Urban Environmental Law and Policy Seminar

Spring 2021

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Course Description and Expected Learning Outcomes

In the late nineteenth and early twentieth centuries, local governments pioneered the introduction of environmental regulations in the United States to address problems such as water and air pollution. The municipal role in environmental regulation was obscured to a large extent with the passage of the landmark federal environmental statutes in the 1970s and the wave of federal regulation that followed to protect air and water quality. However, in the past decade, as climate change has become a live threat, local governments in selected cities in the United States have reasserted a leadership role in environmental law and policy. New York City in particular has been a major environmental leader, first under Mayor Michael Bloomberg and continuing under Mayor Bill de Blasio.

This class will provide an overview of contemporary urban environmental law and policy. It will focus on environmental initiatives in New York City, but also address pioneering environmental initiatives in other cities. The seminar will begin with an overview of the framework in which local governments make environmental law, and the threats of preemption that they face from federal and state law. Then the class will discuss several longstanding local environmental issues and municipal responses to these issues, which remain live ones today: securing clean drinking and air that is safe to breathe, and protecting the environment for racial minorities and low-income people, not just high-income earners. From here, we will explore new issues in urban environmental lawmaking including efforts to mitigate global climate change. Several themes will cut across our discussion of these issues: the links between municipal initiatives and state and federal environmental law, and the extent to which higher levels of lawmaking impinge on municipal initiatives; the political and economic factors that explain the resurgence of interest in environmental law at the local level; and the distinct tools that local governments use to pursue environmental objectives, such as the provision of services and amenities, and land use and building regulation.

**Major Topics:**

1. Introduction – The What and Why of Urban Environmental Law? (Class #1, January 19)
2. The Scope of Local Legislative Power Over the Environment
   1. Home Rule and Preemption of Local Environmental Laws (Class #2, January 26)
   2. Separation of Powers in Municipal Government and the New York City Charter (Class #3, February 2)
3. Selected Issues
   1. Environmental Justice (Class #4, February 9)
   2. Securing Clean Drinking Water (Class #5, February 23)
   3. Clean Water Act, Waste Water, and Stormwater (Class #6, March 2)
   4. Municipal Taxation Authority & Waste Reduction Strategies – The Case of the Plastic Bag Tax (Class #7, March 9)
   5. Environmental Review (Class #8, March 16)
   6. Increasing Density and Reducing Sprawl (Class #9, March 23)
   7. The Battle to Reclaim the Streets from “Motordom”(Class #10, March 30)
   8. Access to Green Spaces and the Management of City Parks (Class #11, April 6)
   9. Reducing Building Energy Use and GHG Emissions (Class #12, April 13)
   10. Environmental Justice (Class #13, April 20)
   11. Climate Change Adaptation (Class #13, December 3)

**Grading:**

We expect the final grades to reflect the following components:

* 25%: Class participation. Class participation will be based on participation in the first 2 hours of the seminar. Students who cannot be present after 6pm must watch the videos of the remaining portion of the class. You also must attend (or watch a video of) a [hearing](https://legistar.council.nyc.gov/Calendar.aspx) of the [NYC Council Committee on Environmental Protection](https://council.nyc.gov/committees/environmental-protection/), and write a 1-page memo describing your reactions to the hearing.
* 75%: For the basic 3 credit version of the class (which also qualifies for the B paper): choice of 7 reaction papers (3-4 pages double-spaced each) OR final paper of at least 20 pages double-spaced. If you would like to take the class for 4 credits, you must do a final paper and it must be at least 40 pages double-spaced; this paper will qualify as an A paper.

**Classes and Reading Assignments:**

1. **Introduction**

* **Class #1 January 19: The What and Why of Urban Environmental Law - DONE**
  + *What is urban environmental law?*
  + *What are the major environmental challenges facing cities today? How do these challenges vary between cities and between different groups within a given city?*
  + *Why do cities develop environmental law?*
  + *What are some of the unique challenges cities confront as they develop environmental policy?*
  + *Are there limits on the kinds of environmental problems that cities can address?*
  + *Why were important components of environmental law federalized in the 1970s in the United States?* 
    - David Owen, *Green Manhattan*, The New Yorker (on NYU Classes)
    - Benjamin Barber, Cool Cities (2017), pp. 15 – 30 (on NYU Classes)
    - Harriet A. Washington, How Environmental Racism is Fueling the Coronavirus Pandemic, Nature, May 19, 2020, available at: <https://www.nature.com/articles/d41586-020-01453-y>

