

A large yellow sun with a gradient from light yellow in the center to a darker yellow at the edges. Inside the sun, the text "virtual Summer Event series" is written in a mix of purple and blue fonts. Below the sun, the dates "July 8-16, 2021" are written in blue. The background is a dark blue sky with three stylized grey clouds.

virtual
Summer
Event series
July **8-16**, 2021

Energy, Environment and Natural Resources Federal Advocacy Committee

Summer Leadership
Virtual Meeting
July 12-16, 2021

Agenda: Energy, Environment and Natural Resources Federal Advocacy Committee

Summer Board and Leadership Meeting

Note: All times Eastern

Wednesday, July 14, 2021

1:30 p.m. – 2:30 p.m.	FEDERAL ADVOCACY GENERAL SESSION For the first time, the American Rescue Plan Act (ARPA) gives every city, town and village access to direct federal funds through the Coronavirus Local Fiscal Recovery Fund. This program offers city leaders an unprecedented opportunity to address their community needs that have arisen as a result of the pandemic. NLC and Polco are developing a tool to help municipalities assess these needs to best leverage the Fiscal Recovery Funds to effectively and efficiently improve the lives of their residents. During this session, Polco will demonstrate this tool, and city leaders will highlight their plans to address their own community needs.
3:00 p.m. – 4:30 p.m.	ENERGY, ENVIRONMENT AND NATURAL RESOURCES COMMITTEE MEETING
3:00 p.m. – 3:10 p.m.	WELCOME, INTRODUCTIONS AND MEETING OVERVIEW The Honorable Ellen Smith, Chair Councilmember, Oak Ridge, Tennessee Councilmember Smith will welcome the committee and provide an overview of the Committee agenda.
3:10 p.m. – 3:20 p.m.	FEDERAL ADVOCACY UPDATE AND POLICY REVIEW PROCESS OVERVIEW Carolyn Berndt Legislative Director for Sustainability, Federal Advocacy, National League of Cities Committee members will hear an update on NLC's Federal Action Agenda, as well as energy and environment issues before Congress and the Administration. Committee members go over the EENR policy and resolutions review process for 2021.

3:20 p.m. – 3:40 p.m.	SUSTAINABILITY PROGRAM UPDATE AND DISCUSSION • Cooper Martin Director, Sustainability and City Solutions, National League of Cities Committee members will hear an update on NLC’s sustainability programs, initiatives and research.
3:40 p.m. – 3:45 p.m.	<i>At 3:40 p.m. EENR Committee members will leave the EENR meeting and enter into the TIS meeting. A link will be provided.</i>
3:45 p.m. – 4:30 p.m.	JOINT MEETING – EENR and TIS: SUPPORTING EVs AND EV INFRASTRUCTURE IN COMMUNITIES • Congressional Perspective (5 min.) ○ The Honorable Paul D. Tonko, Congressman, U.S. House of Representatives (D-NY) • Panel Discussion (20 min.) ○ Jeff Hiott, Vice President, Imagination, Research, and Industry Benchmarking, Capital Metro, Austin, Texas ○ Peter Huether, Senior Research Analyst, Transportation Program, American Council for an Energy-Efficient Economy ○ Erika Myers, Global Senior Manager, Electric Vehicles, World Resources Institute ○ Kellen Schefter, Director, Electric Transportation, Edison Electric Institute • Audience Q&A (15 min.) In a joint committee meeting of EENR and TIS, committee members will learn and discuss how they can support equitable electric vehicle use and access in their community, how industry and other partners can support their efforts and project examples from communities across the country.
4:30 p.m.	NEXT STEPS AND ADJOURN • The Honorable David Sander, Ph.D, Chair, TIS Councilmember, Rancho Cordova, California • The Honorable Ellen Smith, Chair, EENR Councilmember, Oak Ridge, Tennessee

Enclosures:

- NLC Policy Development and Advocacy Process
- EENR Policy
- EENR Resolutions
- Energy and Environment Legal Update
- BLOG: “How Cities Can Ensure Equity for Siting Electric Vehicle Infrastructure”
- Energy, Environment and Natural Resources Committee Roster

Upcoming EENR Committee Meetings

Wednesday, July 21 at 3 p.m. eastern

Wednesday, July 28 at 3 p.m. eastern

September – TBD

October – TBD

Upcoming Events

NLC & DOE webinar:

Streamline Solar Permitting Using the No-cost SolarAPP+ Online Tool

July 28 at 2 p.m. eastern

[Register here](#)

Don't forget to register for [City Summit!](#)

Salt Lake City, Utah

November 18-20, 2021

NLC POLICY DEVELOPMENT AND ADVOCACY PROCESS

As a resource and advocate for more than 19,000 cities, towns and villages, the National League of Cities (NLC) brings municipal officials together to influence federal policy affecting local governments. NLC adopts positions on federal actions, programs and proposals that directly impact municipalities and formalizes those positions in the [National Municipal Policy \(NMP\)](#), which guides NLC's federal advocacy efforts.

NLC divides its advocacy efforts into seven subject areas:

- Community and Economic Development
- Energy, Environment and Natural Resources
- Finance, Administration and Intergovernmental Relations
- Human Development
- Information Technology and Communications
- Public Safety and Crime Prevention
- Transportation and Infrastructure Services

For each of the seven issue areas, a Federal Advocacy Committee advocates in support of NLC's federal policy positions. Members of each committee serve for one calendar year, and are appointed by the NLC President.

Federal Advocacy Committees

Federal Advocacy Committee members are responsible for advocating on legislative priorities, providing input on legislative priorities, and reviewing and approving policy proposals and resolutions. Additionally, Committee members engage in networking and sharing of best practices.

Federal Advocacy Committees are comprised of local elected and appointed city and town officials from NLC member cities. NLC members must apply annually for membership to a Federal Advocacy Committee. The NLC President makes appointments for chair, vice chairs, and general membership. In addition to leading the Federal Advocacy Committees, those appointed as committee chairs will also serve on NLC's Board of Directors during their leadership year.

At the Congressional City Conference, Federal Advocacy Committee members are called upon to advocate for NLC's legislative priorities on Capitol Hill, as well as develop the committee's agenda and work plan for the year. Committee members meet throughout the year to further the plan, hear from guest presenters, discuss advocacy strategies and develop specific policy amendments and resolutions. At the City Summit, committee members review and approve policy proposals and resolutions. These action items are then forwarded to NLC's Resolutions Committee and are considered at the Annual Business Meeting, also held during the City Summit.

Advocacy

Throughout the year, committee members participate in advocacy efforts to influence the federal decision-making process, focusing on actions concerning local governments and communities. During the Congressional City Conference, committee members have an opportunity, and are encouraged, to meet with their congressional representatives on Capitol Hill. When NLC members are involved in the legislative process and share their expertise and experiences with Congress, municipalities have a stronger national voice, affecting the outcomes of federal policy debates that impact cities and towns.

EENR POLICY

Section 2.00 Environmental Quality

D. Principles

2. Sustainability

NLC is committed to the concept of sustainability, that as a society we must find ways to meet the needs of the present population without compromising the ability of future generations to meet their needs. Adopting sustainable solutions offers the potential of multiple, significant benefits to individuals, communities and society, including economic prosperity, environmental protection, environmental justice, social well-being, public health and national security.

A wide array of issues should be viewed through the sustainability lens, including energy, water, transportation, land use and economic development, housing, and public health. *(See also the Community and Economic Development (CED) and Transportation Infrastructure and Services policy chapters.)*

NLC supports the Interagency Partnership for Sustainable Communities formed by the U.S. Department of Housing and Urban Development, the U.S. Department of Transportation, and the U.S. Environmental Protection Agency to coordinate housing, community development, transportation, energy, and environmental policies that will help local communities create better and more affordable places to live, work and raise families. NLC urges Congress to pass legislation to officially authorize the partnership and to continue funding.

From a municipal perspective, protecting and rebuilding existing communities are vital components of a national environmental protection program. Restoring and strengthening existing communities contributes toward ensuring a sustainable future. *(For more details on sustainable development, see CED Section 3.07 (C) (4) (c), Land Use, Promoting Sustainable Communities.)*

America's cities can benefit from the exchange of experiences and engagement with local governments in other countries, and must join in international cooperation and collaboration efforts to mount meaningful actions to achieve goals and reduce the impacts of climate change.

3. Environmental Justice

The impacts of pollution fall disproportionately on poor and minority Black, Indigenous and People of Color (BIPOC), communities, an issue of special concern to the nation's cities and towns. To mitigate these unacceptable impacts, the federal government should:

- Identify those areas with the largest concentrations of toxic chemicals in air, land, and water;
- Assess the human health in the areas of highest impact;
- Provide opportunities and resources that will allow them to participate in determining adverse health effects and economic impacts;
- Identify activities that have significant effects on human health and develop plans that will result in net reductions in pollution;

- Include environmental justice as an integral component of all federal planning, programs, and statutes; and
- Enhance opportunities for early public and local government participation, including access to accurate, objective information about the consequences of permit issuance; and
- Prioritize equitable easy access to nature and natural spaces.

NLC opposes any federal regulations that place restrictions on state and local government actions regulating private property or that require additional compensation beyond current interpretations of the Fifth Amendment of the U.S. Constitution.

2.02 Energy

A. Goals

NLC urges the federal government to work with local governments to develop and implement a sustainable energy policy that is reliable, equitable, environmentally responsible and evidence-based and that will:

- Continue to assess the future of our nation's energy requirements to ensure that our energy policy adequately addresses the future needs of the country;
- Promote the most efficient and affordable use of all energy sources while protecting the environment;
- Encourage the transition to a clean energy economy that increases the use of carbon neutral energy and promotes energy efficiency, with goals of 50 percent carbon neutral energy by 2030 and 100 percent by 2050;
- Protect the supply of energy by promoting the use of renewable energy sources ~~and alternative fuels~~, while ~~implementing measures~~ developing techniques to ~~reduce~~ minimize the environmental impact of ~~the use of conventional~~ fossil fuels;
- Protect our economic and national security by reducing our dependence on foreign oil and minimizing the environmental impact of the ~~encouraging environmentally responsible~~ domestic production of ~~conventional and renewable~~ energy sources;
- Ensure a national energy supply ~~which will~~ that decreases greenhouse gas emissions;
- Encourage conservation and increased energy efficiency across the country and sectors of the economy;
- Encourage the widespread use and deployment of both distributed energy sources and utility scale generation of renewable energy as a component of energy infrastructure to help communities withstand impacts from disruptions in regional supply systems; and
- Promote community resilience by strengthening and modernizing energy infrastructure to reduce vulnerability to disruptions and withstand the impacts of climate change; ~~and~~
- Support local economies with job training and workforce development as the nation transitions to clean energy; and
- Ensure that low-income households do not face unaffordable costs related to the transition away from fossil fuels.

B. Climate Change Mitigation

[no change]

C. Federal Policies

[no change]

D. Energy Efficiency

[no change]

E. ~~Renewable~~ Energy Sources

1. ~~Alternative and~~ Renewable Energy

Federal tax policies should promote the development and use of ~~alternative and~~ renewable energy. NLC supports long-term extensions of the investment tax credit and the production tax credit for renewable energy as an incentive for their development and deployment. NLC supports policies and financial mechanisms that lower the cost and eliminate financial, regulatory and market barriers to development, procurement and implementation of ~~alternative and~~ renewable energy sources by residential, commercial and municipal entities, as well as producers. The U.S. Department of Energy (DOE) should continue to offer grants to cities for the procurement of ~~these non-conventional~~renewable energy sources for use in municipal buildings.

To promote the use and development of renewable energy such as solar, wind, geothermal, biomass, tidal and hydro power, the federal government should:

- Increase funding for research and development to implement the use of renewable energy sources;
- Create a renewable portfolio standard that increases the share of electricity from renewable sources;
- Create standards for and evaluate the effectiveness of renewable energy products;
- Promote and support improvements to the electrical grid, including capabilities and incentives for smart metering, support for large scale distributed generation and storage capacity, and construction of long-distance renewable energy transmission capabilities; and
- Increase funding to research and develop innovative ~~alternative energy~~ technology for energy production, storage and transmission.

~~1. Demand Management~~

~~NLC urges the federal government to establish tax incentives promoting demand-side management of energy in such areas as distributed generation systems and electricity production to reduce base load demand.~~

~~2. Distributed Generation~~

~~The federal government should develop a comprehensive research and development program to improve storage capacity and affordability of distributed energy systems, as well as promote their implementation.~~

~~3. Renewable Energy Sources~~

a. Hydroelectric

The use of hydroelectric power should be done in a manner that minimizes environmental impact. The pricing of hydroelectric power generated at federal projects should be as low as

possible, while ensuring that all costs to the federal government are fully recovered including the cost of federal capital. The federal government should continue to own and operate the federal power marketing agencies and should not sell, transfer, exchange or otherwise dispose of them. NLC supports the protection of municipal utility purchases of hydroelectric power through federal contracts.

b. Solar

The federal government should support research programs to develop innovative and practical solar technology. Additionally, the federal government should promote financing mechanisms that stimulate and incentivize the adoption and installation of solar technologies for residential, commercial and municipal use.

c. Wind

The federal government should support research programs to develop wind technology for commercial and residential use, clarify regulations related to its implementation, and provide incentives to promote its use.

d. Additional Energy Sources

The federal government should support research and development and use of additional energy sources such as geothermal and bioenergy, including waste-to-energy and landfill gas recovery projects, that help meet goals of an efficient, economical, and environmentally responsible energy supply. NLC urges the federal government to support technical assistance and incentives for local- and regional-scale efforts to obtain “clean natural gas” from waste materials and biological feedstocks.

