



## AGENDA

**Environment Board**  
**Room 2404 Lagoon Conference Room**  
**Lorraine H. Morton Civic Center**  
**2100 Ridge Ave, Evanston, IL 60201**  
**Thursday, March 14, 2024**  
**6:30 PM**

### **Join Zoom Meeting:**

<https://us06web.zoom.us/j/86278501403?pwd=3iNS4cAnQMaNZt32bdEeyn5WhBrnO7.1>

Meeting ID: 862 7850 1403

Passcode: 986024

One tap mobile +13126266799,,87159587261# US (Chicago)

+13092053325,,87159587261# US

### **1. CALL TO ORDER/DECLARATION OF A QUORUM**

### **2. PUBLIC COMMENT** (5 minutes)

### **3. APPROVAL OF MINUTES** (5 minutes)

### **4. REVIEW OF OUTSTANDING ITEMS** (5 minutes)

- A. Congrats to ETHS on “ETHS Green New Deal”

### **5. ITEM FOR DISCUSSION** (30 minutes)

- A. Bylaw Discussion (A Futerman)

### **6. STAFF UPDATES** (40 minutes)

- A. Comprehensive Plan Update (K Drehobl)
- B. Transportation and Mobility Coordinator Update (B Martin)
- C. Leaf Blower Ordinance Update (K Drehobl)
- D. BPS Concept Paper Update (B Martin)

**7. TASK FORCE/SUBCOMMITTEE UPDATES** (10 minutes)

A. CIT Update (K Topalov)

**8. ITEM FOR ACTION** (20 minutes)

A. City Council Briefing on Building Electrification (P Scholl)

**9. ADJOURNMENT**

Next Meeting: April 11, 2024

Order & Agenda Items are subject to change. Information about the Environment Board is available at: [www.cityofevanston.org/government/boards-commissions](http://www.cityofevanston.org/government/boards-commissions). Questions can be directed to Cara Pratt at 847- 448-8199. The City of Evanston is committed to making all public meetings accessible to persons with disabilities. Any citizen needing mobility or communications access assistance should contact the Facilities Management Office at 847-448-4311 (Voice) or 847-448-8064 (TTY)



## MINUTES

**Environment Board**  
**Room 2404 Lagoon Conference Room**  
**Lorraine H. Morton Civic Center**  
**2100 Ridge Ave, Evanston, IL 60201**  
**Thursday, February 8, 2024**  
**6:30 PM**

**Members present:** K Topalov, E Neal, J Nieuwsma, M Redfield, M Cotter, J Edinberg, K Kavanagh, A Futerman, P Scholl

**Staff present:** C Pratt, B Martin, K Drehobl, B Zimmerman, L Williams

### **1. CALL TO ORDER/DECLARATION OF A QUORUM** at 6:32 pm

### **2. PUBLIC COMMENT** (5 minutes)

- Advocating for City Council to delay leaf blower discussion to talk with landscaping companies and get all the facts
- Support for the ban and advocating for electric leaf blowers
- Urging the City of Evanston that it would be a mistake to walk back this ban
- Concern about undoing progress in regards to leaf blowers
- We cannot move backwards on leaf blower ordinance
- Do not backtrack on leaf blower ordinance
- City should advocate for more environmentally friendly landscaping
- Advocating for clean air and support of leaf blower ban
- Validating leaf blower ordinance
- Health hazards of leaf blowers
- Remember why we banned leaf blowers in the first place
- Support of the leaf blower ban
- support of better education and funding for leaf blower

### **3. FEATURED PRESENTATION**

- A. L Williams and HDR Consultants presented on the City's Comprehensive Plan
- B. B Zimmerman presented the Circularity Roadmap

### **4. APPROVAL OF MINUTES** (5 minutes)

J Nieuwsma moved to approved minutes, A Futerman seconded. Minutes approved at 7:53 pm.

#### **5. REVIEW OF OUTSTANDING ITEMS**

- A. A Futerman and K Topalov gave an update on the EEB bylaws and will prepare recommendations for the March meeting
- B. M Redfield and M Cotter gave an update on the Comprehensive Plan memo
- C. M Redfield gave an update on the Deputy City Manager hiring memo
- D. J Edinberg shared that ETHS's Sustainability Plan readthrough will be February 12th and voting will take place on February 26th.