1. **The Scope of Local Legislative Power Over the Environment**

* **Class #2, January 26: Home Rule and Preemption of Local Environmental Laws** - DONE

*The authority of the City vis-à-vis state government; origins and breath of Home Rule authority.*

* The City vis*-*à-vis the State
  + Briffault & Reynolds excerpts (on NYU Classes):
    - pp. 289 – 293 (stop before “The Prohibition on Special Commissions.”)
    - pp. 327 – 330 (stop before “*Marble Technologies, Inc*.”)
    - pp. 346 – 358
  + New York State Constitution Art. IX (excerpt on NYU Classes)
  + *Adler v.* *Deegan,* 251 N.Y. 467, 489 (N.Y. 1929*)* (with Lehman dissent) (on NYU Classes)
  + *Greater New York City Taxi Ass’n v. State*, 21 N.Y.3rd 289 (2013) (edited version posted on NYU Classes)
  + *Wallach v. Dryden et al*, 16 N.E.3d 1188 (N.Y. 2014) (edited version on classes)
* Policy Arguments for and Against Local Autonomy
  + Frug & Baron excerpt: pp. 36-43 (on NYU Classes)
  + Hills, *Romancing the Town*, 113(8) Harv. L. Rev. 2009 (2000) (read 2009-2012; 2025-2031) (on NYU Classes)

*Discussion question (posted on NYU Classes):*

* Could New York City – or any other U.S. city -- implement a “low emission zone” without being preempted by federal law?

*Optional reading:*

* Briffault & Reynolds excerpts (on NYU Classes): pp. 8-13 (background on types of local governments)
* **Class #3, February 2: Preemption, cont’d & Separation of Powers in New York City - DONE**

*Federal preemption of local environmental law; the roles of the administration and the City Council; the non-delegation doctrine*

* Federal preemption of municipal law
  + *Metropolitan Taxicab Bd. of Trade v. City of New York,* 615 F.3d 152 (2d Cir. 2010)
* Separation of powers within local government
  + *Boreali v. Axelrod*, 517 N.E.2d 1350 (N.Y. 1987) (on NYU Classes)
  + *New York Statewide Coalition of Hispanic Chambers of Commerce v. New York City Dept. of Health and Mental Hygiene,* 16 N.E.3d 538 (N.Y. 2014) (the “soda ban” case) (on NYU Classes)
  + *Gundy v. United States*, 588 U.S. \_\_\_ (2019) (excerpt on classes)
* A note on the predecessor to the City Council
  + Janos Marton, 26 Years Since the Board of Estimates’ Demise, Gotham Gazette, March 22, 2015, *available at* <https://www.gothamgazette.com/government/5645-26-years-since-the-board-of-estimates-demise>
* *Optional reading:* 
  + Board of Estimates of City of New York v. Morris, 489 U.S. 688 (1989) (on classes)

1. **Selected topics**

* **Class #4, February 9: Environmental Justice (Guest; Eddie Bautista) - DONE**
  + Luke W. Cole & Sheila Foster, From the Ground Up 151-65 (on classes)
  + 17 Principles of Environmental Justice (1991) (on classes)
  + Executive Order 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” https://www.archives.gov/files/federal-register/executive-orders/pdf/12898.pdf
* **Class #5, February 23: Securing Clean Drinking Water - DONE**

*Municipal authority over and responsibility for drinking water protection; the Safe Drinking Water Act; municipal struggles with lead contamination*

* + People v. Van Buren, 830 N.E.2d 1130 (N.Y. 2005)
  + Michael C. Finnegan, New York City’s Watershed Agreement: A Lesson in Sharing Responsibility, 14 Pace Envt’l L. Rev. 577 (1996) [read: 577-602; 609-622; skim 625 🡪 end]
  + Winnie Hu, A Billion Dollar Investment in New York’s Water, New York Times (Jan. 17, 2018)
  + James Salzman, Drinking Water: A History (2013), ch. 5, Flint
  + Safe Drinking Water Act, 42 U.S.C. § 300g–1

*Discussion questions*

* + Do you agree with the Court’s home rule analysis in the *Van Buren* decision?
* **Class #6: March 2: Clean Water Act, Waste Water and Stormwater - DONE**

