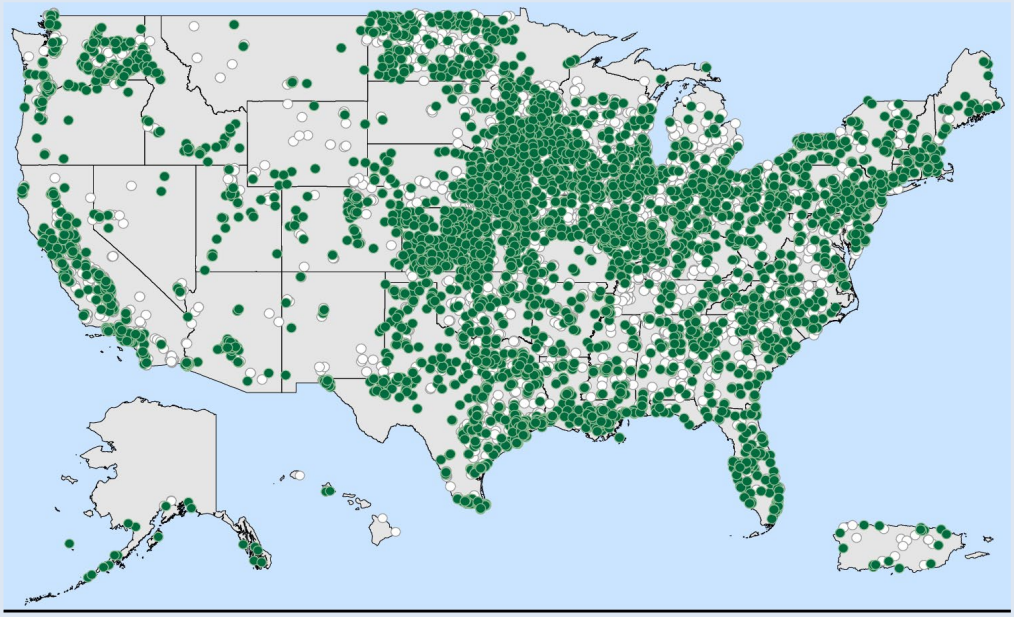
- **Temporary migrations and fluctuations.** Disasters that disrupt life and destroy homes may force residents to relocate. However, some may choose to return or the availability of affordable housing in a rebuilt community may attract new residents. For example, after a 2018 wildfire destroyed most of the town of Paradise, California, many of its residents had no choice but to move away. More recently, however, the town has seen a real estate boom, with both former residents and newcomers moving into new homes there.

- **Incoming migration.** People leaving areas due to climate-related causes may seek out places that will be relatively unscathed by climate change. A study published by ProPublica found that six of the ten counties with the least risks from climate change are in Vermont, while three are in Maine and one is in New York (see ProPublica: New Climate Maps Show a Transformed United States). However, other factors can also influence individual decisions on where to relocate, including economic opportunities, healthcare availability, and proximity to family. In any event, some communities the US should expect to see population growth as a result of climate change.

Combining Manmade Hazards with Natural Hazards

In addition to understanding the ramifications of climate change, municipalities should consider how other hazards in or near the area can make adverse climate events even worse. For example, a natural hazard may trigger an accidental release of chemicals from a facility that makes, uses, handles, or stores hazardous substances. Out of 11,000 EPA-regulated facilities with extremely hazardous chemicals, 31% are in areas at risk for climate-related disasters (see map below).

Facilities Located in Areas at Risk for Flooding, Storm Surge, Wildfire, or Sea Level Rise



Risk Management Plan (RMP) facilities that GAO analyzed (10,420)

Located in an area with one or more of these natural hazards (3,219)

Located in an area without one or more of these natural hazards or where hazards are unknown (7,201)

Sources: GAO analysis of Environmental Protection Agency, Federal Emergency Management Agency, National Oceanic and Atmospheric Administration, and U.S. Forest Service data; U.S. Census Bureau (map). | GAO-22-104494

(See US Government Accountability Office: Chemical Accident Prevention: EPA Should Ensure Regulated Facilities Consider Risks from Climate Change.)