#### **6. ITEM FOR DISCUSSION**

- A. P Scholl gave an update on the Building Electrification Ordinance

#### **7. STAFF UPDATES**

- A. B Martin presented on Building Performance Standards

#### **7. TASK FORCE/SUBCOMMITTEE UPDATES (10 minutes)**

- A. K Topalov gave an update on the CARP Implementation Taskforce

#### **8. ITEM FOR ACTION**

**9. ADJOURNMENT** M Cotter motioned to adjourn, M Redfield seconded, meeting adjourned at 8:54.

Next Meeting: March 6, 2024

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**BY-LAWS**

**EVANSTON ENVIRONMENT BOARD**

**ARTICLE I**

**Name and Authority**

- Section 1.** The name of this organization shall be the Evanston Environment Board, referred to herein as “the Board.”
- Section 2.** The Board exists under the provisions of the Evanston City Code, Title 2, Chapter 13.
- Section 3.** The business of the Board is conducted in accordance with [Evanston City Code, Title 2, Chapter 130](#) and the Ethics Ordinance 54-O-04 ([Evanston City Code, Title 1, Chapter 10](#)), and these By-laws.

**ARTICLE II**

**Mission**

- Section 1.** To support Evanston's environmental goals of reducing and mitigating climate change impacts, increasing resource efficiency, [protecting human health](#), and protecting and restoring natural systems by investigating issues and developing recommendations for City Council, other Boards, Committees and Commissions and City Departments to meet Evanston's goals. ([36-O-71](#)) ([23-O-93](#)) ([78-O-16](#))
- Section 2.** The Board shall support the implementation of the environmental components of the City of Evanston’s guiding documents (including, but not limited to, [Strategic Comprehensive Plan](#), [Climate Action and Resiliency Plan](#), [Multi-Modal Transportation Plan](#), [Bicycle Plan](#)) through research, policy recommendations, and coordination with other groups’ efforts.

**Comment [1]:** I can't find reference to this ordinance in the city code anywhere.

**Comment [2]:** 78-O-16 says ""The City of Evanston has a Ladd Arboretum Committee whose primary function is to advise and consult with the City Council on development and maintenance of the Ladd Arboretum; and an Environment Board that advises the City Council on issues related to the environment. The City Council determines that it is in the best interest of the City to consolidate the functions of the Ladd Arboretum Committee into the Environment Board."

**Comment [3]:** This originally read "Climate Action Plan". Assuming it means CARP, I changed the name and added the hyperlink to the CARP page.

**Comment [4]:** We could list several more here, but not sure where to draw the line.

## ARTICLE III

### Membership and Duties

#### Section 1. Members

A. Number of Members: The Board shall consist of ~~eleven~~ ~~twelve~~ twelve (1~~2~~) members appointed by the Mayor of Evanston with the consent of the Evanston City Council. The members must include the following:

1. Seven (7) members who have training and/or experience in areas addressing climate change issues or natural systems such as: environmental science, law, education, ecology, pollution control, engineering, or public health.
2. Two (2) members who have training, knowledge, past experience or some combination related to the Ladd Arboretum or other natural habitat areas in Evanston.
3. Two (2) members must be designated as “at-large” community representatives that need to have an interest but are not required to have training or experience in areas addressing climate change issues or natural systems such as: environmental science, law, education, ecology, pollution control, engineering, or public health.

~~3.4.~~ One (1) member shall be a currently elected member of the City Council.

#### B. Term

Board members are appointed to three (3) year terms by the Mayor with the advice and consent of the City Council. Board members may serve no more than two (2) consecutive terms and can be considered for re appointment after remaining off the board for at least 3 years.