*History of waste water management; regulation of waste water and stormwater under the Clean Water Act; green infrastructure to manage storm water*

* Joel A. Tarr, The Search for the Ultimate Sink: Urban Pollution in Historical Perspective (1996) (read pp. 103-128)
* Mireya Navaro, 1.5 Billion Plan Would Cut Sewage Flow Into City Waters, New York Times (Sept. 28, 2010)
* Caswell F. Holloway et al, Solving the CSO Conundrum: Green Infrastructure and the Unfulfilled Promise of Federal-Municipal Cooperation, 38 Harv. Envt’l L. Rev. 335 (2014) (read 354 – 369)
* Envt’l Def. Ctr., Inc. v. EPA, 344 F.3d 832 (9th Cir. 2003) (read pp. 840 – 848; skim 848 – 852)
* **Class #7, March 9: Municipal Taxation Authority & Waste Reduction Strategies – The Case of the Plastic Bag Tax - DONE**
  + New York State Plastic Bag Task Force Report: An Analysis of the Impact of Single-Use Plastic Bags (Jan. 13, 2018), available at http://www.dec.ny.gov/docs/materials\_minerals\_pdf/dplasticbagreport2017.pdf (read pages 1 -14, skim 14 – 24) (on classes)
  + Michael Gold, Paper or Plastic? Time to Bring Your Own Bag, New York Times (April 22, 2019).
  + Clayton Gillette, Fiscal Home Rule, 86(4) Denver University Law Review 1242 (2009)
  + Schmeer v. County of Los Angeles, 213 Cal.App.4th 1310 (Cal. Ct. App. 2013)

*Discussion questions*

* + Gillette notes that states fall on a continuum with respect to how much fiscal autonomy they give to local governments. How would you characterize the degree of fiscal autonomy that New York City has? Do you think this level of autonomy is appropriate?
  + Which stakeholder groups do you think may have opposed Local Law 63 and on what grounds? Do you have any suggestions for alternative ways of structuring the law that might be more economically efficient? If so, do you have thoughts on why the City may have designed the law as it did?
* **Class #8, March 23: Increasing Density and Reducing Sprawl**
* Edward Glaeser, Triumph of the City (2012), Chapter 7, Why Has Sprawl Spread?
* Anthony Flint, [*Backyard Brouhaha: Could Inclusionary Zoning Break the YIMBY Deadlock?*](https://www.lincolninst.edu/publications/articles/backyard-brouhaha) Land Lines (February 26, 2019)
* Noah Kazis, Ending Exclusionary Zoning in New York City’s Suburbs, Nov. 2020 (read pp 3-21)
* Emily Badger & Quoctrung Bui, *Cities Start to Question an American ideal: A house with a Yard on Every Lot*, New York Times (June 18, 2019)
* Joel Kotkin, The Human City (2016), pp. 12 – 18, 116-121. Vicki Been et al, Supply Skepticism: Housing Supply and Affordability, 29(1) Housing Pol’y (2018)
* Vicki Been et al, Supply Skepticism: Housing Supply & Affordability, *available at* https://furmancenter.org/research/publication/supply-skepticismnbsp-housing-supply-and-affordability
* **Class #9, March 16: Environmental Review (Guest: Adalene Minelli) - DONE**

*Threshold and coverage of environmental review; the use of environmental review to challenge development; environmental review and climate change; modernizing environmental review*

* + Environmental review and challenges to locally undesirable land uses
    - *Ass’n for Community Reform v. Bloomberg*, 824 N.Y.S.2d 752 (2006) (Classes)
  + Environmental review and challenges to residential development
    - *Strycker’s Bay Neighborhood Council, Inc., v. Karlen*, 444 U.S. 223 (1980)
    - *Chinese Staff v. City of New York*, 68 N.Y.2d 359 (1986) (Classes)
    - Affidavit of Professor Thomas Angotti in *Northern Manhattan Is Not for Sale v. City of New York* (December 9, 2018)
  + *Optional reading:* 
    - *Ordonez v. City of New York*, 2018 N.Y. Slip Op. 51093 (Unpublished) (Classes)
* **Class #10, March 30: The Battle to Reclaim the Streets from “Motordom” and Incorporate Equity Concerns into Transportation Planning (Guest: Deborah Archer, Clinical Professor, NYU School of Law) - DONE**

*Allocating the finite resource of the streets; planning and siting new transportation infrastructure; Congestion pricing; parking; bike lanes & bike share*