~~F. Conventional Energy Sources-~~

~~2. Fossil Fuels~~

~~NLC supports the transition away from fossil fuels as energy sources toward a clean energy economy that increases the use of carbon neutral energy and promotes energy efficiency. During this transition, the federal government must ensure that:~~

- ~~• Fossil fuel use minimally impacts the environment;~~
- ~~• Communities with a reliance on the fossil fuel industry are supported with job training and workforce development;~~
- ~~• Low-income households do not face unaffordable energy costs;~~
- ~~• Carbon capture technologies are deployed to minimize environmental impacts and harm and reduce greenhouse gas emissions; and~~
- ~~• No new leases for fossil fuel development on federal land are granted and that existing permits are phased out.~~

~~4.a. Coal~~

~~The use of clean coal technology (as defined by DOE standards) will help NLC supports maximum use of measures to decrease emissions from coal utilization while helping cities affected by such emissions to reach and maintain attainment of air quality standards. Therefore, NLC urges the federal government to:~~

- ~~• Expediently minimize environmental impacts and harm from use of coal as the nation transitions to renewable and sustainable energy; Support research programs to develop~~

the most efficient, environmentally responsible methods to extract, transport, and utilize coal for energy production;

- Streamline requirements for development and retention of leases for coal reserves on federal land in an environmentally responsible manner; Eliminate the practice of mountain top removal mining and prohibit disposal of spoils in watersheds to protect water quality and water sources; and
- Research the use and storage of coal byproducts, such as methane, as a future energy source; Provide appropriate guidance and standards for the safe management of coal combustion ash.
- Develop incentives for the use of clean coal technology and Best Available Control Technologies for new and existing plants; and
- Increase research and development for carbon capture and storage technology and fund large-scale integrated demonstration projects for carbon capture, transportation and storage that reduce emissions from existing coal plants.

2.b. Natural Gas

The federal government should encourage ensure the domestic production of natural gas occurs in a manner that minimizes environmental impacts and harm ~~environmentally responsible manner~~. Therefore, the federal government should:

- Research the use and storage of coal byproducts, such as methane, as a future energy source;
- Promote measures to avoid leakage and other accidental release of methane during production and transport of natural gas and support development of new technologies for leak detection;
- Ensure that water quality and water resources are protected;
- Require the disclosure of chemicals used in hydraulic fracturing; and
- Study the relationship of the oil and natural gas production and extraction process on drinking water resources and air quality, the impacts on land and aquatic ecosystems, seismic risks and public safety.

3.c. Nuclear

Nuclear power will be a necessary component of the carbon-neutral energy portfolio for the coming decades. The federal government should use its capacities and authorities to maximize the safety and minimize the adverse environmental effects and public costs of nuclear power production and the nuclear fuel cycle. The federal government should support and encourage the development and deployment of technical innovations and advanced technology that enhances safety and efficiency of nuclear power production and reduces the potential for misuse or diversion of nuclear materials. In the exploration of nuclear power options, the federal government should require the development of design and safety features that will maximize the safety of nuclear energy. The federal government should ensure that its improve existing licensing and regulatory procedures for new and existing nuclear power plants are appropriate for the potential hazards associated with their specific technologies and external conditions, including implications of climate change. In particular,

Additionally, Congress should strengthen the Nuclear Regulatory Commission's (NRC) protection of the public – and public confidence in the NRC – by prohibiting “revolving door”

employment between industry and the NRC. ~~Final siting approval of nuclear facilities should be a shared responsibility among federal, state and local governments, subject to appropriate federal environmental laws and regulations.~~

~~Federal agencies providing review of emergency preparedness, response and evacuation plans must include cities in the development and review of the plans. These plans should include a protocol for educating communities, particularly those who reside within the evacuation zone, on radioactivity and radiological hazards before an incident occurs. Federal funding should be available to local governments as first responders for emergency preparedness and response for nuclear events. (Specific policies for disaster preparedness and response are contained in Section 6.03 of the Public Safety and Crime Prevention chapter.)~~

4.d. Petroleum

~~While the nation continues to rely on petroleum as an energy source, the~~The federal government should ~~promote the~~ensure domestic production occurs in a manner that~~of domestic petroleum in an environmentally responsible manner. minimizes environmental impacts and harm.~~

~~In the event of a supply disruption, t~~There should be no action by the federal government that causes the depletion of the Strategic Petroleum Reserve simply to mitigate oil prices. The federal government should not reinstate price controls on domestically produced crude oil.

G.F. Electricity

1. Infrastructure

NLC supports federal incentives for all generators and transmission grid owners to create new infrastructure, consistent with current environmental regulations and laws. To ensure that the nation has an adequate and reliable national transmission grid, the federal government should coordinate with state and local governments. NLC opposes any attempts to preempt local authority in siting energy producing facilities or transmission grids.

2. Smart Grid

Smart grid technology will increase the capacity, quality and reliability of the electric power grid, increase the grid's energy and operational efficiencies, and enable significant increases in distributed renewable and stored energy. NLC supports federal programs that:

- Conduct research into smart grid technology and help promote its commercialization;
- Create standards for interoperability and security;
- Fund pilot programs to study techniques that reduce energy demand by giving customers more direct and automated control over their energy use, evaluate rate structures that more accurately reflect energy costs, and investigate the integration of renewable energy sources onto the local grid;
- Provide consumer education and workforce training; and
- Facilitate an accelerated implementation of smart grid technology across the distribution and transmission networks.

3. Demand Management

NLC urges the federal government to establish tax incentives promoting demand-side management of energy in such areas as distributed generation systems and electricity production to reduce base load demand.

4. Distributed Generation

The federal government should develop a comprehensive research and development program to improve storage capacity and affordability of distributed energy systems, as well as promote their implementation. The federal government should incentivize the buildout and deployment of microgrids, which can provide backup power during emergencies.

H.G. Transportation and Energy

NLC supports federal programs that:

- Reduce dependence on fossil fuels used for transportation, including through the support and promotion of transportation alternatives such as public transportation, multi-modal transportation systems and safe routes to schools;
- Increase funding for federal research and development of alternative sources of energy for transportation;
- Pursue a national distribution system for alternative fuels for transportation use;
- Encourage national standards for electric vehicle infrastructure to ensure compatibility with all brands of vehicles;
- Offer incentives for acquisition of zero-~~or low~~-emission vehicles, such as ~~natural gas or~~ electric vehicles. Incentives should be available for cities to purchase these vehicles for use in public transportation systems, ~~and~~ municipal fleets and school buses, and to public and private entities to install electric vehicle infrastructure;
- Minimize environmental harm associated with the extraction, processing, and disposal of metals used in electric vehicle batteries, and encourage development of alternatives; and
- Ensure that the air quality benefits of using zero and low emission vehicles are quantified and credited toward meeting national air quality goals.

NLC opposes a federally mandated phase-in of a fixed number of alternative fueled vehicles for fleets, in the absence of federal funding for this purpose. (*See also the Transportation Infrastructure and Services policy chapter*).

2.04 Solid and Hazardous Waste

A. Problem

Disposing of solid and hazardous wastes and conserving resources are two of the most challenging issues facing local governments.

Improper disposal of hazardous wastes, including nuclear and radioactive waste, and spills of chemicals, oils, and other hazardous substances, can endanger public health and pollute our nation's air, water and land resources.

B. Goals

Waste management must be addressed aggressively through source reduction, volume reduction and resource recovery. These actions must be compatible with protecting the environment.

C. Solid Waste Policies

Solid waste management is primarily a local ~~matter~~issue, but the nature and quantity of waste that must be managed is largely dictated by national and multinational decisions and trends. The federal government should support local programs by developing a national solid waste management policy that takes an integrated approach to best meet local needs.

1. Source Reduction

To help relieve local governments and tax-payers of the financial burden of product and packaging management and to reduce greenhouse gas emissions, the federal government should:

- Develop and implement policies that promote product stewardship and create incentives inducements for manufacturers and marketers to design and produce products and packaging created with less energy, materials and toxins;
- Support the creation of effective producer-led reduction, reuse and recycling programs to address a product's life cycle environmental impacts;
- Create incentives for local governments and producers to develop systems to collect, compost, reuse and recycle products;
- Promote material exchange and secondary markets;
- Support research and development on conversion technology, packaging materials, biodegradability and techniques to minimize solid waste, facilitate recycling and reuse, and provide safe and cost-effective methods to convert nonrecyclable wastes to energy;
- Support public participation and education programs to provide a better understanding of source reduction (reduce, reuse, recycle) and disposal options; and
- Promote the recycling of materials for federally-funded projects.

2. Electronic Waste

NLC supports federal efforts to educate the public on minimizing electronic waste and associated risks to health and the environment. NLC urges Congress to develop a system to maximize the reuse and responsible recycling of used electronics and create a viable financing mechanism.

Congress should investigate the use of appropriate incentives to:

- Design products that facilitate source reduction, reduce environmental impact, and encourage reuse, recycling, product take-back, and responsible reclamation of components;
- Ensure that used electronics are recycled in a sustainable manner, such as through an accredited third-party certification program;
- Promote green electronics as a source selection preference;
- Reduce toxicity by limiting the use of hazardous materials in electronics manufacture; and
- Increase recycled content and improve efficiencies in development and operation of electronic products.

NLC urges Congress and the Administration to ensure that all exported electronics are handled and disposed of safely in a manner that does not harm public health or the environment.

3. Recycling

To support municipal recycling initiatives, EPA should develop a clearinghouse to share best practices among cities on delivering efficient recycling programs and to create connections that foster collaboration between waste producers and users.

Congress should encourage development of long-term stable markets for recycled products, hard-to-recycle products (such as plastics) and non-recyclable products. In addition, federal funding should:

- Support research and development and pilot programs to assist local governments in demonstrating of new recycling techniques;
- Fund research and development for conversion technology for recycled materials, including products from tires and batteries; and
- Develop fair and appropriate tax incentives to target problematic waste streams from recycling processing centers.

4. Environmental Labeling

NLC supports the development of national ~~programs-guidance~~ to ensure that environmental labels for products and packaging, including labels regarding recyclability, biodegradability, flushability and suitability for composting or other processing, are based on a set of clear and verifiable definitions and standards that facilitate the safe and efficient processing of municipal solid waste and recycled goods and reduce costs to municipalities.

5. Plastics

Plastic waste is found in the planet's land and oceans, in our food streams and in animals and human bodies. Plastics in our environment do not biodegrade, nor are all plastics are recyclable. For these reasons, NLC supports federal efforts to:

- reduce plastic use, including incentives to reduce the use of single-serve plastics that are not recyclable;
- incentivize and support research and development to reuse plastic waste through extended producer responsibility or other programs; and
- increase plastic recycling through public education and outreach and clear and verifiable definitions and labeling.

6. Organic Material

NLC supports the diversion and reduction of compostable materials from landfills. NLC encourages development of reliable technical guidance to assist municipalities in establishing successful arrangements, including composting programs or other bioprocessing operations, that will convert organic waste materials into useful products or energy sources, rather than sending these materials to landfills.

Organic material, such as food waste, breaks down anaerobically and produces methane, which is a short-lived climate pollutant. Collected food waste can be composted into nutrient rich soil or renewable natural gas and lessen the impact on landfills and the environment.

Organic waste diversion and reduction are costly to implement. Barriers for organic waste collection are the requirements to sort into its own designated recycling bin with its own

collection, public education and outreach, and the lack of technology and infrastructure by solid waste providers to process and convert organic waste. Additional barriers are individual environmental approvals for recycling facilities, as well as the need for regional recycling sites.

To support the proliferation of organic material diversion and reduction from landfills, Congress should consider:

- Funding to support the procurement organic waste infrastructure, including technological advancements in organic waste processing;
- Support for environmental approvals to establish anaerobic recycling facilities;
- Funding for public education and outreach to support and comply with organic waste collection; and
- Incentives for waste haulers or processors.

A byproduct of organic waste collection is food waste prevention. Markets, restaurants, farmers, and institutions (hospitals and schools) contribute to the organic waste stream by disposing edible food products. Congress can incentivize unnecessary food waste by:

- Supporting the redistribution or donation of edible food sources to local charities, food pantries or homeless shelters;
- Supporting the redistribution of edible food sources to animal feed processors; and
- Creating tax incentives and liability protections for donations.

7. Medical Sharps and Pharmaceuticals-

NLC supports medical sharps and pharmaceutical collection in order to protect public health, the environment and water quality. Improper disposal of expired or unused pharmaceuticals and medical sharps, such as needles and syringes, can endanger municipal workers and the public, as well as impose a cost-burden on local governments.

Extended producer responsibility through pharmaceutical and drug take-back programs will help prevent pollution of waterways, drinking water and soil contamination. Although pharmacy chains are working with drug manufacturers to create greater resources for drug disposal, the federal government should continue to work with drug manufacturer and local communities on public education and outreach and to further develop and expand product stewardship and take-back programs.

Product stewardship and collection centers are also important in sharps disposal. Sharps have been comingled in regular and public trash cans (such restrooms, hotels) leading to injury and harm to children, maintenance workers, and others. Sharps could contaminate trash, recycling bins and landfills, which impacts sanitation workers, recycling workers and water treatment facilities. While hospitals and pharmaceutical chains have participated in collection programs, Congress can help support proper sharps disposal by:

- Funding public disposal and collection sites at both public and private facilities including entertainment venues, airports, restaurants, hotels, etc.;
- Working with sharps manufacturers and pharmaceutical companies to develop sharps product stewardship programs and distribution of biohazard containers;
- Creating convenient sharps disposal sites such as pharmacy chains, hospitals, etc.;

- Providing funding for public health organizations to develop disposal sites and distribution of biohazard containers; and
- Supporting public outreach and education.

8.5. Incinerator Ash

The federal government should designate incinerator ash as a “special” waste and establish appropriate testing and treatment requirements. NLC supports the beneficial reuse of non-toxic ash.

The federal government must provide that the term of permits for new incinerators is for an adequate duration with periodic monitoring to ensure compliance with permit conditions. The federal government should also provide resources for operators of municipal incinerators.

9.6. Landfills

New federal mandates that retroactively reclassify specific segments of waste, thus requiring new and more costly disposal methods and/or retrofitting of existing and closed disposal facilities, must be accompanied by financing to comply.