Green Gentrification

Many cities have seen efforts to reclaim polluted areas for new development or provide climate-friendly features in urban residential areas. New green spaces, waterfront restorations, and other environmentally focused features can provide community benefits and enhance sustainability. However, they can also drive up property values and push lower income residents away. Even practical efforts such as elevating buildings and erecting seawalls to prevent losses from storm surges can attract residents with more money.

In east Boston, a carbon-neutral project provided a rehabilitated shoreline, stabilized seawalls, and waterfront apartments. However, the new development displaced former residents of the area and demand for residential units drove their prices above $1 million. (See PBS NewsHour: How 'green gentrification' is pricing out longtime East Boston residents.) To avoid limiting green enclaves to wealthier occupants, new urban development will need to include a sufficient proportion of affordable housing units to address community needs.

SIGNS OF PROGRESS

New Climate Bill

In August 2022, the US Congress passed the Inflation Reduction Act (HB 5376), which includes almost $375 billion in funding for tackling the climate crisis. Large portions of this funding will go toward renewable energy production and tax breaks that encourage consumers to buy new or used electric vehicles. Estimates show that by 2030, the legislation will help reduce the nation's greenhouse gas (GHG) emissions by 42 percent from their peak levels in 2005. The White House's goal is to reduce emissions by at least 50 percent by 2030.

Help for State, Local, and Tribal Governments

The new climate legislation includes provisions that support state, local, and tribal efforts to reduce GHG emissions, such as:

- Funding for the first national "green bank," which can also be distributed to state and regional green banks. Sixty percent of this funding must support projects such as community solar and environmental justice programs for disadvantaged communities.
- Grant programs for:
    - urban forests and parks; and
    - water supply in places without reliable domestic water sources.
- Support for air pollution reduction efforts at ports, such as climate action plans, zero-emission technology, and new equipment.
- A clean heavy-duty vehicle program to offset costs of zero-emission transit buses, garbage trucks, and school buses.
- State rebate programs for homeowners achieving demonstrated energy savings, including those in affordable housing .

(See Governing: What Does the Inflation Reduction Act Do for State and Local Government? For more information on the new act and how it benefits cities, see Columbia Law School: Cities & The Inflation Reduction Act.)

State and Local Government Initiatives

Some state and local governments have taken their own measures to move toward net zero goals. In some cases, these actions came in response to the Trump administration's walk-back of environmental protections, while other initiatives have come more recently. Examples of these state and local actions include the following:

- Cities and counties have adopted climate action plans setting targets for GHG emission reductions, along with steps for achieving their targets. For example, the goals in Fairfax County, Virginia's plan include:

    - green building commitments for new buildings;
    - retrofitting at least 100,000 housing units with energy efficiency measures by 2030;
    - increasing transit and non-motorized commuting to 30% (including teleworking) by 2030;
    - increasing zero-emission vehicles to at least 15% of all light-duty vehicle registrations by 2030;
    - expanding tree canopies to 60%, with a minimum of 40% tree canopy coverage in every census block by 2030. The plan prioritizes areas of highest socioeconomic need first; and
    - diverting at least 90% of waste from landfills and incineration.

    (See Fairfax County: Community-Wide Energy and Climate Action Plan. For more on local government action plans, see Developing Climate Action Plans below.)

- Phoenix, Arizona has taken actions such as:

    - prioritizing a "cool corridor" program that aims to create "tree equity" and add much-needed shade in disadvantaged neighborhoods; and
    - piloting the use of "cool pavement" that reflects sunlight rather than absorbing it (see City of Phoenix: Cool Pavement Program).

- The California Air Resources Board (CARB) has adopted a rule requiring all new cars and light trucks sold in the state to be zero-emission vehicles (including plug-in electric vehicles) by 2035. Eleven percent of the nation's light-duty vehicle sales occur in California. There are 17 other states that have followed California's lead on other vehicle rules. If these states follow suit on California's zero-emission vehicles, the requirement will apply to 40 percent of US light-duty vehicle sales. (For more information on California's action, see CARB: California moves to accelerate to 100% new zero-emission vehicle sales by 2035.)