* + Peter D. Norton, Fighting Traffic: The Dawn of the Motor Age in the American City (2008), pages 1-17
  + Janette Sadik-Kahn, Streetfight: Handbook for An Urban Revolution (2016), pages 47-71, 143-164
  + Donald Shoup, *The High Cost of Free Parking*, 17 Journal of Planning Education and Research 201 (1997) (read the abstract, and skim the article)
  + Deborah Archer, *White Men’s Roads Through Black Men’s Homes: Advancing Racial Equity Through Highway Reconstruction*, 73 Vand. L. Rev. 1261 (2020) (read 1261-1286)
  + 42 U.S.C. 2000d et seq (Title VI of the Civil Rights Act of 1964) (on classes)
  + Beaver Creek decision, available at <https://www.justice.gov/sites/default/files/crt/legacy/2014/07/07/DOT_fhwa_decision-_lead_v_city_of_beavercreek_june_2013.pdf>

*Optional Readings:*

* + Henry Grabar, [*San Francisco Legalizes Itself*](https://slate.com/business/2018/12/san-francisco-eliminates-parking-minimums-its-a-trend.html), Slate, December 18, 2018
  + Robert Caro, The Power Broker: Robert Moses and the Downfall of New York 1-21 (1974)
  + William Vickery, *The Economizing of Curb Parking Space*, 25 Traffic Engineering 62 (1954) (Classes)
* **Class #11, April 6: Access to Green Spaces and Management of City Parks**
  + *Friends of Van Cortlandt Park v. City of New York*, 95 N.Y.2d 623 (2001)
  + *Brooklyn Bridge Park Legal Defense Fund v. New York State Urban Development Corporation*, 2006 N.Y. Slip Op. 26466 (N.Y. Sup, Ct. 2006) (on Classes)
  + Isabelle Anguelovski, From Toxic Sites to Parks as (Green) LULUs? New Challenges of Inequity, Privilege, Gentrification, and Exclusion for Urban Environmental Justice, 31 Journal of Planning Literature 23 (2016) (excerpt on Classes)
  + Michael Murray, Private Management of Public Spaces: Nonprofit Organizations and Urban Parks, 34 Harv. Envtl. L. Rev. 179 (2010). (read pp. 180-193, 203-213 & 224
  + Eric Klinenberg, Palaces of the People (2018) (read the introduction)
* **Class #12, April 12: Reducing Building Energy Use and GHG Emissions (Guest: Lia Cairone, Deputy Director, North America, C40) - DONE**

*Origins of cities’ regulation of building emissions; buildings’ contribution to climate change; policy options for reducing building energy use and GHG emissions.*

* *Air Conditioning, Heating and Refrigeration Inst. v. City of Albuquerque*, 2008 WL 5586316 (D.N.M. 2008) (on NYU Classes)
* *Building Industry Association of Washington v. Washington State Building Council*, 683 F.3d 1144 (9th Cir. 2012) (on NYU Classes; stop reading at top of p. 1153)
* Will Bredderman & Daniel Geiger, *Legislation to Cut Carbon Emissions Will Cost Property Owners Billions*, Crain’s New York (April 22, 2019)

*Discussion question:*

* Should cities introduce emissions trading regimes to reduce building GHG emissions?

*Optional Readings:*

* Urban Green Council, Blueprint for Efficiency (Aug. 2018) (on NYU Classes)
* Amy Howden, *Building Consensus*, Urban Omnibus (Nov. 28, 2018)
* **Class #13, April 19: Climate Change Adaptation: Planning for Flooding and Heat at the Local Level** (Guest TBC: Jaiyney Bavishi, Director, New York City Office of Resilience) **- DONE**
  + IPCC Oceans and Cryosphere Report Chapter 4 (read Executive Summary and 4.1; skim 4.4) (on Classes)
  + Christopher Flavelle & John Schwartz, *As Climate Risks Grow, Cities Test a Tough Strategy: Say No to Developers*, N.Y. Times (Nov. 19, 2019)
  + *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992) (excerpt on Classes. Read pp 1275 – 1294 and note 9 on p.1298)
  + Neena Satija et al., [Everyone Knew Houston’s Reservoirs Would Flood – Except for the People Who Bought Homes Inside](https://projects.propublica.org/graphics/harvey-reservoirs), ProPublica, October 12, 2017