10.7. Interstate Transport of Municipal Solid Waste

Congress should authorize states that develop approvable, comprehensive solid waste management plans, which include long-term capacity assurance for disposal of waste generated in-state, to restrict out-of-state use of their facilities unless there is planned capacity for out-of-state wastes. Municipal or regional authorities within states with approved plans must have the right to accept or reject solid waste from out-of-state. Congress should also authorize the imposition of phased-in differential, i.e., higher, disposal fees which must be equal for out-of-state solid waste at facilities in states with approved plans.

Municipalities accepting out-of-jurisdiction waste must be authorized by Congress to impose their standards on the importing jurisdiction.

11.8. Backhauling

Congress should prohibit the hauling of solid and/or hazardous waste in vehicles used for transporting food.

D. Nuclear Waste Management Policies

1. Local Participation in Site Selection

Final siting approval of nuclear facilities should be a shared responsibility among federal, state and local governments, subject to appropriate federal environmental laws and regulations.

Federal policy related to nuclear and radioactive waste disposal should be amended to give local governments the authority to directly participate in selecting the site for permanent repositories for high-level nuclear and intermediate and low-level radioactive waste. The permanent disposal or storage of nuclear and radioactive waste, within any populated area, is completely unacceptable. Further, sufficient technical assistance funding from the Nuclear Waste Trust Fund should be provided to local governments to enable them to conduct technical studies of potential repository sites, to provide technical comments on federal siting-related documents, and to

194 monitor the site selection process. This should apply to sites identified on federal property or
195 reservations in close proximity to a municipal boundary.

1 Section 2.10 Security of Critical Infrastructure

3 C. Federal Policies

5 3. Nuclear Facilities Protection

6 NLC supports a federal regulatory system that protects nuclear facilities from direct attack or
7 extreme events, including natural or human-caused disasters. Federal agencies and/or state agencies
8 with delegated authority that provide review of emergency preparedness, response and
9 evacuation plans must include cities in the development and review of the plans. These plans
10 should include a protocol for educating communities, particularly those who reside within the
11 evacuation zone, on radioactivity and radiological hazards before an incident occurs. Federal
12 funding should be available to local governments as first responders for emergency
13 preparedness, training and response for nuclear events. (Specific policies for disaster
14 preparedness and response are contained in Section 6.03 of the Public Safety and Crime
15 Prevention chapter.)

16
17 NLC opposes any attempts by the federal government to federalize nuclear plant security teams or to
18 provide the Nuclear Regulatory Commission (NRC) with authority to summon any branch of the
19 military.

20
21 ~~NLC urges the federal government to increase funding available to local governments to train first-~~
22 ~~responders in the event of a nuclear emergency.~~

1 Section 2.11 Health-Focused Local Food Systems

2
3 NLC urges Congress and the Administration to:

- 4 • Support policies and programs that reduce the prevalence of obesity and improve the
5 overall health and wellness of those in our communities;
- 6 • Ensure that all people have access to healthy, affordable and locally grown food;
- 7 • Support efforts to establish, promote and expand local farmers markets and school
8 and community gardens;
- 9 • Provide incentives for local farms to sell fresh produce ~~at to~~ farmers markets and to
10 schools;
- 11 • Encourage farmland conservation and sustainable farming, such as using less water and
12 fertilizer and rotating crops, by providing incentives to small, local farms;
- 13 • Improve the quality of food in schools by supporting and promoting the purchase of
14 unprocessed and minimally processed, locally grown and locally raised agriculture
15 products, such as fresh fruits and vegetables, in schools;

- Expand and strengthen the Health Food Financing Initiative to meet the growing demand of healthy food access in underserved urban and rural communities;
- Maintain the Supplemental Nutrition Assistance Program as a federal grant program;
- Establish and maintain a national set of uniform, integrated food system metrics to help evaluate the effectiveness of existing programs and to plan innovative initiatives; and
- Enable an interagency partnership among the U.S. Environmental Protection Agency, U.S. Department of Health and Human Services, and U.S. Department of Agriculture to protect and improve human, animal, and environmental health as an integrated system, including food safety and production.

EENR RESOLUTIONS

NLC resolutions are annual statements of position that sunset at the end of the calendar year unless action is taken. The committee must review each of the 2021 resolutions that originated in the EENR Committee to determine recommendations for 2022. The committee has the following options:

1. Renew the resolution for the coming year (with or without edits)
2. Incorporate the resolution into permanent policy; or
3. Let the resolution expire.

The EENR resolutions that were approved for 2021 at the City Summit with NLC staff recommendations for 2022 are:

Resolution	NLC Staff Recommendation
NLC RESOLUTION #20: Supporting Local PACE Programs	Renew
NLC RESOLUTION #21: Supporting and Advancing Resilient Communities to Prepare for Changing Climate and Extreme Weather Events	Renew with edits
NLC RESOLUTION #22: Supporting Urgent Action to Reduce Carbon Emissions and Mitigate the Effects of Climate Change	Renew with edits
NLC RESOLUTION #23: Addressing Lead Contamination and Calling for Nationwide Federal Support for Water Infrastructure	Renew with edits
NLC RESOLUTION #24: Increase Federal Investment in Water Infrastructure	Renew with edits
NLC RESOLUTION #25: Support for Integrated Planning and New Affordability Consideration for Water	Renew with edits
NLC RESOLUTION #26: Calling on the Federal Government to Take Action to Address PFAS Contamination	Renew
NLC RESOLUTION #27: Improve the Benefit-Cost Analysis for Federally Funded Flood Control Projects	Renew
NLC RESOLUTION #28: Increase Funding for Border Water Infrastructure Projects	Renew
NLC RESOLUTION #29: Supporting Local Control of Water Infrastructure Projects	Renew

1 **NLC RESOLUTION #20**

2 **SUPPORTING LOCAL PACE PROGRAMS**

3 **[NLC STAFF RECOMMENDATION: Renew]**

4
5
6
7 **WHEREAS**, utility bills represent a major part of operating costs for home and business owners;
8 and
9

10 **WHEREAS**, the building sector accounts for 39 percent of the nation’s energy use, 72 percent
11 of its electricity use, one third of all global greenhouse gas emissions and represents the single
12 largest, most accessible opportunity for deep emission cuts in the United States; and
13

14 **WHEREAS**, investing in cost-effective energy efficiency and renewable energy improvements
15 to homes and businesses can save energy, cut utility bills up to \$140 billion per year, create
16 thousands of local jobs, reduce reliance on fossil fuels, and dramatically reduce greenhouse gas
17 emissions; and
18

19 **WHEREAS**, a 2013 study that found default risks are on average 32 percent lower in energy
20 efficient homes and recommends that the lower risks associated with energy efficiency should be
21 taken into consideration when underwriting mortgages;¹ and
22

23 **WHEREAS**, Property Assessed Clean Energy (PACE) financing programs are an innovative
24 local government solution to help property owners finance energy efficiency and renewable
25 energy improvements – such as energy efficient HVAC systems, upgraded insulation, new
26 windows, solar installations, etc. – to their homes and businesses; and
27

28 **WHEREAS**, PACE programs can also be used for other types of projects that provide public
29 and community benefits, such as improving community resilience to hurricanes and wildfires
30 and managing stormwater and tidal flooding; and
31

32 **WHEREAS**, the PACE program removes many of the barriers of energy efficiency and
33 renewable energy retrofits that otherwise exist for residential homeowners and businesses,
34 particularly the high upfront cost of making such an investment and the long-term ability to reap
35 the benefits of cost savings; and
36

37 **WHEREAS**, 37 states plus the District of Columbia have passed laws enabling local
38 governments to develop PACE programs; and
39

40 **WHEREAS**, locally-administered PACE programs are an exercise of the traditional authority of
41 local governments to utilize the tax code for public benefit; and
42

¹ *Home Energy Efficiency and Mortgage Risk*, UNC Center for Community Capital and Institute for Market Transformation, (March 2013), available at: <http://www.imt.org/resources/detail/home-energy-efficiency-and-mortgage-risks>

43 **WHEREAS**, PACE programs help local governments meet a core obligation to their citizens to
44 maintain housing stock and improve housing opportunities for all citizens; and
45

46 **WHEREAS**, the PACE program is an achievement of the intergovernmental partnership to
47 realize national policy goals, namely, reducing energy consumption, that will positively impact
48 the fiscal conditions of every level of government; and
49

50 **WHEREAS**, PACE holds the potential to unlock private capital and jumpstart economic growth
51 backed by the marketplace certainty of the federal government; and
52

53 **WHEREAS**, despite PACE’s great promise, in July 2010 the Federal Housing Finance Agency
54 (FHFA) and the Office of the Comptroller of the Currency issued statements that immediately
55 forced existing PACE residential programs to halt operations and froze the development of
56 dozens of other residential PACE programs nationwide; and
57

58 **WHEREAS**, despite the FHFA directive, many commercial and a few residential PACE
59 programs are operating or are in development in hundreds of municipalities across the country;
60 and
61

62 **WHEREAS**, in 2010 the U.S. Department of Energy dedicated \$150 million to assist in the
63 development of local PACE programs and in 2016 issued Best Practice Guidelines for
64 Residential PACE Financing Programs to help state and local governments develop and
65 implement programs and recommended protections that PACE programs should put in place for
66 consumers and lenders;² and
67

68 **WHEREAS**, in July 2016, the U.S. Department of Housing and Urban Development released
69 guidance allowing the Federal Housing Administration to insure mortgages on properties that
70 include PACE assessments,³ which has since been withdrawn; and
71

72 **WHEREAS**, in 2018, Congress passed the Economic Growth, Regulatory Relief, and Consumer
73 Protection Act banking reform bill that recognizes PACE as a tax assessment and directs the
74 Consumer Financial Protection Bureau (CFPB) to develop rules in consultation with state and
75 local governments that ensure consumers have the ability to pay their residential PACE financing
76 obligations.
77

78 **NOW, THEREFORE, BE IT RESOLVED** that locally-administered PACE programs
79 operating in accord with state and federal guidelines are a safe and sound investment of public
80 and private funds; and
81

² *Best Practice Guidelines for Residential PACE Financing Programs*, U.S. Department of Energy, (Nov. 18, 2016),
available at: <https://energy.gov/eere/slsc/downloads/updated-guidelines-residential-pace-financing-programs>

³ “FHA to Insure Mortgages on Certain Properties with PACE Assessments,” U.S. Department of Housing and
Urban Development, (July 19, 2016), available at:
https://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2016/HUDNo_16-110

82 **BE IT FURTHER RESOLVED** that locally-administered PACE programs represent an
83 essential contribution of local governments to reduce greenhouse gas emissions and promote
84 renewable energy; and
85

86 **BE IT FURTHER RESOLVED** that the National League of Cities (NLC) urges FHFA to work
87 with local governments seeking to establish PACE programs that benefit from the same senior
88 lien status of all other projects that are funded through municipal assessments that improve
89 private property and meet public policy objectives; and
90

91 **BE IT FURTHER RESOLVED** that NLC urges the CFPB to work with local governments to
92 adopt regulations that clearly reaffirms the right of state and local governments to exercise liens
93 or assess special taxes or other property obligations to protect and improve housing stock for the
94 public good, including energy efficiency improvements, and establishes underwriting standards
95 that are consistent with guidelines issued by the U.S. Department of Energy for PACE financing
96 programs or by implementing any other appropriate measure.

NLC RESOLUTION #21

SUPPORTING AND ADVANCING RESILIENT COMMUNITIES TO PREPARE FOR
CHANGING CLIMATE AND EXTREME WEATHER EVENTS

[NLC STAFF RECOMMENDATION: Renew with edits]

WHEREAS, across the country local governments are seeing the devastating effects associated with a changing climate and recent extreme weather events, such as heat waves, droughts, heavy downpours, floods, hurricanes, and changes in other storms have brought renewed attention to the need for cities to anticipate, prepare for and adapt to these events; and

WHEREAS, these challenges are larger than individual communities can address on their own, making it beneficial to coordinate regionally and across levels of government; and

WHEREAS, while all regions of the country are impacted by climate change, approximately one third of the U.S. population—more than 100 million people—live in coastal communities that are threatened by rising sea levels, which could impact economic development, land availability, property values, insurance rates, beaches and tourism, and critical water, transportation and energy infrastructure; and

WHEREAS, the ~~2014~~Fourth National Climate Assessment reports that current evidence of climate change appears in every region and impacts are currently visible in every state, and concludes that the evidence of human-induced climate change continues to strengthen;¹ and

WHEREAS, the effects of a changing climate are a national security issue with potential impacts to the U.S. Department of Defense (DoD) missions, operations plans and installations and the DoD must be able to adapt to current and future operations to address the impacts of a variety of threats and conditions, including those from weather and natural events²; and

WHEREAS, a report by the Intergovernmental Panel on Climate Change indicates that limiting global warming to 1.5° C is necessary to avoid the worst impacts of climate change;³ and

WHEREAS, climate change and extreme weather events can have severe impacts on local and regional infrastructure, economies, public safety, national security, public health, population migration, natural landscapes, water resources, and environmental quality; and

WHEREAS, the impacts of climate change and extreme weather events pose an especially pressing threat to persons with disabilities, economically disadvantaged households, the elderly, Black, Indigenous and People of Color (BIPOC), and other vulnerable populations; and

¹ National Climate Assessment (~~Volume I, 2017; Volume II, 2018~~May 2014), available at: <http://nca2014.globalchange.gov/> <https://nca2018.globalchange.gov/>

² Report on Effects of a Changing Climate to the Department of Defense, Office of the Under Secretary of Defense for Acquisition and Sustainment (Jan. 2019), available at: https://partner-mco-archive.s3.amazonaws.com/client_files/1547826612.pdf

³ “Special Report on Global Warming of 1.5°C,” Intergovernmental Panel on Climate Change, (Oct. 2018), available at: <https://www.ipcc.ch/sr15/>

41
42 **WHEREAS**, as local governments ~~grapple with the COVID-19 challenge~~ continue to recover
43 from the coronavirus pandemic, hurricanes, wildfires, floods and other disasters continue to
44 threaten communities across the U.S. and present new challenges for communities in protecting
45 residents, particularly those that are most affected and least able to prepare or respond; and