The Rocky Mountain Institute (RMI), a nonprofit focused on improving America's energy practices, provides State Climate Scorecards that evaluate the

efforts of states toward reducing GHG emissions. In addition to California, the scorecards show Colorado, Illinois, New Jersey, New York, and Washington to be the farthest along with their policies. RMI identifies these policies as the best options for putting states on net zero pathways:

- Investing in clean electricity infrastructure, such as wind and solar.
- Replacing air conditioners, furnaces, and water heaters with heat pumps.
- Prioritizing the use of electric vehicles.
- Shifting industrial activity from burning fossil fuels to electricity.
- Capturing methane and fixing leaks from fossil fuel infrastructure, including oil and gas sites, and landfills.

(See RMI: Sprinting Ahead: Just Five Policies Get States About Two-Thirds of the Way to Key Climate Goals.)

Sources of Help

City attorneys and other municipal officials may be able to find pertinent resources and educational opportunities through government agencies and professional organizations, such as the International Municipal Lawyers Association (IMLA). Additionally, nonprofits supporting local government efforts to fight climate change include:

- **C40 Cities**, a network of mayors from across the world, collaborating to halve the emissions of its member cities within a decade (see C40 Cities: About C40).
- **Climate Mayors**, a bipartisan network of US mayors committed to climate leadership (see Climate Mayors: Who We Are).
- **Resilient Cities Network**, with members from around the world working to protect communities from climate change and other urban challenges (see Resilient Cities Network: Our Story).
- **Local Governments for Sustainability**, a global network of local governments devoted to sustainability challenges (see ICLEI: Who We Are).

RMI also publishes research and analysis dealing with urban transformation, buildings, transportation, and other topics of interest to local governments (see RMI: Research and Analysis).

The Chancery Lane Project

The Chancery Lane Project (TCLP), based in the United Kingdom, is a pro bono initiative that brings legal professionals across the world together to collaborate, rewrite contracts, and create legal standards to tackle the climate crisis (see TCLP: About The Chancery Lane Project). TCLP has developed a broad range of climate clauses. Although most of TCLP's current clauses are for use in the United Kingdom, many have potential applicability in the US. For TCLP clauses that have been specifically adapted for use in the US, see TCLP: US Translations. Efforts are ongoing to increase the number of TCLP's US-specific clauses. For access to all of TCLP's clauses, see TCLP: Climate Clauses.

In addition to drawing from its clauses, US attorneys can help further TCLP's work by contributing new climate clauses or joining the effort to adapt UK-focused clauses for use in the US. Pro bono opportunities are available for attorneys with diverse professional backgrounds and experience levels (see TCLP: Get Involved).

Legal Pathways to Deep Decarbonization Project

The Legal Pathways to Deep Decarbonization (LPDD) website provides resources for legislators and advocates at the federal, state, and local level, including:

- More than 50 model laws focused on reducing GHG emissions, drafted by pro bono attorneys and peer reviewed by experts (see LPDD: Model Laws).

- Over 2,000 other laws adopted or proposed by state and local governments to reduce GHG emissions.

For information on drafting or peer reviewing model laws for the LPDD Project, or to receive monthly updates, see LPDD: Get Involved.

Sabin Center for Climate Change Law

The Sabin Center develops legal techniques to fight climate change and provides up-to-date resources on key topics in climate change law and regulation (see Columbia Law School: Sabin Center for Climate Change Law). Its Cities Climate Law Initiative works with local government attorneys, sustainability staff, and others to provide guidance on the legal aspects of local carbon mitigation policies. The Sabin Center's work includes legal research and memorandums, policy drafting, amicus briefs, and webinars for policymakers. For a report identifying legal considerations for local climate policies across the buildings, transportation, waste, and energy sectors, see Sabin Center: Cities Climate Law: A Legal Framework for Local Action in the U.S.

