

Q&A: How can cities fight climate change and still stay within legal guardrails?

November 10 2023, by Kevin Krajick



Lower Manhattan. Credit: Kevin Krajick/Earth Institute

Many U.S. cities are leading the way in cutting emissions of greenhouse gases, with mandates on more efficient buildings, renewable energy and expansion of mass transit. But often these efforts face hurdles in the

form of state and federal laws that were not designed with climate action in mind.

Lawyers Michael Burger and Amy Turner of the Sabin Center for Climate Change Law have just come out with *Urban Climate Law*, a primer on how cities can enact meaningful policies within existing legal strictures. It is the sixth in a series of primers from Columbia University's Earth Institute focused on practical sustainability issues.

I interviewed Burger and Turner together by email about how state and local laws are often in tension with each other; why cities are in the climate spotlight right now; and how cities can model climate action as small-scale "laboratories of democracy."

Why have cities become a locus of climate activity?

Cities are diverse and creative places, and relatively nimble in their ability to respond to changing circumstances. They also stand on the front lines of climate impacts, from urban heat to sea level rise and more, and the costs of inaction have long been clear. So they have often stepped up to fill the gaps left by federal and state governments, and to make up for the shortfalls in industry leadership.

What have cities been the most successful at so far? And the least successful?

They have been most successful when they've acted as small-scale "laboratories of democracy," to borrow a favorite Justice Brandeis coinage. Cities like St. Louis, New York and Washington have developed new ways of mandating emissions reductions from buildings, and their models are reverberating in cities around the country. Minneapolis found a different way to engage with its electric utility to

advance decarbonization. Kansas City, Missouri, starting offering fare-free public transit, rolling climate and equity considerations into one policy.

On the other hand, where cities hit trouble, it is often a result of outside limitations. Many states have laws that sorely limit city options for decarbonization. And sometimes well-funded interest groups can outspend, out-litigate, and outlast efforts to develop local policies. For example, Eugene, Oregon, is very much a "climate city," with an actionable and ambitious plan. But it's seen pushback in its efforts to phase down reliance on natural gas. A yearslong slog to renegotiate a critical agreement with the natural gas utility remains at an impasse. And the city remains constrained by state limitations on local construction requirements.

What are some of the main legal stumbling blocks?

Cities are creatures of state law, and they are nested within our federalist system of governance. Questions of statutory preemption—where a federal or state environmental, energy, transportation or other law overrides a local government—come up all the time. For instance, many [local governments](#) have been unable to enact building electrification requirements or [natural gas](#) bans because [state laws](#) restrict them from setting construction standards. Natural gas bans in California have come under scrutiny following a court case holding they are preempted by federal law. One of the reasons congestion pricing has taken decades to get into effect in New York City is that the state and [federal governments](#) have control over things like road tolling.

Preemption can get really granular: cities in Florida are barred from banning gas stations within their communities, and in Georgia they cannot even ban gas-powered leaf blowers. Local governments may also be limited in how they may raise funds through taxes or otherwise, so

they may not have the resources to advance the policies they want.

Speaking as a resident of New York City, I'm a little scared of our new Local Law 97, which mandates that many buildings undertake projects to radically reduce their emissions. I fear this will make our city even more unaffordable than it already is, given that residents and businesses will have to pay for this.

We're so glad you raised this point. Local climate laws have to take into account factors like housing affordability. Local Law 97 isn't perfect, but it does address affordability by allowing owners of largely rent-protected buildings and other forms of affordable housing to choose alternative ways to comply if a reduction measure is too costly. State law also protects rent-stabilized tenants from significant rent increases as a result of Local Law 97. And federal incentives from the Inflation Reduction Act will make some building improvements more affordable. It's also really important to note that affordable housing tends to be concentrated in areas of higher air pollution.

Cleaning up our building stock is a public health and environmental justice imperative. Finally, nearly 90% of large buildings are already in compliance with the Local Law 97 standards that begin in 2024, so they will incur no additional costs until 2030. The law is already working, and so far it hasn't proven too painful.

At least in the US, urban areas tend to be far more liberal and progressive than rural ones. Does this demographic by itself make it easier for cities to get something done?

Decades of disinformation and climate denial plotted by the fossil fuel industry and its political supporters have driven a political wedge into climate policy. Opposition to climate action is a central tenet of the Republican platform. Support for [climate action](#), even if imperfect, is a tenet of the Democratic platform. So places where Republicans tend to hold power tend to lag in many areas of climate policy, and places where Democrats hold sway tend to lead.

State governments can and do enact broad preemption laws that restrict more populous (and sometimes but not always more liberal) cities from taking certain actions. We hope that the increasing recognition of the reality of climate change continues in cities, states and at the national level. It may well be that there is something of a disconnect between the politicians making decisions on climate policy and the demographics they are supposed to represent.

This story is republished courtesy of Earth Institute, Columbia University
<http://blogs.ei.columbia.edu>.

Provided by State of the Planet

Citation: Q&A: How can cities fight climate change and still stay within legal guardrails? (2023, November 10) retrieved 27 April 2024 from <https://phys.org/news/2023-11-qa-cities-climate-stay-legal.html>

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