46
47 **WHEREAS**, the capability of maintaining energy availability is a critical first order priority in
48 maintaining critical infrastructure and building community resilience; and

49
50 **WHEREAS**, there is currently insufficient information, technical coordination or financial
51 assessment of the costs and mechanisms to rapidly retrofit and redesign local energy systems to
52 enable them to be more resilient to a range of potential disruptive events, such as extreme
53 weather, terrorism, and energy price escalation; and

54
55 **WHEREAS**, the United States has seen 265290 separate billion-dollar-plus disasters since 1980,
56 including 14 in 20198 and 1422 in 20192020, with a cumulative cost exceeding \$1.97 trillion
57 (CPI-adjusted) and a total death toll of 14,223492;⁴ and

58
59 **WHEREAS**, in 2005 Hurricane Katrina led to 1,833 deaths and more than \$167.5 billion (CPI-
60 adjusted) in losses, and a subsequent \$120 billion in supplemental disaster assistance and in 2012
61 Hurricane Sandy led to 159 deaths and more than \$73.5 billion in damages (CPI-adjusted), and a
62 subsequent \$60.4 billion in supplemental disaster assistance;⁵ and

63
64 **WHEREAS**, in 2017 three Category 4 hurricanes made landfall in the U.S. totaling more than
65 \$275 billion (CPI-adjusted) in damages and a death toll of 3,167, including 2,981 from Hurricane
66 Maria, which made landfall in Puerto Rico;⁶ and

67
68 **WHEREAS**, in 2019 historic flooding hit the Midwest and southern plains significantly
69 affecting agriculture, roads, bridges, levees, dams and other infrastructure, assets and industries,
70 resulting in 12 deaths and \$20.3 billion (CPI-adjusted) in economic costs;⁷ and

71
72 **WHEREAS**, 2020 sets the new annual record of 22 billion-dollar-plus weather or climate events
73 - shattering the previous annual record of 16 events that occurred in 2011 and 2017, and is the
74 sixth consecutive year (2015-2020) in which 10 or more billion-dollar weather and climate
75 disaster events have impacted the United States;⁸ and

76

⁴ National Climate Data Center, National Oceanic and Atmospheric Administration, *available at:*
<https://www.ncdc.noaa.gov/billions/events/US/1980-2019><https://www.ncdc.noaa.gov/billions/events/US/1980-2020>

⁵ National Climate Data Center, National Oceanic and Atmospheric Administration, *available at:*
<https://www.ncdc.noaa.gov/billions/events/US/1980-2018>

⁶ National Climate Data Center, National Oceanic and Atmospheric Administration, *available at:*
<https://www.ncdc.noaa.gov/billions/events/US/1980-2018>

⁷ National Climate Data Center, National Oceanic and Atmospheric Administration, *available at:*
<https://www.ncdc.noaa.gov/billions/events/US/2019>

⁸ “Billion-Dollar Weather and Climate Disasters: Overview,” National Climate Data Center, National Oceanic and Atmospheric Administration, available at: <https://www.ncdc.noaa.gov/billions/overview>

77 **WHEREAS**, rising temperatures are lengthening the wildfire season, causing more radical fire
78 behavior and increasing wildfire risks throughout the Western United States due to earlier snow
79 melts and forests that are drier longer,⁹ the costs of putting out wildfires has increased
80 dramatically, from \$5~~7150~~ million in 1985 to over \$~~2.23~~ billion in 20~~2018~~¹⁰ (20~~2018~~ dollars¹¹),
81 and the economic losses associated with wildfire continues to grow, with the 2018 western
82 wildfires costing over \$24.5 billion (CPI-adjusted);¹² and the 2020 western wildfires, the most
83 active fire season on record, costing over \$16.6 billion (CPI-adjusted);¹³ and

84
85 **WHEREAS**, Congress approved over \$6~~20~~ billion in disaster relief in FY~~2018 and FY19~~; ¹⁴ and

86
87 **WHEREAS**, 20~~1920~~ was the second warmest year on record behind 2016 (warmest), followed
88 by 2019 (third warmest), 2015 (~~third~~fourth warmest), 2017 (~~fourth~~fifth warmest) and 2018
89 (~~fifth~~sixth warmest);¹⁵ and

90
91 **WHEREAS**, as extreme weather events become more common, local governments in all
92 geographic and climatic regions require resources to assist them in anticipating, preparing for
93 and adapting to these events; and

94
95 **WHEREAS**, a preparedness response fund would provide financial assistance to accelerate the
96 development of adaptive success models and provide a far-reaching damage prevention initiative
97 that would help reduce the ultimate financial pressure on the federal government; and

98
99 **WHEREAS**, local governments are first responders—preparing in advance of emergency
100 situations, offering immediate assistance to those impacted, and identifying strategies, solutions,
101 and partnerships to address situations quickly and efficiently; and

102
103 **WHEREAS**, firefighters and other local essential personnel, who risk their lives responding to
104 natural disasters and extreme weather events, are put at even greater risk of contracting
105 coronavirus as they respond to emergency situations; and

106

⁹ Infographic: Western Wildfires and Climate Change, Union of Concerned Scientists, *available at:*
http://www.ucsusa.org/global_warming/science_and_impacts/impacts/infographic-wildfires-climate-change.html

¹⁰ Federal Firefighting Costs (Suppression Only), National Interagency Fire Center, *available at:*
[https://www.nifc.gov/fire-information/statistics/suppression-](https://www.nifc.gov/fire-information/statistics/suppression-costs)
[costshttps://www.nifc.gov/fireInfo/fireInfo_documents/SuppCosts.pdf](https://www.nifc.gov/fireInfo/fireInfo_documents/SuppCosts.pdf)

¹¹ CPI Inflation Calculator, Bureau of Labor Statistics, U.S. Department of Labor, *available at:*
http://www.bls.gov/data/inflation_calculator.htm

¹² “Assessing the U.S. Climate in 2018,” National Centers for Environmental Information, National Oceanic and
Atmospheric Administration, *available at:* <https://www.ncei.noaa.gov/news/national-climate-201812>

¹³ “Billion-Dollar Weather and Climate Disasters: Overview,” National Climate Data Center, National Oceanic and
Atmospheric Administration, *available at:* <https://www.ncdc.noaa.gov/billions/overview>

¹⁴ The Disaster Relief Fund: Overview and Issues, Congressional Research Service, (Nov. 13, 2020), *available at:*
<https://fas.org/sgp/crs/homsec/R45484.pdf>[https://ersreports.congress.gov/product/pdf/R/R45484/2-and-](https://ersreports.congress.gov/product/pdf/R/R45484/2-and-https://ersreports.congress.gov/product/pdf/R/R45484-)
<https://ersreports.congress.gov/product/pdf/R/R45484->

¹⁵ National Oceanic and Atmospheric Administration (Jan. 14⁵, 2021⁰), *available at:*
[https://www.noaa.gov/news/2020-was-earth-s-2nd-hottest-year-just-behind-](https://www.noaa.gov/news/2020-was-earth-s-2nd-hottest-year-just-behind-2016)
[2016https://www.noaa.gov/news/2019-was-2nd-hottest-year-on-record-for-earth-say-noaa-nasa](https://www.noaa.gov/news/2019-was-2nd-hottest-year-on-record-for-earth-say-noaa-nasa)

WHEREAS, taking action now to adapt to a changing environment and create community resilience will help save lives, strengthen local economies, save taxpayer dollars and build preparedness for future events; and

WHEREAS, in 2014 the President’s Task Force on Climate Preparedness and Resilience, comprised of state, local and tribal leaders, including representatives from the National League of Cities (NLC) made recommendations to the President on ways the federal government can assist local efforts to address and prepare for the impacts of climate change.

NOW, THEREFORE, BE IT RESOLVED that NLC calls on Congress and the Administration to partner with local governments and to support local action on climate change adaptation and resilience; and

BE IT FURTHER RESOLVED that NLC urges Congress and the Administration to take urgent action to help states and local governments conduct vulnerability assessments, develop and implement long-term mitigation, adaptation and resiliency action plans, and identify innovative financing opportunities to implement these assessments and plans in order to prepare, plan for and more quickly recover from extreme weather events; and

BE IT FURTHER RESOLVED that NLC calls on Congress and the Administration to recognize the unique risks and opportunities communities face and to offer customized tools and incentives to local governments to encourage communities to plan for and rapidly respond to the effects of climate change and extreme weather; and

BE IT FURTHER RESOLVED that NLC urges the federal government to develop a national strategy to assist communities in integrating the risks of climate change and extreme weather events into emergency management planning and responses to identify and quantify the economic value of regional infrastructure at risk under different scenarios; and

BE IT FURTHER RESOLVED that NLC urges the federal government to work with state and local governments, the insurance industry, and other stakeholders to develop an incentive-based disaster insurance and mitigation system that would encourage property owners to retrofit existing structures to reduce future losses from natural disasters; and

BE IT FURTHER RESOLVED that returning to the status quo is not sufficient in meeting the challenges of climate change and inequities in our society; and

BE IT FURTHER RESOLVED that NLC calls on the federal government to outline strategies and actions to reduce the vulnerability of federal programs to the impacts of climate change and extreme weather; and

BE IT FURTHER RESOLVED that NLC calls on the federal government to better align federal funding with local preparedness and resilience-building efforts; and

BE IT FURTHER RESOLVED that NLC calls on Congress to fully fund grant programs that help local governments prepare, respond and recover from climate change and extreme weather

events and establish a preparedness and response fund to support local governments that are at the forefront of developing adaptive solutions; and

BE IT FURTHER RESOLVED that NLC urges the federal government to develop grant and technical assistance programs to enable communities to develop community energy transition plans that ensure the capability of cities to maintain critical energy and infrastructure during disruptions to local, regional or national energy infrastructure; and

BE IT FURTHER RESOLVED that NLC urges the federal government to develop a national pilot project initiative to conduct detailed assessments and designs for resilient city energy system retrofit and redesign across a range of different regions and city sizes; and

BE IT FURTHER RESOLVED that federal investments in communities must prioritize those communities that have been left behind and BIPOC communities, which have been disproportionately impacted by the effects of climate change and COVID-19.

NLC RESOLUTION #22

SUPPORTING URGENT ACTION TO REDUCE CARBON EMISSIONS AND
MITIGATE THE EFFECTS OF CLIMATE CHANGE

[NLC STAFF RECOMMENDATION: Renew with edits]

WHEREAS, climate change mitigation is a global problem that demands a global solution; and

WHEREAS, the ~~2014~~Fourth National Climate Assessment reports that current evidence of climate change appears in every region and impacts are currently visible in every state, and concludes that the evidence of human-induced climate change continues to strengthen;¹ and

WHEREAS, a report by the Intergovernmental Panel on Climate Change indicates that limiting global warming to 1.5° C is necessary to avoid the worst impacts of climate change;² and

WHEREAS, extreme heat will have more serious health consequences on people living in low-income communities, communities of color, and tribal communities, and people in these communities have been disproportionately impacted by coronavirus and high rates of underlying health conditions, both of which can be exacerbated by extreme heat; and

WHEREAS, according to the American Lung Association’s 2021~~10~~ State of the Air report, more than 406 percent or 13550 million people live in counties with unhealthy air, which is especially concerning as research shows that people with long-term exposure to air pollution are more likely to die from COVID-19³; and

WHEREAS, while some impacts of climate change are inevitable, sharp reductions in greenhouse gas emissions will reduce the severity of the impacts and limit the rate of climate change; and

~~WHEREAS, the U.S. Environmental Protection Agency’s (EPA) 2015 Clean Power Plan set state-specific carbon emissions reductions goals that would have reduced carbon emissions from coal and natural gas fired power plants by 32 percent below 2005 levels by 2030; and~~

~~WHEREAS, EPA repealed the Clean Power Plan and replaced it with the Affordable Clean Energy Rule, which establishes emission guidelines for states to use when developing plans to limit carbon dioxide at their coal-fired power plants; and~~

¹ National Climate Assessment (Volume I, 2017; Volume II, 2018), available at: <https://nca2018.globalchange.gov/National-Climate-Assessment> (May 2014), available at: <http://nca2014.globalchange.gov/>

² “Special Report on Global Warming of 1.5°C,” Intergovernmental Panel on Climate Change, (Oct. 2018), available at: <https://www.ipcc.ch/sr15/>

³ “State of the Air,” American Lung Association (2021), available at: <https://www.lung.org/research/sota/key-findings>

WHEREAS, in order to meet the carbon emissions reductions goals necessary to help mitigate the effects of climate change on communities, improving energy efficiency, increasing energy conservation and deploying renewable energy systems will be essential at the local, state and federal levels; and

WHEREAS, improving energy efficiency, increasing energy conservation and deploying renewable energy systems will save taxpayer dollars, boost the national and local economy, enhance national security, increase our nation's energy independence, and improve environmental quality; and

WHEREAS, technology exists and continues to be developed that will help families, businesses and communities reduce energy use, but without standards to encourage adoption of new technology, many of these technology options will be unavailable or unaffordable; and

WHEREAS, the transportation sector generates the largest share of greenhouse gas emissions, ~~over 298~~ percent of 201~~98~~ greenhouse gas emissions, in the United States;⁴ and

WHEREAS, buildings account for nearly 40 percent of the nation's energy consumption⁵ and more than 70 percent of its electricity use,⁶ and electricity production represents the second largest share of greenhouse gas emissions, ~~nearly 257~~ percent of 201~~98~~ greenhouse gas emissions, in the United States;⁷ and

WHEREAS, indoor and outdoor lighting account for ~~86~~ percent of electricity consumed in the nation,⁸ and rapid conversion to efficient lighting would result in significant greenhouse gas reductions as well as a decrease in base load energy needs; and

WHEREAS, communities large and small nationwide are laboratories of innovation and are taking action on climate mitigation, including adopting greenhouse gas reduction goals, successfully pioneering and demonstrating cost-effective clean energy solutions, and pursuing local strategies that create jobs, save energy and taxpayer dollars, and promote renewable sources; and

