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 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 focus on five issue areas where leading local governments such as New York’s currently are active in developing environmental law: (1) climate mitigation and adaptation, (2) transportation, (3) waste management, (4) preserving open green spaces, and (5) water quality protection. 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 land use regulation and urban planning.

Major Topics:

I. Introduction – The What and Why of Urban Environmental Law? (Class #1)
II. Principles of Local Government Law and the Scope of Local Legislative Power Over the Environment
   a. Home Rule and Preemption of Local Environmental Laws (Class #2)
   b. Separation of Powers in Municipal Government and the New York City Charter (Class #3 – Guest: Laura Popa)
III. Climate Change Mitigation and Adaptation
   a. Reducing Building Energy Use (Class #4)
   b. Adapting to Climate Change: Planning Resilient Land Use at the Local Level in New York City (Class #5 – Guest TBD)
IV. Urban Transportation Mobility
   a. Sustaining Mass Transit (Class #6)
b. Reducing Vehicular Traffics: Pedestrian Plazas, Bikesharing, Ridesharing and Driverless Cars (Class #7)

V. Watershed Quality Controls
   a. Waste Water Treatment and Stormwater Reduction (Class #8 – Guest TBD)
   b. Watershed Protection and the Maintenance of Safe Drinking Water (Class # 9)

VI. Waste Management
   a. Environmental Justice and the Siting of Waste Treatment Facilities (Class #10 – Guest: Eric Goldstein)
   b. Municipal Taxation Authority and Plastic Bag Tax (Class #11 – Guest: Cullen Howe)

VII. Access to Green Spaces and the Management of Public Parks (Class # 12)

VIII. Brownfield Remediation (Class #13 – Guest: Mark MacIntyre)

IX. Field Trip – Green Roofs (Class #14 – Guest: Dustin Partridge)

Grading:

We expect the final grades to reflect the following components:

- Class participation (students will be “on call” approximately every third class): 25%
- Choice of 8 reaction papers (3-4 pages each) or final paper of approximately 30 pages double-spaced: 75%. If you are taking the seminar for 3 credits, the final paper should be a minimum of 40 pages double-spaced.

Classes and Reading Assignments:

I. INTRODUCTION

- Class #1 January 16: The What and Why of Urban Environmental Law (KMW & DSF)
  - What is urban environmental law?
  - What are the major environmental challenges facing cities today?
  - Why do cities develop environmental law?
  - Should local governments take a leading role in addressing global issues such as climate change as well as local environmental issues?
  - What are some of the unique challenges cities confront as they develop environmental policy?

- BENJAMIN BARBER, COOL CITIES (2017), pp. 15 – 30 (on NYU Classes)
Optional material:

- Saving Jamaica Bay – A documentary Film (2016) (available on Amazon Prime or on DVD at the NYU Law library)

II. **THE SCOPE OF LOCAL LEGISLATIVE POWER OVER THE ENVIRONMENT**

- **Class #2, January 23: Home Rule and Preemption of Local Environmental Laws (KMW& DSF) (Group 1 on call)**

  The authority of the City vis-à-vis federal and state government; origins and breath of Home Rule authority; local regulation of fracking.

- Overview home rule and state preemption of local laws
  - Briffault & Reynolds excerpts: pp. 289 – 293; 327 – 330; 346 – 364; 423 – 428 (on NYU Classes)
  - Frug & Baron excerpt: pp. 31-43 (on NYU Classes)
- Constitutional preemption
  - *Adler v. Deegan*, 251 N.Y. 467, 489 (N.Y. 1929) (with Cardozo concurrence and Lehman dissent, other concurring and dissenting opinions optional)
  - New York State Constitution Art. IX (excerpt on NYU Classes)
- Statutory preemption
  - *Metropolitan Taxicab Bd. of Trade v. City of New York*, 615 F.3d 152 (2d Cir. 2010)

**Discussion questions (posted on NYU Classes):**

- Could New York State enact a congestion pricing scheme in New York City without authorization from the City?
- Could New York City implement a “low emission zone” without being preempted by federal law?

**Optional readings:**

- Briffault & Reynolds excerpts (on NYU Classes): pp. 8-13 (background on types of local governments)
Class #3, January 30: Separation of Powers within Local Government and the New York City Charger (Guest: Laura Popa, Deputy Chief of Staff for Legislation and Policy, New York City Council)

III. CLIMATE CHANGE MITIGATION AND ADAPTATION

- Class #4, February 6: Reducing Building Emissions and Building Energy Use (DSF)
- Class #5, February 13: Climate Resilience: Flood Proofing and Infrastructure (Guest TBD)

IV. URBAN TRANSPORTATION MOBILITY

- Class #6, February 27: Sustaining Mass Transit (KMW)
- Class #7, March 6: Reducing Vehicular Traffic: Pedestrian Plazas, Bikesharing, Carsharing, Parking, and Driverless Cars (KMW)

V. WATERSHED QUALITY CONTROL

- Class #8, March 20: Waste Water Treatment and Green Infrastructure (KMW) (Guest TBD)
- Class #9, March 27: Watershed Protection and the Maintenance of Safe Drinking Water (DSF)

VI. WASTE MANAGEMENT

- Class #10, April 3: The Siting of Waste Treatment Facilities and Environmental Justice (Guest: Eric Goldstein, New York City Environment Director, Natural Resources Defense Council)
- Class #11, April 10: Municipal Taxation Authority & Waste Reduction Strategies – The Case of the Plastic Bag Tax (DSF & Cullen Howe, Senior Attorney and New York Legislative Director, Acadia Center, former Legislative Council at the New York City Council)

VII. OPEN SPACES

- Class #12, April 17: Access to Green Spaces and Management of City’s Parks (KMW)

VIII. BROWNFIELDS

- Class #13, April 24 Brownfield Remediation (Guest: Mark MacIntyre, General Counsel, New York City Office of Environmental Remediation)
IX. Class #14, May 1: Green Roofs & Urban Biodiversity (DSF & Dustin Partridge, Consultant New York City Audubon Society, PhD Candidate, Biology, Fordham University)

*Field trip to the Javits Center green roof.*