#### C. Vacancies and Removal

**Comment [5]:** This could be refined to add youth or other representation.

1. If a Board member fails to attend three (3) consecutive regular Board meetings, or misses four (4) meetings in one calendar year, without a reasonable cause, or otherwise neglects his or her duties as a Board member, the Chairperson, with the two-thirds majority assent of the Board, may recommend to the Mayor that the seat be declared vacant.
2. Any vacancy shall be filled by the Mayor as soon as possible.
3. A member of the Board may be removed by the Mayor ~~for absenteeism, neglect of duty, misconduct or malfeasance in office, after being given a written statement of the charges and an opportunity to refute them at a hearing with the Mayor in accordance with the provisions of Evanston City Code Title 1, Chapter 6, Section 5.~~

## Section 2. Duties of the Board

The Board has the following powers and duties:

- A. The Board shall report to the Human Services Committee of the City Council, and shall periodically meet with the Human Services Committee to discuss the Board's activities, goals and objectives;
- B. To research, study and hold public hearings on environmental issues raised by the City Council, the Board, the City Manager, City departments, other governmental agencies or the public;
- C. To develop public awareness on environmental issues through hearings, meetings, newsletters, news media releases and cooperation with environmental education organizations;
- D. To serve as an advocate for Evanston residents who are interested in issues and solutions to address climate change, resource efficiency and natural systems;
- E. To develop policy recommendations which are relevant to climate change, resource efficiency and natural systems for submission to the City Council, which advance the vision of the City's goals and guiding documents. Policy recommendations should aim to support implementation of the City's guiding documents, including, but not limited to: suggestions regarding implementation of policy. Policy recommendations should aim to support implementation of Evanston's guiding documents, including but not limited to:

**Comment [6]:** I am not sure about this. Not sure what is meant by the env'tl edu organizations or cooperation.

**Comment [7]:** Is this sentence redundant? The next sentence is more specific.

City's Strategic Plan, Climate Action Plan, Ladd Arboretum Master Plan, Lakefront Plan, Multi-Modal Transportation Plan, Bicycle Plan, Water Conservation and Efficiency Plan, Municipal Separate Storm Sewer System ("MS4") Permit, Complete and Green Streets Policy, and Environmental Justice Initiative Resolution implementation, and any Environmental, Climate Change, Sustainability, or other natural systems related policies, initiatives, plans, or resolutions that the City Council may adopt in the future;

**Comment [8]:** I cannot find the Ladd Arboretum Master Plan

**Comment [9]:** I cannot find the Lakefront Plan

**Comment [10]:** What I linked cannot be what this is referencing because the resolution I linked was in 2020 but these bylaws were last updated in 2019.

F. To serve as a resource for the City Council, Council committees, boards or commissions, the City Manager and City departments in addressing environmental issues, providing advice, research or technical assistance, as requested;

G. To keep itself informed about the activities of other City boards and commissions so far as these relate to environmental matters. The Environment Board may work jointly with the Energy Utilities Commission and other Evanston boards and commissions in addressing environmental issues which are of mutual concern, including, but not limited to, the development of a City energy policy.

**Comment [11]:** I don't think this exists anymore. There are the Utilities Commission, Land Use Commission, and Parks and Recreation Board as commissions/boards with the most overlap with the EB.

H. To serve as a liaison with other municipalities' boards or commissions to learn how they deal with matters of interest to the Environment Board and to share information pertaining to those matters;

I. To assist City staff in developing and improving programs and services that with address climate change, resource efficiency, and natural system protection and restoration;

**Formatted:** Highlight

J. To assist City staff in evaluating and tracking performance measures related to climate change and natural systems including the annual report for Evanston's Climate Action and Resiliency Plan and participation in the STAR Community Rating System ("STAR");

**Comment [12]:** Outdated? I need to ask Cara P. Cara, is this still the standard that the city follows (has it evolved?) and are there any other rating systems that should be included?

~~K. To raise funds and seek gifts for the development and maintenance of the Ladd Arboretum and approve disbursements of funds raised by the Committee for Ladd Arboretum; and~~

**Comment [13]:** STAR has been replaced by LEED for Cities, but we have not committed to participating.

**Comment [14]:** This seems inappropriate to me; we can discuss.

**Comment [15]:** Completely agree



K. To create subcommittees, as necessary, in furtherance of the Board's purpose.

**Comment [16]:** Is adding another Article addressing governance of subcommittees necessary? Membership, powers & duties, scope, etc.