CITY ATTORNEYS AS CLIMATE CHANGE FIGHTERS

Local government lawyers can help municipalities in the fight against climate change by:

- Recognizing an ethical obligation to provide advice on environmental policies that considers moral, economic, social, and political factors (see The Ethics of Fighting Climate Change).
- Knowing how to talk about the fundamentals of climate change (see Becoming Conversant in Climate Change Terminology).
- Acknowledging the risks climate change poses to segments of the community and the potential benefits of mitigation measures (see Recognizing Potential Impacts and Solutions in Your Community).
- Identifying and advising on proposed measures in local government climate action plans (see Developing Climate Action Plans).
- Putting goals to work in local government regulations and contracts (see Incorporating Climate Goals into Regulations and Contracts).

The Ethics of Fighting Climate Change

City attorneys are subject to the same rules of ethics that apply to private sector lawyers but must learn how to apply those rules to the practice of municipal law. Rule 2.1 of the American Bar Association's Model Rules of Professional Conduct includes this guidance:

> *In rendering advice, a lawyer may refer not only to law but to other considerations such as* ***moral, economic, social, and political factors*** *that may be relevant to the client's situation.* (Emphasis added.)

This rule recognizes that there is frequently more than just a legal issue involved when clients need their attorneys' advice. This may be especially true in municipal law, where local government actions can affect long-term quality of life issues for neighborhoods and residents. Preparing for and mitigating climate change in your community can involve many moral, economic, social, and political factors, in addition to legal considerations. (All of the states have adopted the ABA rules except for California, which has its own version of ABA Rule 2.1.)

Becoming Conversant in Climate Change Terminology

There is no need for municipal lawyers to become climate scientists to understand climate change threats and the measures that can abate them. However, a basic understanding of commonly used terms and concepts is useful in advising on local government climate change policies.

Net Zero

Policies and goals related to climate change mitigation often refer to the concept of "net zero." This refers to a balance between GHG produced and GHG removed from the atmosphere. Many governments and businesses have set goals to reach net zero by 2050, with incremental GHG reduction goals in the interim (see Developing Climate Action Plans). While the White House has set emissions reduction goals for the nation as a whole, local governments can identify measures that are specifically tailored to their communities.

The best pathway to net zero is to reduce GHG emissions overall. However, local governments must rely on available technologies. Until these technologies are more developed, short-term success in reaching local government goals is likely to rely on offsetting GHG emissions with measures that remove GHG from the atmosphere.

Other Essential Terms

Other terms that lawyers should know when drafting or reviewing climate-related contract clauses and regulations include: **greenhouse gases**, **carbon footprint**, **carbon offset** and **carbon capture and sequestration**. For definitions of these and other helpful terms, see Practical Law's Glossary of Decarbonization Terms, which accompanies this paper.

Recognizing Potential Impacts and Solutions in Your Community

Municipal lawyers should know about the potential local impacts of various climate scenarios and be involved in the local government's plans for addressing those impacts. The municipality should consider the effects of:

- Regional phenomena, such as sea level rise and high tide flooding, along with increasing frequency of heatwaves, wildfires, storms, and extreme rainfalls.

- Specific local impacts on sections of the community, including low-lying areas, neighborhoods with basement apartments, and low-income neighborhoods.

- The potential for residents and businesses to leave or come into the community due to climate migration.

(See The Effects on State and Local Governments.)

Taking the Right Actions

There is no one-size-fits-all solution for local governments to address climate change. Municipalities should identify both short- and long-term measures that will improve their ability to withstand adverse climate events. These measures

will depend on geographic location and many other factors, but may include steps such as:

- Improving public transportation and making communities more bike- and pedestrian-friendly.
- Using electric vehicles throughout the city's fleet and installing charging infrastructure at convenient locations for motorists who live and work in the city.
- Replacing surface asphalt parking with other options.
- Planting trees throughout areas that lack shade.
- Building seawalls and upgrading drainage systems.
- Tax abatements that encourage private sector businesses and property owners to take measures of their own.