WHEREAS, the Energy Efficiency and Conservation Block Grant (EECBG) helped local governments undertake projects to reduce energy use, diversify energy supplies and improve air quality and the environment; and

WHEREAS, all levels of government must work to become more resilient by achieving greater energy independence based on a multi-pronged strategy of aggressively expanding renewable

⁴ Sources of Greenhouse Gas Emissions, U.S. Environmental Protection Agency, *available at*: <https://www.epa.gov/ghgemissions/sources-greenhouse-gas-emissions>

⁵ U.S. Energy Information Administration, *available at*: <http://www.eia.gov/tools/faqs/faq.cfm?id=86&t=1>

⁶ Environmental and Energy Study Institute, Buildings and Climate Change, *available at*: <http://www.eesi.org/files/climate.pdf>

⁷ Sources of Greenhouse Gas Emissions, U.S. Environmental Protection Agency, *available at*: <https://www.epa.gov/ghgemissions/sources-greenhouse-gas-emissions>

⁸ FAQ: How much electricity is used for lighting in the United States, U.S. Energy Information Administration, *available at*: <https://www.eia.gov/tools/faqs/faq.php?id=99&t=3>

energy, significantly increasing energy efficiency portfolio standards, and creating new financing mechanisms; and

WHEREAS, in 2014 the President’s Task Force on Climate Preparedness and Resilience, comprised of state, local and tribal leaders, including representatives from the National League of Cities (NLC), made recommendations to the President on ways the federal government can assist local efforts to address and prepare for the impacts of climate change; and

~~**WHEREAS**, 77 percent of millennial voters, ages 18-35, believe that the U.S. should try to stop or slow climate change.⁹~~

NOW, THEREFORE, BE IT RESOLVED that NLC calls on Congress and the Administration to partner with local governments, to support local action on climate change mitigation, and to provide essential tools, research, technology development, data, and funding, as well as workforce development, job training and community assistance, to help local governments achieve their greenhouse gas reduction targets and transition to a clean energy economy; and

BE IT FURTHER RESOLVED that NLC urges Congress and the Administration to take urgent action to reduce carbon emissions across a broad sector of the economy and become carbon neutral to mitigate the effects of climate change and hold warming to 1.5°C; and

BE IT FURTHER RESOLVED that NLC ~~opposed efforts to repeal the Clean Power Plan and~~ supports the U.S.’s reengagement in the Paris Climate Agreement; and

BE IT FURTHER RESOLVED that NLC ~~opposes~~supports efforts to ~~lower~~increase the CAFE standards or fuel efficiency for all types of vehicles; and

BE IT FURTHER RESOLVED that NLC calls on Congress to pass energy efficiency and conservation legislation to incentivize energy efficiency improvements in residential and commercial buildings, schools and federal buildings located in communities; and

BE IT FURTHER RESOLVED that NLC calls on Congress to pass a national renewable portfolio standard that increases the use of carbon neutral energy and promotes energy efficiency, with the goal of 50 percent carbon neutral energy by 2030 and 100 percent by 2050; and

BE IT FURTHER RESOLVED that NLC calls on Congress to pass a long-term extension of the investment tax credit and the production tax credit for renewable energy as an incentive for their development and deployment; and

BE IT FURTHER RESOLVED that NLC calls on Congress to reauthorize and fully fund the EECBG or other funding structure at the U.S. Department of Energy to further incentivize clean energy at the local level; and

⁹ Poll, Alliance for Market Solutions, (March 5, 2018), available at: <https://allianceformarketsolutions.org/public-opinion/>

121 **BE IT FURTHER RESOLVED** that federal investments in communities must prioritize those
122 communities that have been left behind and Black, Indigenous and People of Color (BIPOC)
123 who have been disproportionately impacted by the effects of climate change and COVID-19.

1 NLC RESOLUTION #23

2
3 ADDRESSING LEAD CONTAMINATION AND CALLING FOR NATIONWIDE
4 FEDERAL SUPPORT FOR WATER INFRASTRUCTURE

5
6 [NLC STAFF RECOMMENDATION: Renew with edits]
7

8 WHEREAS, access to clean drinking water is fundamental to the health and well-being of
9 America's communities and families; and

10
11 WHEREAS, Flint, Michigan, and Sebring, Ohio, are two recent examples of cities where high
12 levels of lead have been found in the city's drinking water; and

13
14 WHEREAS, in the early 2000s, the District of Columbia experienced a similar crisis, as have
15 many other cities; and

16
17 WHEREAS, lead has negative and long-term neurological effects, particularly in infants and
18 children; and

19
20 WHEREAS, in Flint, the elevated blood lead level was discovered in children after the city's
21 water source was switched to the Flint River by the state-appointed emergency manager, a
22 decision made without coordination or consultation with local officials; and

23
24 WHEREAS, a contributing factor to the Flint, Michigan, drinking water crisis was the city's
25 aging infrastructure and the lack of investment in infrastructure and the community; and

26
27 WHEREAS, incidents like these can undermine citizens' confidence in the safety and quality of
28 the drinking water supply and water infrastructure of every community; and

29
30 WHEREAS, in January 2016, President Obama signed an emergency declaration in the State of
31 Michigan, ordering federal aid to supplement state and local response efforts due to the
32 emergency conditions caused by lead-contaminated water; and

33
34 WHEREAS, corrosion control and testing are essential to preventing lead leaching and alerting
35 the public to potential dangers; and

36
37 WHEREAS, recent analysis by the National Resources Defense Council found that over 5,300
38 water systems nationwide have elevated levels of lead¹ and a recent analysis by the American
39 Water Works Association estimates 6.1 million lead service lines remain in U.S. communities, at
40 an estimated \$30 billion to replace;² and

41

¹ "What's in your Water? Flint and Beyond," National Resource Defense Council (June 2016), available at:
<https://www.nrdc.org/sites/default/files/whats-in-your-water-flint-beyond-report.pdf>

² "National Survey of Lead Service Line Occurrence," American Water Works Association (March 10, 2016),
available at: <http://www.awwa.org/resources-tools/public-affairs/press-room/press-release/articleid/4074/lead-service-line-analysis-examines-scope-of-challenge.aspx>

42 **WHEREAS**, there is a need to invest in our aging water infrastructure nationwide and a failure
43 to do so can have negative public health consequences; and
44

45 **WHEREAS**, the U.S. Environmental Protection Agency (EPA) estimates the nation’s water
46 infrastructure capital needs over the next 20 years to be approximately \$743 billion in total,³ the
47 American Society for Civil Engineers estimates ~~the needed investment for water infrastructure to~~
48 ~~be \$1.3 trillion over the next 20–25 years; that over the next 20 years, the cumulative water and~~
49 ~~wastewater capital investment need will soar to \$3.27 trillion and the cumulative capital~~
50 ~~investment gap will total \$2.2 trillion,~~⁴ and other estimates put the cost at more than \$4 trillion to
51 maintain and build a 21st century water system.
52

53 **NOW, THEREFORE, BE IT RESOLVED** that local planning and infrastructure decisions,
54 including those related to clean drinking water, should not be preempted and should be made by
55 locally elected leaders in coordination with state and federal officials; and
56

57 **BE IT FURTHER RESOLVED** that the National League of Cities (NLC) calls on Congress to
58 provide direct assistance to the City of Flint, Michigan, and for EPA and the federal government
59 to work directly with local officials, for as long as necessary, to resolve the drinking water crisis
60 through the provision of safe drinking water and to support economic recovery; and
61

62 **BE IT FURTHER RESOLVED** that NLC calls on Congress and the Administration to provide
63 long-term support for the families affected by lead drinking water contamination in Flint and
64 nationwide, including in the areas of education and mental health; and
65

66 **BE IT FURTHER RESOLVED** that NLC calls on Congress and the Administration to support
67 robust funding for all water infrastructure funding mechanisms, including the Clean Water and
68 Drinking Water State Revolving Loan Fund programs and the Water Infrastructure Finance and
69 Innovation Act (WIFIA); and
70

71 **BE IT FURTHER RESOLVED** that NLC calls on Congress and the Administration to support
72 other mechanisms of infrastructure funding, including protecting the tax-exempt status of
73 municipal bonds and reinstating the tax exemption for advance refunding bonds; and
74

75 **BE IT FURTHER RESOLVED** that NLC calls on Congress and the Administration to support
76 grants to local governments, as well as school systems and daycare centers, for the replacement
77 of lead service lines, testing, planning, corrosion control, and public education campaigns, and to
78 assist small and disadvantaged communities in complying with the Safe Drinking Water Act.

³ “Clean Watershed Needs Survey,” U.S. Environmental Protection Agency, (Jan. 2016), *available at:*
<https://www.epa.gov/cwns> and “Drinking Water Needs Survey,” U.S. Environmental Protection Agency, (March
2018), *available at:* [https://www.epa.gov/dwsrf/epas-6th-drinking-water-infrastructure-needs-survey-and-](https://www.epa.gov/dwsrf/epas-6th-drinking-water-infrastructure-needs-survey-and-assessment)
[assessment](https://www.epa.gov/dwsrf/epas-6th-drinking-water-infrastructure-needs-survey-and-assessment)

⁴ ~~“2017 Infrastructure Report Card,” American Society of Civil Engineers (March 2017), *available at:*~~
~~<https://www.infrastructurereportcard.org/>~~ “The Economic Benefits of Investing in Water Infrastructure,” Value of
Water Campaign and American Society of Civil Engineers (Nov. 2020), *available at:*
http://www.uswateralliance.org/sites/uswateralliance.org/files/publications/The%20Economic%20Benefits%20of%20Investing%20in%20Water%20Infrastructure_final.pdf

NLC RESOLUTION #24

INCREASE FEDERAL INVESTMENT IN WATER INFRASTRUCTURE

[NLC STAFF RECOMMENDATION: Renew with edits]

WHEREAS, the nation’s water infrastructure systems, both built and natural, are significant assets that protect public health and the nation’s water resources and well-maintained systems are essential to our citizens’ general welfare and the nation’s prosperity; and

WHEREAS, with much of our nation’s physical water infrastructure built in the post-World War II period—and some of it more than 100 years old—there are an estimated 240,000 water main breaks each year;¹ and

WHEREAS, cities and towns nationwide are finding that decentralized water solutions such as water use efficiency measures and green stormwater installations can effectively and affordably serve many of the same functions as conventional water infrastructure and can supplement and extend their existing centralized systems;² and

WHEREAS, federal loan and grant assistance to cities and local governments to assist in maintaining and upgrading water infrastructure systems has continued to decline in real dollars over the past decades³; and

WHEREAS, local governments are responsible for the vast majority of investment in water and sewer infrastructure, investing over \$1.7 trillion between 1956-2010⁴ (not adjusted for inflation) and over **\$130 billion in 2018** alone;⁵ and

WHEREAS, tax-exempt municipal bonds are the primary funding mechanism for state and local government infrastructure projects with three-quarters of the total United States investment in infrastructure being accomplished with tax-exempt financing; and

WHEREAS, an economic analysis by the American Society of Civil Engineers shows a water-related infrastructure investment gap of \$434 billion over 10 years for drinking water, wastewater, and stormwater combined~~an estimated \$271 billion is needed to meet current and future demands over the next 20 years for upgrading the nation’s wastewater infrastructure and~~

¹ 2019 *Infrastructure Report Card*, American Society of Civil Engineers, available at: <https://www.infrastructurereportcard.org/cat-item/drinking-water/>

² Koehler, Cynthia and Caroline Koch, *Public Water Utilities Deploy 21st Century Water Infrastructure to Build a Resilient Future* (2019), available at: <https://tapin.waternow.org/resources/innovation-in-action-21st-century-water-infrastructure-solutions/>

³ *Federal Investment, 1962-2018*, Congressional Budget Office (June 2019), available at: https://www.cbo.gov/system/files/2019-06/55375-Federal_Investment.pdf

⁴ Anderson, Richard F., *Growth in Local Government Spending on Public Water and Wastewater – But How Much Progress Can American Households Afford?* The U.S. Conference of Mayors (April. 2013), available at: http://www.circleofblue.org/wp-content/uploads/2013/06/USMayors_Growth-in-Local-Government-Spending-on-Water-and-Wastewater.pdf

⁵ *2018 Annual Surveys of State and Local Government Finances*, U.S. Census Bureau (October, 2020), available at: <https://www.census.gov/programs-surveys/gov-finances.html>

~~an estimated \$1 trillion is necessary to maintain and expand service to meeting drinking water demands over the next 25 years;~~⁶ and

WHEREAS, this funding gap does not include anticipated expenditures to comply with new Clean Water Act and Safe Drinking Water Act mandates, consent decrees, new responsibilities and costs relating to water security and source water protection, additional needs for re-use of treated effluent, or impacts due to climate change; and

WHEREAS, municipal resources dedicated to water infrastructure are currently overwhelmingly directed to comply with new complex federal mandates and are therefore unavailable for critical maintenance, repair, and rehabilitation needs; and

WHEREAS, public-private partnerships can provide options for communities to access sources of private capital to meet water infrastructure needs, but are not a viable for all communities or all types of projects; and

WHEREAS, private activity bonds or tax-exempt facility bonds are a form of tax-exempt financing that can be used for water infrastructure projects that utilize private capital instead of public debt and shift the risk and long-term obligation from the municipality to the private equity partner; and

WHEREAS, Congress provides to states a capped annual allocation (“volume cap”) of tax-exempt bonds, based on population, but historically, most of the tax-exempt bonds are issued to short-term projects such as housing and education loans; and

WHEREAS, Congress has previously enacted legislation eliminating the state volume cap for such municipal infrastructure projects such as airports, landfills, and ports; and

WHEREAS, eliminating the state volume cap is estimated to make available \$5-6 billion in private capital for water projects, while the cost in foregone revenue to the federal government is nominal.⁷

NOW, THEREFORE, BE IT RESOLVED that the National League of Cities (NLC) continues to urge Congress and the Administration to reverse the decline in federal financial participation in funding municipal water infrastructure needs by developing a financial option that strikes the right balance between local responsibility and federal assistance; and

BE IT FURTHER RESOLVED that NLC calls on Congress and the Administration to support robust funding for water infrastructure ~~funding~~ financing through the Clean Water and Drinking Water State Revolving Loan Fund programs and to reauthorize the programs; and

⁶ 2019 ~~7~~ *Infrastructure Report Card*, American Society of Civil Engineers, available at: <http://www.infrastructurereportcard.org/>

⁷ Testimony of Stephen L. Johnson, Administrator, U.S. Environmental Protection Agency, before the Senate Appropriations Committee, March 4, 2008.