L. Subcommittee operates by the same laws as the Environment Board and has a subcommittee chair who is a member of the Environment Board.

## ARTICLE IV

### Officers

#### **Section 1. Elected Officers**

The elected officers of the Board shall consist of two Co-chairs.

#### **Section 2. Election of Officers**

Board members shall elect officers by majority vote at the December meeting of odd years.

#### **Section 3. Terms of Office**

The Co-chairpersons shall be elected for two-year terms from January 1 to December 31. No member shall serve more than three consecutive two-year terms as an officer.

#### **Section 4. Vacancies**

A vacancy in any office shall be filled by a vote of the Board at the next regular meeting following the occurrence of the vacancy. The officer is elected for the duration of the unexpired term.

#### **Section 5. Duties of Officers**

A. The Co-chairpersons shall assure that the policies, programs and orders of the Board are carried out.

B. One Co-chairperson, or their designee, shall preside at all meetings of the Board.

C. The Co-chairpersons shall be responsible for calling meetings of the Board pursuant to the Open Meetings Act and for assuring an agenda for each meeting.

D. The Co-chairperson may appoint committees to consist of two or more members for specific tasks.

**Comment [17]:** subcommittee?

**Comment [18]:** Clarify that subcommittees have chairs, clarity on term limits, should declare its missions and scope, timeline

~~D-E.~~ Members of the community with a specific expertise may be invited to participate in the subcommittee at the discretion of the subcommittee chair.

## ARTICLE V

### Meetings

#### **Section 1. Regular and Special Meetings**

A. Regular meetings shall be held at such times and places as decided by the Board and shall be held at least quarterly.

B. Special meetings shall be held upon the request of the members of the Board.

C. Notice of all regular and special meetings of the Board shall be communicated to the members at least one week before the meeting by action at a previous meeting, or by e-mail, mail, or telephone.

D. Meetings shall be open to the public in accordance with the ordinance of the City of Evanston and the Open Meetings Act.

E. Notice of all regular and special meetings of the Board shall be communicated to the public by publication of an agenda in accordance with the Open Meetings Act.

F. Closed executive sessions may be held to consider matters relating to personnel, pending litigation, or property acquisition, or any applicable exemption pursuant to the Open Meetings Act.

**Section 2. Quorum**

A majority of the members of the Board constitutes a quorum for the transaction of business.

**Section 3. Voting**

At any meeting at which a quorum is present, the affirmative vote of the majority of the members present shall carry any issue. The Co-chairpersons are voting members of the Board and may vote on any issue.

**Section 4. Parliamentary Procedure**

Unless inconsistent with these By-laws or otherwise decided by the Board, all meetings shall be conducted in accordance with *Robert's Rules of Order*.

**ARTICLE VI**

**Staff of the Environment Board**

**Section 1.** The City shall employ staff who shall be responsible for the administrative direction and execution of the Board's policies, goals and objectives, and the administrative direction and execution of the policies of the City. The Board may evaluate the performance of the staff so assigned annually and report same to the City Manager.

**Section 2.** The staff of the Board shall be responsible for taking and distributing the minutes of each meeting, pursuant to the Open Meetings Act.

**Section 3.** The staff of the Board shall be subject to the terms and conditions of employment for City of Evanston management staff, as established by the City Manager and City Council. Board members shall transmit any concerns or comments about the performance of the staff of the Board to the City Manager.

## **ARTICLE VII**

### **Amendments**

**Section 1.** These By-laws may be amended at any meeting of the Board by the affirmative vote of a majority of members in office. Written notice of proposed amendment(s) shall be given to all members at least two weeks prior to the meeting at which the amendment(s) is/are to be considered.

**Section 2.** Any proposed amendment(s) to the By-laws shall be included in the call to the meeting at which they will be voted upon.