Planning, Budgetary, and Legal Effects

Efforts to counteract the impacts of climate change should be an element of the local government's comprehensive plan, zoning ordinance, and capital budget. From a legal standpoint, these efforts may require the city attorney's assistance with:

- Acquiring property and using eminent domain powers.
- Intergovernmental agreements.
- Grant funding from federal and state government sources.
- Addressing affordable housing and other issues related to environmental justice.
- Assisting with drafting and enforcing zoning regulations and building codes.

Developing Climate Action Plans

Local government actions to fight climate change will be most effective if they are part of a coordinated approach, rather than scattershot efforts. Communities can be more assured that their actions are meaningful if they are part of a well-prepared climate action plan (CAP).

At least 35 of the 50 largest cities in the US by population have adopted CAPs (see Ballotpedia: Climate action plans in the 50 largest cities). Local CAPs adopted or updated most recently include these:

City/Name of Plan	Key Goals
Austin Climate Equity Plan	Net zero GHG emissions by 2040
Columbus Climate Action Plan	45% GHG reduction by 2030 (from 2013); carbon neutral by 2050
Memphis Area Climate Action Plan	51% GHG reduction by 2035 (from 2016); 71% by 2050
Miami Forever Carbon Neutral	60% GHG reduction by 2035 (from 2018); net zero by 2050
Raleigh Community Climate Action Plan	80% GHG reduction by 2050 (from 2007)
San Francisco's Climate Action Plan 2021	61% GHG reduction by 2030 (from 1990); net zero by 2040

Adopting CAPs is not just for large cities. Examples of smaller US cities with their own plans include:

- Grand Marais, Minnesota (2020 population, 1,426).
- Aspen, Colorado (2020 population: 7,721).
- Greenville, South Carolina (2020 population: 69,648).
- Bloomington, Indiana (2020 population: 84,691).
- Beaverton, Oregon (2020 population: 98,567).
- Richmond, California (2020 population: 110,051).

Getting Started

Developing and following a CAP can be a daunting prospect. To ensure that the end result provides a meaningful but realistic pathway, local governments should:

- Consider joining with other nearby local governments to adopt joint plans or use the same consultants.

- Select and negotiate a contract with a qualified consultant. Reviewing CAPs adopted by other cities and inquiring about their experiences with the experts they used can be helpful in forming a list of potential consultants.

- Adopt a scope of work that describes the government's approach to building the CAP. For example, see the scope of work issued by Asheville, North Carolina.

- Acknowledge the specific issues the local government will face (see Recognizing Potential Impacts and Solutions in Your Community) and scale the CAP to the community's size and abilities.

- Build buy-in from the community early on and engage stakeholders, including:

    - departments and agencies that are part of the government entity; and

    - members of the community or representatives of those served by the entity.

- Determine if funding for developing the CAP is available through grants, foundations, public utilities, or public-private partnerships.

Goals and Strategies

To show that goals for reducing GHG emissions are not merely idealistic, a CAP must describe the government's strategies for achieving its goals. For example, to achieve the goal of reducing GHG emissions by 40% by 2030, 75% by 2040, and 100% by 2050, the City of Houston developed strategies related to:

- Transportation.

- Energy transition.

- Building optimization.

- Materials management.

For more on Houston's goals, see City of Houston: Houston Climate Action Plan, at 20-21.

The local government may also want to hire a third party, separate from the consultant used to develop the CAP, to validate that the plan's goals and strategies are robust and realistic.

The Attorney's Role in Climate Action Plans

While municipal attorneys may not play a central role in creating CAPs, they may need to:

- Assist in drafting or reviewing requests for proposals and contract documents for outside consultants and other necessary parties.
- Review agreements for grant funding used to develop the plan.
- Advise on the scope of the municipality's authority to carry out proposed climate-related initiatives, along with any preemptions of the municipality's authority under state law.
- Determine the legal implications of fulfilling the CAP and how implementation will involve the city attorney's office.

Incorporating Climate Goals into Contracts and Regulations

The municipal attorney must be mindful of the local government's climate-related goals when drafting and reviewing proposed contracts and regulations. Integrating climate clauses into legal documents and laws can be a critical part of implementing a city's climate action plan. However, even if the municipality has not yet adopted a CAP, contract terms and regulatory provisions can focus on environmental impacts and pave the way to a healthier future.