77 **BE IT FURTHER RESOLVED** that Congress should provide full appropriation to the Water
78 Infrastructure Finance and Innovation Act (WIFIA) for loans and loan guarantees for water
79 infrastructure projects; and
80

81 **BE IT FURTHER RESOLVED** that Congress should provide funding to local governments
82 through grant programs such as for sewer overflow and stormwater management, lead pipe
83 replacement, water infrastructure resilience/sustainability to protect and reduce risk to extreme
84 weather events, new/emerging technologies for cybersecurity improvements and water
85 efficiency, workforce development in the water sector, and other programs; and
86

87 **BE IT FURTHER RESOLVED** that Congress should exempt from federal taxation rebates
88 issued to consumers by local governments to pay for consumer-installed decentralized water
89 infrastructure that benefits their communities; and
90

91 **BE IT FURTHER RESOLVED** that NLC supports legislation removing the federal volume
92 cap on tax-exempt bonds for water and wastewater infrastructure projects; and
93

94 **BE IT FURTHER RESOLVED** that NLC calls on Congress and the Administration to support
95 other mechanisms of infrastructure ~~funding and~~ financing, including protecting the tax-exempt
96 status of municipal bonds and reinstating the tax exemption for advance refunding bonds; and
97

98 **BE IT FURTHER RESOLVED** that Congress and the Administration should enact new
99 legislation which provides adequate and reliable long-term funding for municipal water
100 infrastructure needs to help close the funding gap.

NLC RESOLUTION #25

SUPPORT FOR INTEGRATED PLANNING AND NEW AFFORDABILITY
CONSIDERATION FOR WATER

[NLC STAFF RECOMMENDATION: Renew with edits]

WHEREAS, in 2012 the U.S. Environmental Protection Agency (EPA) issued its *Integrated Municipal Stormwater and Wastewater Planning Approach Framework* (“Integrated Planning Framework”), which was intended to help local governments seek more efficient and affordable solutions to stormwater and wastewater issues and meet the requirements of the Clean Water Act (CWA) in a more flexible, affordable, and cost-effective manner; and

WHEREAS, in 2014 EPA issued its *Financial Capability Assessment Framework for Municipal Clean Water Act Requirements* (“Financial Capability Framework”), which allows the consideration of additional information, such as socio-economic factors, in determining the financial capability of residents and a community when developing compliance schedules for municipal projects necessary to meet CWA obligations; and

WHEREAS, these two policy frameworks demonstrate an awareness by EPA of the challenges local governments face in meeting CWA requirements, as well as the conflicts they face in balancing environmental protection with economic feasibility; and

WHEREAS, at a time where local financial resources are increasingly limited and the ability of local governments to raise revenue is also limited, local governments are facing costly unfunded federal and state regulatory requirements forcing them to make tough decisions about the services and maintenance that they can afford; and

WHEREAS, proposed federal budget cuts to critical local programs would further reduce the ability of cities and towns to meet the everyday needs of their community; and

WHEREAS, local water and sewer rates and stormwater fees are rapidly becoming unaffordable for many fixed- and low-income citizens, placing a disproportionate financial burden on these vulnerable populations who live at or below the poverty level; and

WHEREAS, the current reliance on two percent of median household income for wastewater and combined sewer overflows controls is a misleading indicator of a community’s ability to pay, and often places a particularly high burden on residents at the lower end of the economic scale; and

WHEREAS, green infrastructure, such as constructed swales, wetlands, green roofs, infiltration planters, rain gardens, cisterns, and enhanced floodplains and riparian buffers, augmented by permeable pavers, rain barrels, and trees, is a valuable part of water infrastructure systems and provides a multitude of community benefits such as helping local governments manage runoff, extending the life of local infrastructure, saving the city and taxpayers money, providing outdoor

recreation opportunities through parks and green spaces and promoting the joint use of city and school facilities, and serve as an economic development tool; and

WHEREAS, National Pollutant Discharge Elimination System (NPDES) permits are increasingly stringent, the treatment technologies and approaches necessary to meet permit limits have become exceedingly expensive and time-intensive to implement, and project construction timelines for clean water infrastructure projects can extend more than a decade.

NOW, THEREFORE, BE IT RESOLVED that the National League of Cities (NLC) calls on EPA to work with local governments to develop local integrated plans through the permit process to comprehensively and collectively manage wastewater and stormwater needs, prioritize investments in wet weather overflows and flooding, incorporate green infrastructure components, and to ease the burden of unfunded mandates; and

BE IT FURTHER RESOLVED that NLC calls on EPA to share integrated planning best management practices, including those that take a regional watershed approach, from across the country with all communities that are interested in pursuing an integrated planning approach; and

BE IT FURTHER RESOLVED that NLC calls on Congress to modernize the NPDES permitting process to approve legislation to allow states with delegated authority to administer the NPDES permitting program to issue permits of up to ten years; and

BE IT FURTHER RESOLVED that NLC calls on EPA to work with local governments to revise the “Combined Sewer Overflows—Guidance for Financial Capability Assessment and Schedule Development” (Feb. 1997) to eliminate reliance on median household income as the critical metric for determining investment level and to allow for the consideration of additional information, such as socio-economic factors, consistent with the Agency’s 2014 Financial Capability Framework; and

BE IT FURTHER RESOLVED that NLC calls on the federal government to explore options for ~~addressing affordability and providing~~ ratepayer assistance, such as ~~through~~ a consumer assistance program modeled on the Low Income Home Energy Assistance Program.

NLC RESOLUTION #26

CALLING ON THE FEDERAL GOVERNMENT TO TAKE ACTION TO ADDRESS
PFAS CONTAMINATION

[NLC STAFF RECOMMENDATION: Renew]

WHEREAS, Per- and polyfluoroalkyl substances (PFAS) are a class of nearly 5,000 man-made chemicals that includes PFOA, PFOS, PFBS and GenX manufactured and used in a variety of industries; and

WHEREAS, PFAS chemicals are known as “forever” chemicals because they are persistent in the environment and in the human body; and

WHEREAS, PFAS chemicals have been known to cause adverse health outcomes in humans including effects on prenatal development, low infant birth weights, early onset of puberty, negative effect on the immune system, cancer, liver damage, and thyroid disruption¹; and

WHEREAS, while science predicts that the entire class of PFAS chemical may be associated with adverse health effects and many such chemicals are in industrial and commercial use, only a small fraction of these chemicals have been investigated sufficiently to establish quantitative measures of toxicity; and

WHEREAS, in 2016 the U.S. Environmental Protection Agency (EPA) established a lifetime exposure health advisory level of 70 parts per trillion for the combined concentration of PFOA and PFOS in drinking water;² and

WHEREAS, in 2018 the U.S. Department of Health and Human Services Agency for Toxic Substances and Disease Registry released a draft report warning that PFAS chemicals could pose a health risk at levels lower than currently recommended by the EPA;³ and

WHEREAS, in 2019 EPA announced a comprehensive nationwide action plan for addressing PFAS, including identifying both short-term solutions for addressing these chemicals and long-term strategies that will help states, tribes and local communities provide clean and safe drinking water to residents and address PFAS at the source – before it gets into the water;⁴ and

¹ Fact Sheet: PFOA & PFOS Drinking Water Health Advisories, U.S. Environmental Protection Agency (Nov. 2016); *available at*: https://www.epa.gov/sites/production/files/2016-06/documents/drinkingwaterhealthadvisories_pfoa_pfes_updated_5.31.16.pdf

² *Ibid*

³ Toxicological Profile for Perfluoroalkyls, Draft for Public Comment, U.S. Department of Health and Human Services, Agency for Toxic Substances and Disease Registry (June 2018); *available at*: <https://www.atsdr.cdc.gov/toxprofiles/tp200.pdf>

⁴ EPA’s Per- and Polyfluoroalkyl Substances (PFAS) Action Plan, U.S. Environmental Protection Agency (Feb. 2019); *available at*: https://www.epa.gov/sites/production/files/2019-02/documents/pfas_action_plan_021319_508compliant_1.pdf

37 **WHEREAS**, in February 2020 EPA issued a proposed regulatory determination to regulate
38 PFOS and PFOA, the first step in the regulatory process of setting a Maximum Contaminant
39 Level under the Safe Drinking Water Act; and

41 **WHEREAS**, there are significant technical challenges in detecting and measuring PFAS in
42 water and other environmental media at the levels where health effects can occur, and analytical
43 methodologies are still under development or are not yet generally available; and

45 **WHEREAS**, the Environmental Working Group and the Social Science Environmental Health
46 Research Institute at Northeastern University updated an interactive map of known
47 contamination of communities from PFAS; and

49 **WHEREAS**, as of March 2019, the interactive map shows at least 610 locations in 43 states are
50 known to be contaminated, including drinking water systems serving an estimated 19 million
51 people;⁵ and

53 **WHEREAS**, in February 2019, EPA and United States Geological Survey scientists published
54 results on analysis for 17 PFAS compounds in water samples from 25 public drinking water
55 supplies in 24 states (locations confidential) that detected PFAS in every sample tested,
56 suggesting that PFAS is ubiquitous in our water;⁶ and

58 **WHEREAS**, PFAS chemicals were widely used in firefighting foams, particularly for airports,
59 and were used in frequent training exercises at military air bases; and

61 **WHEREAS**, PFAS chemicals were required in firefighting foams used at airports to meet
62 federal performance standards for extinguishing agents, but currently the Federal Aviation
63 Administration is updating its standards to allow for a non-fluorinated option for airports; and

65 **WHEREAS**, the U.S. Department of Defense has ended its use of the foam in training exercises;
66 and

68 **WHEREAS**, PFAS contamination is found at and around military bases, airports, manufacturing
69 sites, landfills, and in local water supplies obtained from both rivers and groundwater; and

71 **WHEREAS**, local governments are responsible for protecting the health, safety and welfare of
72 residents, including providing clean and safe water; and

74 **WHEREAS**, while treatment technology for removing PFAS from water is not well-developed,
75 the more effective methods use technologies that are not conventionally available in existing
76 water treatment plants, so removing these PFAS chemicals from water could require costly
77 investments by local governments and other local water suppliers, which would be passed onto
78 ratepayers; and

⁵ EWG: *PFAS Chemicals Must be Regulated as a Class, Not One by One* (May 6, 2019), available at:
<https://www.ewg.org/release/mapping-pfas-contamination-crisis-new-data-show-610-sites-43-states>

⁶ “Per- and polyfluoroalkyl substances in source and treated drinking waters of the United States,” *Science of the Total Environment*, Volume 653 (February 25, 2019), pages 359-369, available at:
<https://www.sciencedirect.com/science/article/pii/S004896971834141X>

79
80 **WHEREAS**, local governments are owners and operators of airports and landfills and employ
81 firefighters, some of whom may have been exposed to PFAS chemicals on the job through
82 inhalation or skin absorption, and therefore present a pension and liability concern for local
83 budgets; and

84
85 **WHEREAS**, PFAS contamination not only poses health risks, but also economic impacts on
86 communities, including in the agriculture and fishing industries by contamination of food
87 sources; and

88
89 **WHEREAS**, a number of states have adopted PFAS policies pertaining to prohibiting use,
90 monitoring and reporting, cleanup, health studies, testing, liability provisions, and contamination
91 limits, including Michigan, New Jersey and Vermont that have set maximum contamination
92 levels lower than EPA health advisory levels;⁷ and

93
94 **WHEREAS**, a number of bills have been introduced in both the U.S. House of Representatives
95 and U.S. Senate to survey, regulate, mitigate and phaseout the use of PFAS.

96
97 **NOW, THEREFORE, BE IT RESOLVED** that the National League of Cities (NLC) calls on
98 Congress and the Administration to holistically examine PFAS contamination and to take
99 comprehensive action to address the problem, including through nationwide testing, monitoring,
100 mapping, public education, and water supply treatment; and

101
102 **BE IT FURTHER RESOLVED** that NLC calls on the federal government to ensure that the
103 parties responsible for PFAS contamination, including the federal government but excluding
104 local governments, are held fully liable for costs of cleanup and mitigation and to ensure that
105 sites are cleaned up in a timely manner and to standards sufficiently stringent to permit reuse of
106 the site and to obviate the need for additional cleanup and mitigation costs by affected local
107 governments; and

108
109 **BE IT FURTHER RESOLVED** that local governments, including municipal airports and fire
110 departments, were required by federal law to use firefighting foam containing PFAS chemicals,
111 and therefore should not be held liable for PFAS contamination or cleanup costs; and

112
113 **BE IT FURTHER RESOLVED** that local governments, including drinking water and
114 wastewater utilities and municipal landfills, serve as receivers of PFAS chemicals and did not
115 cause or contribute to contamination, and therefore should not be held liable for PFAS
116 contamination or cleanup costs; and

117
118 **BE IT FURTHER RESOLVED**, that NLC calls on the federal government to accelerate
119 research and technology development to advance the science needed to understand the health
120 consequences of exposure to PFAS chemicals, detect and measure PFAS chemicals in water and
121 other environmental media, treat water supplies to remove these substances, and find safe
122 substitutes for PFAS chemicals; and

123

⁷ States Forge Ahead with PFAS Regulations, PoliticoPro Datapoint on Energy (Feb. 28, 2019)

BE IT FURTHER RESOLVED, that NLC calls on the federal government to set drinking water standards, including for PFAS chemicals, based on sound science, public health protection, occurrence of the contaminant in drinking water supplies at levels of public health concern, risk reduction and cost; and

BE IT FURTHER RESOLVED that NLC calls for the federal government to avoid passing costs onto local ratepayers and to provide financial and technical assistance to communities for testing, monitoring, mapping, public education, water supply treatment, and pursuit of alternative water supplies if necessary; and

BE IT FURTHER RESOLVED that NLC calls on the federal government to prevent further exposure to PFAS through multiple means, including promoting and funding the development and use of firefighting alternatives and the phasing out the use of PFAS; and

BE IT FURTHER RESOLVED that the federal government should thoroughly study and test alternative PFAS and other long-chain chemicals before they are put into circulation to make sure they are safe; and

BE IT FURTHER RESOLVED that NLC should update the “Assessing the State Firefighter Cancer Presumption Laws and Current Cancer Firefighter Cancer Research” that it conducted in 2009 to determine what linkages there are between firefighting and an elevated incidence of cancer.