**Section 3.** The City Manager shall be advised of any changes in these By-laws.

**Section 4.** The Board shall review its By-laws at least every two years.

Adopted on December 10, 2009

Amended on January 14, 2010

Amended on February 9, 2012

Amended on December 12, 2019

**Concept Paper: Assistance for the Adoption of the Latest and Zero Building Energy Codes**  
Funding Opportunity Announcement (FOA) Number: DE-FOA-0003056  
City of Evanston, Illinois - Equitable Foundations for Building Performance Standards

The City of Evanston is committed to achieving carbon neutrality by 2050. A tipping point in reaching carbon neutrality is addressing the 50% of community-wide emissions that come from the 500 largest buildings. Given these buildings' large impact, Evanston's Mayor Daniel Biss committed to developing building performance standards (BPS), which will be achieved by staff conducting research and community engagement (CE) to reach a set of recommendations. As a member of the National BPS Coalition, the City is striving for BPS adoption by April 2024, but find this timeline unlikely given the current capacity and funding constraints.

BPS will regulate, educate, and provide a clear path for Evanston's largest buildings to comply with goals set out in our Climate Action and Resilience Plan (CARP). Early research suggests a BPS that regulates efficiency and onsite greenhouse gas emissions for energy savings equivalent to zero energy codes. The policy will efficiently reduce building emissions while ensuring equitable decision-making, affordability preservation, workforce development opportunities, and cost savings.

Significant CE will be conducted leading up to the ordinance's introduction to City Council, and the City intends to continue CE after policy passage to ensure equitable design and implementation and inform specific targets. Finalization of a CE strategy for passage is expected in February 2024, and will be updated after passage and with the receipt of additional funds. The timeline for *implementation* depends on receiving DOE funds.

With three full-time staff, Evanston's Sustainability and Resilience Division (SRD) is responsible for implementing CARP, and works in collaboration with the Community Development Department on legislation and programs related to building emissions. With current staffing and help from existing partnerships, we are confident in our ability to conduct CE and support adoption. However, there are capacity constraints for our team to add BPS to our programs list to *implement, enforce*, and educate without DOE funds.

As part of implementation and design, DOE funding would address equity concerns by allowing the City to develop a stipend-supported community advisory board (CAB). The CAB would work with an existing subcommittee of the Environment Board and Utilities Commission, and city staff to create an equitable foundation for our BPS, including the creation of a priority list of equity-concerned buildings. DOE funds would support technical assistance (TA) for the equity-concerned buildings. This TA would be established through an outside partner or additional staff depending on the level of funding received. TA would educate the managers of the most vulnerable and least resilient buildings, often with the highest energy burdens, to understand what is required of them and how they can comply with a BPS. Lastly, DOE funds would ensure that buildings that need the most financial help are able to secure micro-grants for retrofits approved by the CAB and staff.

Building codes in Evanston are implemented and enforced by Community Development, the City’s buildings department. Benchmarking is run throughout the year by SRD using Energy Star Portfolio Manager and custom in-house back end solutions. Benchmarking and BPS enforcement would be conducted on an annual basis requiring professional verification. BPS would be supported by our network of nonprofits, and electric utility to ensure adequate online resources exist such as compliance guidance and access to financing. Penalties for failure to comply will be determined through collaboration of staff and relevant advisory groups.

A BPS policy can address over half of the emissions reductions needed in Evanston. With initial assistance, we are confident we can establish this program and subsequently maintain it with existing staff capacity and our strong network of partners. By supporting Evanston, the DOE would contribute to a broader vision of empowering small cities across the U.S.. By submitting this concept paper, I attest that: The City of Evanston City Council has the authority to adopt innovative ordinances that regulate building efficiency and emissions. Evanston plans to submit a full application for Topic Area 3 Subtopic B. The following Organizations are expected to play a key role in achieving the objectives of the project:

Organization	Role in Project	Funding	Key Activities
Northwestern University	Building Owners	Potential	<ul style="list-style-type: none"> <li>Collaborate to use their educational background as a means of technical assistance, innovation, and real world experience</li> <li>Engage closely as they are a key stakeholder in Evanston’s largest buildings</li> </ul>
Midwest Energy Efficiency Alliance	Non-profit	Potential	<ul style="list-style-type: none"> <li>Bi weekly meetings to engage City staff on outreach, education, technical assistance, and training opportunities</li> <li>Host public meetings for stakeholders on compliance and workforce training</li> </ul>
Slipstream	Non-profit	Potential	<ul style="list-style-type: none"> <li>Bi weekly meetings to engage with City staff on outreach, education, technical assistance, and training opportunities</li> <li>Host public meetings for stakeholders on compliance and workforce training</li> </ul>
ComEd an Exelon Company	Utility	N	<ul style="list-style-type: none"> <li>Maintain a healthy relationship for the realization of mutually desired end goals</li> <li>Utilize existing programs that educate and provide incentives</li> </ul>
City Boards and Commissions	City Board	N	<ul style="list-style-type: none"> <li>Critical advisors throughout process</li> <li>Express their support in passage of a BPS</li> <li>Aid in creation of CAB</li> </ul>
Climate Action Evanston	Community Organization	Y	<ul style="list-style-type: none"> <li>Aid in organization of community events</li> <li>Connect resident experts to apply for BEWG</li> </ul>
Environmental Justice Evanston	Community Organization	Y	<ul style="list-style-type: none"> <li>Utilize their network to guide and establish the CAB</li> </ul>
Metropolitan Mayors Caucus	Non-profit	N	<ul style="list-style-type: none"> <li>Share learnings to expand BPS and benchmarking throughout Chicagoland</li> </ul>
ICLEI Cities Forward	Non-profit	N	<ul style="list-style-type: none"> <li>Share learnings to expand BPS and building decarbonization strategies globally</li> </ul>

## Briefing: Building Electrification in Evanston

A Referral to the Environment Board/Human Services Committee by Mayor Biss dated 1-4-23 states: “Ban natural gas hook-ups for new construction”. Six current co-referrers (Revelle, Nieuwsma, Reid, Harris, Wynne, Geracaris).

- Reason: “Necessary for CARP compliance”. Natural gas (NG) use has remained constant for 20 years; we must reduce NG use to zero in the next 25 years. NG accounts for 51% of greenhouse gas (GHG) emissions in Evanston. Installation of new gas equipment is expected to last 15-30 years posing a substantial risk to achieving our commitment to carbon neutrality by 2050. This policy prevents fossil fuel lock-in.
- Regulated entities: Typical number of new building permits in Evanston per year: 12-20, plus accessory dwelling units (ADUs).

### *Research and Engagement*

Evanston would join a cohort of over 100 other municipalities/states that have passed legislation phasing out natural gas in new construction. Staff and the Building Electrification Working Group (BEWG) pursued a dual strategy of research into approaches other communities have taken, and extensive engagement with our own community.

1. Extensive community engagement: The Building Electrification Working Group with members from the Environment Board, Utilities Commission, and CARP Implementation Task Force was formed 6-26-24. As a subcommittee of the Environment Board, they supported Sustainability Staff in design and implementation of the community engagement strategy and are providing relevant expertise. Community engagement included:
  - a. Investigation of approaches that other municipalities have taken (See Appendix A).
  - b. Stakeholder mapping: Identification of all potential stakeholders and contact information for individuals within each stakeholder category.
  - c. A detailed survey to identify concerns, issued to the entire Evanston community through multiple email communications in summer 2023. Over 250 responses were received.
  - d. A Town Hall meeting in September 2023 open to the entire community with approximately 50 attendees.
  - e. Two Stakeholder Meetings in October 2023 targeted to real estate developers, HVAC/plumbing and electrical contractors, builders, trades, etc.
  - f. Meetings with ComEd and Northwestern
2. Major categories of concerns raised from stakeholders during the engagement process, with responses from the working group’s research:
  - a. *The current grid still relies on fossil fuels. Will GHG emissions go up with electrification?* Electric heat pumps are several times more efficient than traditional furnaces and water heaters, so GHG emissions will be reduced now and reduced further as the grid gets greener. In Illinois, the Clean Energy Jobs Act requires 100% carbon free power by 2045, while GHG emissions from gas will never be reduced.
  - b. *Will heat pumps work in Evanston’s cold climate?* Older heat pump technologies did not perform well below freezing, but newer cold climate heat pumps are designed for temperatures well below zero.