Using a Net Zero Mindset

City attorneys can be instrumental in working toward local government net zero targets by incorporating provisions in contracts and regulations specifically aimed at furthering progress toward the targets. To ensure that potential contractors are like-minded about wanting to minimize their environmental impact, government entities can:

- Include their own net zero targets in bid invitations, requests for proposals, requests for qualifications, or other bid and procurement documents.
- Pre-qualify contractors to limit the pool of bidders to those demonstrating a commitment to green construction, manufacturing, or service delivery practices. Pre-qualification procedures can include asking each potential bidder to:
    - describe any net zero targets they have adopted; and

- explain the measures they are taking and plan to take to achieve their net zero targets or to otherwise reduce their carbon footprint.

While net zero targets refer to a party's ultimate long-term goal for reducing GHG emissions, contract documents may also define:

- **Net zero objectives**, representing project-specific goals for the contract. These objectives are meant to move the parties closer to their ultimate targets.

- **Net zero benchmarks**, setting specific measures a contractor must reach to fulfill the net zero objectives.

Climate Goals in Construction Contracts

In 2020, approximately 38% of global carbon dioxide emissions came from the construction and operations of buildings (see Carbon Leadership Forum: Global Status Report for Buildings and Construction.) However, the traditional standards of care found in construction contracts do not explicitly require contractors to incorporate climate change mitigation or adaptation measures. As a result, government entities and their contractors often build facilities without climate-related risks or decarbonization in mind.

The local government should engage with the project team early on to determine how the project design, specifications, contract terms, and budget can address the government's climate-related expectations. Examples of clauses municipalities can include in contracts for construction of public projects include:

- Requiring the contractor to meet defined net zero objectives, including reaching net zero benchmarks at various stages of the project. (See the accompanying Contract Clauses for Government: Net Zero Objectives for sample language.)

- Rewarding the contractor for meeting net zero objectives, instead of penalizing the contractor for failing to meet them. (Practical Law subscribers can find sample language online – see Contract Clauses for Government: Net Zero Incentives.)

- Prescribing practices for management of construction waste associated with the project, which in turn helps:

  - reduce landfill waste and associated greenhouse gas emissions; and

  - avoid pollution to waterways and other environmentally sensitive areas.

(Practical Law subscribers can find sample language online – see Contract Clauses for Government: Construction Waste Management.)

Climate Goals in Procurement Contracts

To ensure that its purchases are environmentally responsible, municipalities should consider procuring equipment, supplies, and materials from sources that:

- Require less transportation.
- Use materials or components that are recycled or otherwise responsibly sourced.
- Reflect the supplier's or manufacturer's commitment to sustainability.

One option for purchasers to evaluate a vendor's corporate responsibility is to look into environmental, social, and government (ESG) ratings. Services like Sustainalytics provide ESG ratings for many industries (see Sustainalytics: Company ESG Risk Ratings). (Practical Law subscribers can find more on ESG reporting and ratings online - see Practice Note, ESG Disclosure & Sustainability Reporting Frameworks: ESG Data and Ratings Providers.)

Climate Goals in Other Local Government Contracts

Local governments sometimes operate facilities with high energy usage or environmental impact, such as landfills, schools, jails, or convention centers. Attorneys may be involved in drafting stand-alone contracts or clauses that are part of broader contracts to address matters such as:

- Retrofitting facilities with energy-efficient appliances, systems, and lighting.
- Reducing single use plastics by vendors in cafeterias and other dining facilities.
- Landfill management practices that reduce GHG emissions and other adverse climate impacts.

In addition to seeking assistance from other cities with the same issues, US attorneys may be able to use some of the clauses developed by The Chancery Lane Project (see The Chancery Lane Project). For TCLP's clause requiring suppliers to use fewer single use plastics, TCLP: Reduction of CO2 from Single Use Plastic.