1 **NLC RESOLUTION #27**

2
3 **IMPROVE THE BENEFIT-COST ANALYSIS FOR FEDERALLY FUNDED FLOOD**
4 **CONTROL PROJECTS**

5
6 **[NLC STAFF RECOMMENDATION: Renew]**
7

8 **WHEREAS**, the U.S. Army Corps of Engineers (Army Corps) at the U.S. Department of
9 Defense is the primary federal agency associated with the design and construction of flood
10 protection systems in communities across the country; and
11

12 **WHEREAS**, the White House Office of Management and Budget (OMB) works with the Army
13 Corps to determine what water resources projects are funded with the budget allocation for the
14 Army Corps enacted by Congress each year; and
15

16 **WHEREAS**, the Army Corps and OMB rely heavily on a benefit-cost analysis to determine
17 which projects receive federal funding each year; and
18

19 **WHEREAS**, since Congress traditionally provides the Army Corps with far fewer resources
20 than are necessary to fund the significant backlog of projects under their jurisdiction, the benefit-
21 cost analysis has become a de facto filter for the Army Corps and OMB; and
22

23 **WHEREAS**, as a result, projects that have a benefit-cost ratio below a certain level are often not
24 considered for funding at all; and
25

26 **WHEREAS**, the current system for determining benefit-cost ratios at the U.S. Army Corps of
27 Engineers does not adequately consider replacement of structures in low-income, low-cost of
28 living communities; and
29

30 **WHEREAS**, the current system for determining benefit-cost ratios at the U.S. Army Corps of
31 Engineers does not adequately consider the impacts of the loss of a community's livelihood
32 associated with agricultural land; and
33

34 **WHEREAS**, the current system for determining benefit-cost ratio at the U.S. Army Corps of
35 Engineers does not include the value of federal lands.
36

37 **NOW, THEREFORE, BE IT RESOLVED** that the National League of Cities (NLC) calls on
38 the U.S. Army Corps of Engineers and the White House Office of Management and Budget to
39 add a quantitative indexed value to life and safety to determine the benefit of federal investments
40 in flood control projects; and
41

42 **BE IT FURTHER RESOLVED** that NLC calls on the Army Corps and OMB to add a
43 quantitative indexed value to agricultural land value and the impacts of crop flooding to
44 determine the benefit of federal investments in flood control projects; and
45

46 **BE IT FURTHER RESOLVED** that NLC calls on the Army Corps and OMB to add a
47 quantitative indexed value to protection of low-income communities and environmental benefits
48 to determine the benefit of federal investments in flood control projects; and

49 **BE IT FURTHER RESOLVED** that NLC calls on the Army Corps and OMB to add a
50 quantitative indexed value to potential benefits of projects on federal properties, as well as
51 benefits to military readiness when developing coastal storm protection projects in the adjacent
52 community.

NLC RESOLUTION #28

INCREASE FUNDING FOR BORDER WATER INFRASTRUCTURE PROJECTS

[NLC STAFF RECOMMENDATION: Renew]

WHEREAS, international transboundary rivers on the southern border of the United States are a major source of sewage, trash, chemicals, heavy metals and toxins; and

WHEREAS, transboundary flows threaten the health of 18 million residents in the United States and Mexico, harm important estuarine land and water of international significance, force closure of beaches, damage farmland, compromise border security, and directly affect U.S. military readiness; and

WHEREAS, a significant amount of untreated sewage, sediment, hazardous chemicals and trash have entered United States waters, via the Tijuana and New Rivers in southern California, the Santa Cruz and San Pedro Rivers in Arizona and the Rio Grande in Texas, eventually draining into coastal waterways, waterbodies and inland waters, such as the Salton Sea; and

WHEREAS, the presence of pollution on state and federal public lands is creating unsafe conditions for visitors and residents—these lands are taxpayer supported and intended to be managed for recreation, resource conservation and the enjoyment by the public, and

WHEREAS, the current insufficient and degrading infrastructure in the border zone poses a significant risk to the public health and safety of residents and the environment on both sides of the border, and places the economic stress on cities that are struggling to mitigate the negative impacts of pollution; and

WHEREAS, the 1944 treaty between the United States and Mexico regarding *Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande* allocates flows on transborder rivers between Mexico and the United States, and provides that the nations, through their respective sections of the International Boundary Water Commission shall give control of sanitation in cross border flows the highest priority; and

WHEREAS, in 1993, the United States and Mexico entered into the *Agreement Between the Government of the United States of America and the Government of the United Mexican States Concerning the Establishment of a North American Development Bank* which created the North American Development Bank (NADB) to certify and fund environmental infrastructure projects in border-area communities; and

WHEREAS, on November 30, 2018 the United States, Mexico and Canada entered into the *Agreement Between The United States of America, The United Mexican States, And Canada* to replace the *North American Free Trade Agreement*, and on December 10, 2019 the United States, Mexico and Canada agreed to a protocol of amendment to the U.S.-Mexico-Canada Agreement (USMCA), which became effective in the United States on January 29, 2020; and

WHEREAS, the implementing language of USMCA authorizes and allocates funding for grants under the U.S.-Mexico Border Water Infrastructure Program (BWIP), the Trade Enforcement Trust Fund and recapitalization of the NADB; and

WHEREAS, the funding package included \$300 million to be available to address the problem of toxic sewage flowing from the Tijuana River watershed; and

WHEREAS, the increase in commerce and traffic across the border has resulted in economic benefits for both the U.S. and Mexico; and

WHEREAS, the ease of trade and commerce has resulted in increased vehicle and factory emissions, which negatively impact the water quality, land quality and air quality of the areas along the southern border; and

WHEREAS, border communities need modernized and innovative water infrastructure to provide clean and sanitary drinking water to improve the quality of living and support the expanding communities; and

WHEREAS, the adverse environmental impact will worsen existing environmental issues and the strain on aging infrastructure, while also creating new environmental issues in the future; and

WHEREAS, the widespread threat to public health and safety, damage to fish and wildlife resources and degradation to the environment caused by transboundary pollution in the border states requires urgent action by the federal and state governments; and

WHEREAS, Congress authorized funding under the Safe Drinking Water Act and established the State and Tribal Assistance Grants (STAG) program for the U.S.-Mexico Border Water Infrastructure Program in 1996 to provide grants for high-priority water, wastewater, and stormwater infrastructure projects within 100 kilometers of the southern border; and

WHEREAS, the EPA administers the STAG and BWIP, and coordinates with the NADB to allocate BWIP grant funds to projects in the border zone; and

WHEREAS, since its inception, the BWIP has provided funding for projects in California, Arizona, New Mexico and Texas that would not have been constructed without the grant program; and

WHEREAS, the BWIP program was initially funded at \$100 million per year, but, over the last 20 years, the program has been significantly reduced to \$15 million in FY19 and \$25 million in FY20; and

WHEREAS, in its FY 2021 Budget Request, the Administration proposed to eliminate the BWIP program and recommends that state revolving funds be used as a source of infrastructure funding; and

WHEREAS, officials from EPA Region 6 and 9 identified a multitude of BWIP-eligible projects along the southern border totaling over \$300 million; and

WHEREAS, Mexico has identified multiple projects totaling hundreds of millions of dollars that would benefit from BWIP funding; and

98 **WHEREAS**, without federal partnership through the BWIP and state support to address
99 pollution, cities that are impacted by transboundary sewage and toxic waste flows are left with
100 limited resources to address a critical pollution and public health issue and limited legal remedies
101 to address the problem; and
102

103 **WHEREAS**, Mexico benefits from the bi-national funding program and relies on the North
104 American Development Bank to assist in funding projects on the Mexico side of the border,
105 which have an immediate and long-term environmental impact along the border in the U.S. due
106 to the upstream, transboundary flows of the major rivers; and
107

108 **WHEREAS**, local governments and the public support the State's primary objectives in
109 complying with environmental laws including the Clean Water Act and Endangered Species Act,
110 and their state law analogues, and are supported by substantial public investments at all levels of
111 government to maintain a healthy and sustainable environment for the future.
112

113 **NOW, THEREFORE, BE IT RESOLVED** that the National League of Cities urges the
114 Federal government to continue to fund the Border Water Infrastructure Program, and to
115 recommit to working bi-nationally to develop and implement long-term solutions to address
116 serious water quality and contamination issues, such as discharges of untreated sewage and
117 polluted sediment and trash-laden transboundary flows originating from Mexico, that result in
118 significant health, environmental, and safety concerns of affected communities.

ENERGY AND ENVIRONMENT LEGAL UPDATE

NOTE: At issue in cases 1-6 below is whether cities and counties may bring state common law claims seeking damages or compensation for climate change impacts. Given the long history of local government reliance on public nuisance and other state common law claims to address widespread social problems affecting the public health and welfare, it is imperative that the courts recognize the viability of this type of claim. Local governments everywhere have an interest in affirming the principles of federalism underlying state common law.

Cities and counties across the United States have brought lawsuits against major oil and gas companies claiming they knew for decades their products caused climate change but denied or downplayed the threat. These lawsuits have been brought under state common law (including public and private nuisance, trespass, negligence, design defect and failure to warn). The suits seek damages or compensation for current and future costs associated with climate change.

Lawsuits have been filed in California (eight separate lawsuits), Colorado, Delaware, Hawaii, New Jersey, New York, Rhode Island, Washington and Washington, DC. There are at least 15 similar cases being litigated at various stages, of which NLC is participating in six. The circuit courts have ruled on five cases, with the local government position upheld in all.

The lower courts all consider the following two cases: In *American Electric Power v. Connecticut* (2011) the Supreme Court held a federal common law public nuisance lawsuit seeking an injunction against power companies to reduce greenhouse gas emissions (GHGs), brought by cities and states, was displaced by the Clean Air Act, which delegates authority to regulate GHGs to the U.S. Environmental Protection Agency (EPA). In *Native Village of Kivalina v. ExxonMobil* (2012) the Ninth Circuit held that a federal common law public nuisance lawsuit seeking damages for climate change brought by a Native village in Alaska was also displaced by the Clean Air Act. (Displacement of federal common law by a federal statute is, in essence, the same as preemption of state common law by a federal statute.)

1. Mayor and City Council of Baltimore v. BP et al. – U.S. Supreme Court

Update since Congressional City Conference: *In June, the U.S. Supreme Court held that a federal court of appeals may review any grounds the district court considered for trying to remove a case to federal court where one of the grounds was federal officer or civil rights removal.*

On June 10, 2019, the U.S. District Court for Maryland granted the City of Baltimore's motion to remand to Maryland state court the City's case against fossil fuel companies for climate change-related damages. In a lengthy and comprehensive opinion, the judge rejected each of defendants' "proverbial 'laundry list' of grounds for removal." The court held that the City's public nuisance claim was not governed by federal common law, and that its claims did not necessarily raise substantial and disputed federal issues and were not completely preempted. The court also held that there was no federal enclave jurisdiction, no jurisdiction under the Outer Continental Shelf Lands Act, no federal officer removal jurisdiction, and no bankruptcy

removal jurisdiction. The decision follows a similar order granting remand in the San Mateo County appeal currently pending in the Ninth Circuit.

Federal law allows defendants to “remove” a case brought in state court into federal court if the federal court has jurisdiction over the case. BP claims that the federal court has jurisdiction to hear this case on eight grounds, including the federal officer removal statute. This statute allows federal courts to hear cases involving a private defendant who can show that it “acted under” a federal officer, has a “colorable federal defense,” and that the “charged conduct was carried out for [or] in relation to the asserted official authority.”

A federal district court rejected all eight grounds BP alleged supported removing this case to federal court. The federal district court remanded the case back to Maryland state court.

28 U.S.C. §1447(d) generally disallows federal courts of appeals to review federal district court orders remanding a case back to state court which was removed to federal court. The statute creates an exception for “an order remanding a case to the State court for which it was removed pursuant to” the federal officer removal statute or the civil-rights removal statute (not at issue in this case).

BP asked the Fourth Circuit to review all eight of its grounds for removing the case to federal court because one of the grounds it alleged--federal officer removal--is an exception allowing federal appellate court review.

The Fourth Circuit refused to review all eight grounds. It cited to a Fourth Circuit case decided in 1976, *Noel v. McCain*, holding that “when a case is removed on several grounds, appellate courts lack jurisdiction to review any ground other than the one specifically exempted from §1447(d)’s bar on review.” BP argued that a 1996 Supreme Court case and the Removal Clarification Act of 2011 “effectively abrogated” the 4th Circuit decision. The Fourth Circuit disagreed but acknowledged other courts have reached different conclusions.

NLC filed an [amicus brief](#) in this case in the Fourth Circuit. Oral arguments were held in December 2019. In March, the Fourth Circuit upheld the district court’s ruling to remand the case to state court, consistent with NLC’s amicus brief. Later in March, the defendants filed a certiorari petition in the U.S. Supreme Court.

On July 31, 2019, the judge denied defendants’ motion for a stay pending appeal of her remand order. The 4th Circuit declined to stay the district court’s remand of the case to state court pending the appeal. This then caused the defendants to ask the district court to extend its stay of the remand, pending a petition for an emergency stay to the U.S. Supreme Court. The district court agreed, but also gave plaintiffs the opportunity to move to rescind the stay. The petition for an emergency stay was denied by the U.S. Supreme Court in October. The only precedent for anything like this would be the Supreme Court’s stay of the Clean Power Plan.