- c. *Concerns about ComEd's distribution capacity and reliability:* Sustainability Staff met with ComEd several times and were assured of sufficient capacity for all new construction, and excellent reliability statistics.
- d. *Concern about heat pump technology for large common domestic hot water heating in multi-unit buildings (raised by building developers):* This is one area where technology is not fully mature but improving. Alternatives exist in the meantime, but flexibility in this area should be considered, depending on the level of prescription in any final ordinance.
- e. *Concern about costs of heat pumps and electric equipment:* Lower utility bills, rebates, and tax credits can offset costs. Three developments are already pursuing all- or almost-all electric construction, including one affordable housing development ([South Blvd](#)).
- f. *Concern about workforce knowledge of heat pumps:* This is valid. Staff will explore training options for contractors. Climate Action Evanston is also interested. ComEd and the Midwest Energy Efficiency Alliance are also working to host training sessions.

Staff prepared a draft ordinance and took the necessary steps to bring the ordinance to council for introduction. Unfortunately, during this time, the legal landscape for this kind of ordinance changed.

#### *Roadblocks*

The growing movement to take the necessary action to get off fossil fuels has been met with legal resistance in the City of Berkeley and State of New York.

A panel of the federal 9<sup>th</sup> Circuit Court ruled against the Berkeley, CA ordinance in response to a suit by the California Restaurant Association. The decision in this case does not directly impact us in the 7<sup>th</sup> Circuit but does create legal precedent that has the City of Evanston attorneys advising against similar approaches to Berkeley.

- Berkeley prohibited “natural gas infrastructure” in “newly constructed buildings”. The 9<sup>th</sup> Circuit ruled that the Berkeley ordinance was preempted by the federal Energy Policy and Conservation Act (EPCA). The restaurant association argued that EPCA prohibits state and local governments from passing laws “concerning the...energy use” of appliances covered under the Act. This was historically interpreted as prohibiting local efficiency standards in conflict with federal standards, but the 9<sup>th</sup> Circuit expanded the interpretation.
- Following denial of an appeal for review by the full court, the 9<sup>th</sup> Circuit amended their ruling to state that EPCA preempts “building codes” that “prohibit natural gas piping in new construction...from the point of delivery at the gas meter.” This more limited interpretation allows for electrification paths not identical to Berkeley. While the 9th Circuit ruling does not apply in Illinois, it is the only federal Circuit Court to have considered the issue and therefore its opinion may be persuasive to other jurisdictions, including the 7th.

#### *Moving Forward*

Other considerations in tandem with any building electrification approach:

- Illinois Stretch Code available for adoption June 30: Multiple pathways, either prescriptive or point system with points for heat pumps, efficient envelope, etc. Includes an optional appendix for all-electric residential construction with high legal risk.
- Building performance standards (BPS): New and existing buildings over 20,000 square feet must meet long term standards such as natural gas use.
- Legal risk evaluation: Seeking legal advice on multiple approaches, including Chicago's.



**APPENDIX A:** Samples of other cities' approaches to phasing out natural gas in new construction:

- Berkeley, CA banned natural gas “infrastructure” (piping) in new construction. This was struck down by the 9<sup>th</sup> Circuit. Santa Barbara, Contra Costa, and other California cities required new construction to be “all electric” and may also be affected by the court ruling.
- Oak Park’s ordinance states “Energy source for new buildings shall be all electric and not fossil fuel”, and also requires heat pumps and other energy saving technologies in new buildings.
- Ithaca, NY has a point-based system with points for measures such as heat pumps, equipment efficiency, LEED compliance, and efficient building envelopes.
- The Bay Area Air Quality Management District requires a zero NOx emission limit in new construction by 2027, which would effectively phase out natural gas. Chicago is considering emission limits on CO2, which would accomplish a similar outcome.
- Seattle has specified graduated progress toward net-zero emissions by 2045 or 2050.
- Legislation for many cities also includes requirements to include heat pumps, efficient building envelopes, EV charging, and solar-ready construction.
- Some cities offer multiple options for compliance, with choices for either prescriptive or performance-based approaches.