Climate Goals in Planning and Zoning

Many cities already include climate-friendly features in their planning and zoning, without necessarily having a coordinated approach to climate change mitigation. For example, municipal plans and zoning regulations often provide for:

- Preserving open spaces and setting aside land for parks.
- Planting new trees and protecting existing trees.
- Incorporating bike lanes, sidewalks, and other pedestrian-oriented features into street infrastructure.

Beyond these measures, some cities anticipate and encourage higher usage of electric vehicles with incentives such as:

- Free parking on streets and in public garages (see LPDD Model Law: Municipal Ordinance for Alternative Fuel Vehicle Parking Benefits).
- Designated parking spaces with charging stations at privately owned parking facilities (see LPDD Model Law: Designation of Parking Spaces for Electric Vehicles and Installation of Electric Charging Devices).

With the serious threats presented by rapid climate change, most cities will need to step up their efforts and be more intentional in using planning and zoning to focus on climate issues. For example, some cities have recognized that single-family zoning with large lot sizes contributes significantly to both regional GHG emissions and the affordable housing crisis. In some cases, state laws or local zoning amendments now allow more than one home on lots previously limited to single-family residences.

Cities that have adopted climate action plans can use them as support for overhauling comprehensive plans and zoning ordinances. Municipal attorneys will need to assist in drafting and reviewing new zoning language to confirm that it is within the city's authority, is enforceable, and carries out the city's intentions.

Climate Goals in Building Codes

To assure that buildings within the municipality are resilient and energy-efficient, the city attorney can assist in efforts like drafting and adopting:

- New building and property maintenance codes that emphasize energy-saving construction and operational practices. For example:
    - some communities have adopted "stretch codes" that go beyond the standards included in other building codes to emphasize higher energy savings. For more on stretch codes, see New Buildings Institute: Stretch Codes.

- codes can require new residential dwellings to include charging infrastructure for electric vehicles (see LPDD Model Law: EV Ready Building Code for One- and Two-Family Homes).

- Ordinances setting requirements for recycling of construction and demolition waste. For example, see Austin, Texas: Construction and Recycling Ordinance.

- Landscaping standards that rely on trees and other plantings that, once established, will provide shade but will not require extensive irrigation.

Sustainable Financing for Addressing Climate Goals

Government entities now sometimes use "green bonds" or other types of specialized debt options to finance projects that have a positive environmental impact. While there is no universal or legal definition for green bonds, the concept has been in use since 2007 in Europe. In 2013, the State of Massachusetts issued the first green bond in the US. The proceeds funded a range of environmentally beneficial projects, including improving drinking water, making state buildings more energy-efficient, and restoring river habitats. The sustainable financing market has grown significantly in the years since. (Practical Law subscribers can find sample language online – see Green Bonds and Local Infrastructure Projects.)

SELLING LOCAL GOVERNMENT CLIMATE POLICIES

Climate policies at any level of government can be a hot-button issue. However, many communities have already adopted regulations, contract provisions, and policies that address climate concerns without necessarily pointing it out. Local government attorneys and officials can get around the political controversy that sometimes accompanies climate-related measures by:

- De-emphasizing terms and references that trigger negative reactions.

- Stressing that climate-related actions will result in:

  - long-term economic benefits to property owners, residents, and the community as a whole;

  - a healthier and safer living environment; and

  - preservation of the community's natural resources and scenic beauty for future generations.

The federal government and large states can act on climate change in ways that have widespread influence. Municipalities have little or no control over matters such as whether fossil fuels continue to be drawn from their sources. However, since the US is composed of thousands of communities, actions on a smaller scale by each community play an important role in fighting climate change. Municipal attorneys must be prepared to lend their skills and expertise to the fight.

Related content available on Practical Law includes these resources:

- Contract Clauses for Government: Construction Waste Management
- Contract Clauses for Government: Net Zero Objectives
- Contract Clauses for Government: Net Zero Incentives
- Practice Note, UNFCCC, the Kyoto Protocol, and the Paris Agreement
- Practice Note, ESG Disclosure & Sustainability Reporting Frameworks: ESG Data and Ratings Providers
- Environmental, Social, and Governance (ESG) Toolkit: US
- Practice Note, Green Bonds and Local Infrastructure Projects