In Oct. 2020, the U.S. Supreme Court decided to take up the case. The Court will decide whether a federal appellate court may review all the grounds upon which a defendant claims its case should not be sent back to state court when only one of the grounds the defendant alleges

is specifically listed in federal statute as a basis for federal appellate court review. The U.S. Supreme Court heard oral argument in this case in January 2021. The State and Local Legal Center filed a [brief](#) in the case, with NLC participating.

2. *City of New York v. BP et al.* – Second Circuit

Update since Congressional City Conference: *In April, the Second Circuit affirmed dismissal of the case, largely on preemption grounds that federal common law displaced the City’s state-law public nuisance, private nuisance and trespass claims. It is unknown if the City is interested in continuing the case.*

In the case [NYC v. BP et al. the district court ruled that cities and counties may not bring state common law claims and dismissed the lawsuit. The district court](#) relied on the above two cases to conclude that, first, a federal common law public nuisance claim for climate change does exist and, second, that as a result of the existence of a federal nuisance claim cities and counties cannot bring state common law claims for damages for climate change. (The lower courts also relied on separation of powers principles to hold that the courts should not consider any federal claims.) NLC filed an [amicus brief](#) in the case. Oral argument was held in November 2019. The Second Circuit held the case until after the U.S. Supreme Court decided the Baltimore Case.

3. *City of Oakland v. BP et al.* – Ninth Circuit

Update since Congressional City Conference: *On June 14, the U.S. Supreme Court denied cert. The case will go back to the lower court to act on the original motion to remand the case to state court.*

In the case [City of Oakland v BP et al. the district court ruled that cities and counties may not bring state common law claims and dismissed the lawsuit. Similar to New York City case, in this case, the district court](#) concluded that, first, a federal common law public nuisance claim for climate change does exist and, second, that as a result of the existence of a federal nuisance claim cities and counties cannot bring state common law claims for damages for climate change. NLC filed an [amicus brief](#) in this case. In May, the Ninth Circuit reversed the district court’s ruling to dismiss the case and remanded it back to the district court for further analysis and action, consistent with NLC’s amicus brief. In August 2020, the Ninth Circuit denied a request for a rehearing en banc.

In January 2021, defendants filed a petition for a writ of certiorari with the U.S. Supreme Court. The petition for cert posed the following different questions from the other cases below: “Whether putative state-law tort claims alleging harm from global climate change are removable because they arise under federal law” and “Whether a plaintiff is barred from challenging removal on appeal after curing any jurisdictional defect and litigating the case to final judgment.” On June 14, the Court denied cert on that question, so the case goes back to the district court to act on Oakland’s original motion to remand the case to state court. Oakland also filed a motion to amend its complaint to withdraw federal common law public nuisance

claims, which they added only conditionally after the district court originally denied remand so that any trial that took place in federal court considered that issue as well.

4. *County of San Mateo v. Chevron et al. – Ninth Circuit*

Update since Congressional City Conference: *The U.S. Supreme Court has remanded the case to the lower court to reexamine its decision in light of the Baltimore holding.*

In the case [County of San Mateo v. Chevron et al.](#) the district court ruled cities and counties may bring state common law claims and ordered the case remanded to state court. In contrast to the New York City and Oakland cases, the district court concluded that the existence of a federal common law claim does not eliminate the state common law claim, and that the Clean Air Act's delegation of regulatory authority to EPA doesn't preempt state law claims. NLC filed an [amicus brief](#) in the case. In May, the Ninth Circuit upheld the district court's ruling, consistent with NLC's amicus brief.

The district court stated:

“To the contrary, the Clean Air Act and the Clean Water Act both contain savings clauses that preserve state causes of action and suggest that Congress did not intend the federal causes of action under those statutes “to be exclusive.””

In August 2020, the Ninth Circuit denied a request for a rehearing en banc. In December 2020, defendants filed a petition for a writ of certiorari with the U.S. Supreme Court.

5. *Board of County Commissioners of Boulder County v. Suncor Energy et al. – Tenth Circuit*

Update since Congressional City Conference: *The U.S. Supreme Court has remanded the case to the lower court to reexamine its decision in light of the Baltimore holding.*

On Sept. 5, 2019, the U.S. District Court for Colorado granted the City and County of Boulder's motion to remand to Colorado state court the local governments' case against fossil fuel companies for climate change-related damages. The decision closely resembles the San Mateo, Baltimore, and Rhode Island decisions. Defendants have filed an appeal in the 10th Circuit Court of Appeals. NLC filed an [amicus brief](#) in this case. Oral argument was heard in May. In July 2020, the Tenth Circuit [ruled](#) in favor of the local government position. In December 2020, defendants filed a petition for a writ of certiorari with the U.S. Supreme Court.

6. *State of Rhode Island v. Chevron et. al – First Circuit*

Update since Congressional City Conference: *The U.S. Supreme Court has remanded the case to the lower court to reexamine its decision in light of the Baltimore holding.*

On July 22, 2019, the U.S. District Court for Rhode Island granted the State of Rhode Island's motion to remand to Rhode Island state court the State's case against fossil fuel companies for climate change-related damages. The decision rejected each of defendants' grounds for

removal. The court held that the State's public nuisance claim was not governed by federal common law, and that its claims did not necessarily raise substantial and disputed federal issues and were not completely preempted. The court also held that there was no federal enclave jurisdiction, no jurisdiction under the Outer Continental Shelf Lands Act, no federal officer removal jurisdiction, and no bankruptcy removal jurisdiction. The decision follows a similar order granting remand in the San Mateo County appeal currently pending in the Ninth Circuit, and as well as a similar order granting remand in Baltimore's case, currently pending in the Fourth Circuit. The defendants have filed an appeal in the 1st Circuit Court of Appeals. NLC filed an [amicus brief](#) in this case.

Oral argument was heard in the First Circuit in September 2020. In October 2020, the First Circuit issued its [decision](#), holding that federal officer removal only permits interlocutory appeal of that one issue and not other grounds for removal, agreeing with the local government position. In December 2020, defendants filed a petition for a writ of certiorari with the U.S. Supreme Court.

NOTE: Cases 7-9 below relate to the U.S. Environmental Protection Agency and U.S. Department of Transportation's joint rulemakings to rollback fuel economy standards and preempt the State of California and others from issuing more stringent greenhouse gas regulations on vehicles. In September 2019 the Trump Administration finalized two related actions that are collectively referred to as "Part 1" of the SAFE Rule: EPA withdrew California's authority to set its own motor vehicle standards, and NHTSA issued a rule holding that any state or local regulation on tailpipe greenhouse gas emissions is preempted by federal law. NHTSA's rule was challenged in *California v. Chao* and both actions were challenged in *Union of Concerned Scientists*.

7. *California v. Chao et al.* – DC District Court – Preemption

Update since Congressional City Conference: *None* – In February 2020, the federal district court for the District of Columbia stayed this case pending resolution of [related litigation](#) in the DC Circuit (see *Union of Concerned Scientists v. National Highway Traffic Safety Administration* below).

Final regulations of the National Highway Traffic Safety Administration (NHTSA) called the "Preemption Regulation" declare that the Energy Policy and Conservation Act of 1975 (EPCA) preempts state laws that regulate greenhouse gas emissions from new passenger cars and light trucks. California has had emissions standards for light-duty vehicles for 60 years. The federal government has repeatedly granted California and other states who have adopted California's standards waivers of preemption the Clean Air Act.

At issue in this case is whether the Preemption Regulation is unlawful, exceeds NHTSA's authority, contravenes Congressional intent, and is arbitrary and capricious because the NHTSA has failed to conduct the analysis required under the National Environmental Policy Act (NEPA). In September, 23 states, the District of Columbia, and the cities of Los Angeles and New York, filed a [lawsuit](#) in federal district court in DC making numerous arguments against the U.S. Department of Transportation pursuant to the Administrative Procedures Act.

First, the states argue that the Preemption Regulation exceeds NHTSA's statutory authority because "Congress has not delegated to NHTSA any authority to issue a regulation or other legally effective determination under EPCA regarding express or implied preemption under EPCA, nor to adopt regulations declaring particular state laws, or categories of state laws, preempted by EPCA."

Second, the Preemption Regulation is ultra vires, meaning beyond NHTSA's scope of authority because NHTSA "does not identify any statute or other authority that authorizes the regulation."

Third, the lawsuit offers numerous arguments for why the Preemption Regulation is arbitrary and capricious including that it "interprets EPCA as expressly and implicitly preempting state laws regulating or prohibiting—or "having the direct or substantial effect of regulating or prohibiting," p. 224—tailpipe greenhouse gas emissions, regardless of whether EPA has waived Clean Air Act preemption of those laws under Section 209(b) of the Clean Air Act."

Finally, the lawsuit describes NHTSA's assertion that NEPA does not apply to the Preemption Regulation so it didn't comply with it as "arbitrary, capricious, and an abuse of discretion." The lawsuit notes that NEPA "requires the preparation of a detailed environmental impact statement for any "major Federal actions significantly affecting the quality of the human environment."

8. *Union of Concerned Scientists v. National Highway Traffic Safety Administration – DC Circuit – California Waiver*

Update since Congressional City Conference: *None – Under the new Biden Administration, the U.S. Environmental Protection Agency asked the U.S. Department of Justice (DOJ) to seek a pause on the litigation while the Administration considers rewriting the rule. The DC Circuit has granted DOJ's request, placing the case on hold.*

Background: On September 27, 2019, EPA and the National Highway Traffic Safety Administration (NHTSA) issued a withdrawal of waiver it had previously provided to California for that State's greenhouse gas and zero-emissions vehicle programs under section 209 of the Clean Air Act.

Before this withdrawal of waiver, California had adopted emissions standards for passenger cars and light trucks for 60 years that were more rigorous than the federal standard. The federal government had repeatedly granted California and other states who have adopted California's standards waivers under the Clean Air Act.

Litigation Status: To date, revocation of this waiver has generated four lawsuits: [California and other states](#); three California air districts; the National Coalition for Advanced Transportation, which represents Tesla and other electric vehicle-aligned companies; and eleven environmental groups. NLC filed an [amicus brief](#) in the *Union of Concerned Scientists* case in July 2022 and the DC Circuit had planned to take briefing on both the California waiver and NHSTA preemption issues.

The waiver lawsuit brought by California and other states has been filed in the D.C. Circuit. The Trump administration asked the court to combine the waiver lawsuit and a related preemption lawsuit against the National Highway Traffic Safety Association ([California vs. Chao](#) above).

9. California v. Wheeler – DC Circuit – Fuel Economy Standards Rollback

Update since City Summit: *Under the new Biden Administration, the U.S. Environmental Protection Agency asked the U.S. Department of Justice (DOJ) to seek a pause on the litigation while the Administration considers rewriting the rule. In April, the DC Circuit granted DOJ's request, placing the case on hold.*

This case is the challenge to the Safer Affordable Fuel Efficient (SAFE) Vehicles Rule. The SAFE Rule was promulgated by the U.S. Environmental Protection Agency (EPA) and the National Highway Traffic Safety Administration (NHTSA) in March 2020. The rule significantly weakens greenhouse gas and fuel economy standards for new passenger motor vehicle rules and light trucks. In 2012 the Obama Administration issued standards that would have required a 5% improvement in both greenhouse gas emissions and fuel economy every year – the SAFE Rule replaces those standards and requires only a 1.5% improvement in each, and is expected to result in an additional 867-923 million metric tons of carbon dioxide. The SAFE Rule was challenged in the D.C. Circuit by 23 states, several cities, and a coalition of public interest groups, as well as some other petitioners. (Because the case is actually a number of consolidated cases it has a number of titles and is also referred to as *Competitive Enterprise Institute v. NHTSA*). NLC filed an [amicus](#) brief in this case in January 2021.

10. Illinois Commerce Commission v. FERC – Seventh Circuit – Market Capacity Order

Update since Congressional City Conference: *This case is being held in abeyance until September. NLC will file an amicus brief in this case.*

In Dec. 2019, the Federal Energy Regulatory Commission (FERC) [directed](#) PJM, a regional wholesale electricity market covering 13 states in much of the mid-Atlantic and Ohio River Valley, to establish a price floor for state subsidized resources in PJM's capacity market, seeking to ensure grid reliability by auctioning power delivery obligations three years before the electricity is needed. That price floor, called the Minimum Offer Price Rule (MOPR), would block many wind, solar and nuclear plants from clearing those auctions.

The MOPR would increase the price of certain wind, solar, and nuclear power generation that receives subsidies from almost every state in PJM's region, thereby removing the impact of the state's subsidy. Specifically, three states in PJM's territory—Ohio, Illinois and New Jersey—have

nuclear subsidies, and eleven have renewable energy mandates that would make new clean energy subject to the MOPR. FERC Chairman Neil Chatterjee did note the MOPR will not apply to existing renewable energy plants, energy storage resources, or power generators that are already under ratepayer-funded “self supply” contracts, like those owned by municipal utilities. This is forecast to exempt about 5,000 MW, a small percentage of the total power usage in the region.

Current status: Following the rule’s publication, many states that participate in PJM, the nuclear industry and renewable energy groups asked FERC to rehear the subsidy case. In April 2020, FERC declined to review its Dec. 2019 decision to limit participation of state-subsidized renewable and nuclear energy in PJM, setting the stage for a raft of legal challenges and potential state exits from the region’s long-term electricity auctions.

FERC’s decision to toss out appeal requests allows opponents of the decision to file legal challenges at the D.C. Circuit Court. Illinois utility regulators, environmental groups and municipal utilities are filing suit. The case was initially held in abeyance pending FERC’s ruling on several petitions for rehearing that were filed with it. FERC has now resolved those petitions and the abeyance will expire on December 14. The court is expected to issue a scheduling order around that time.

The Illinois filing in the U.S. 7th Circuit Court of Appeals was followed by a challenge from the American Public Power Association and American Municipal Power in the D.C. Circuit Court of Appeals. [New Jersey and Maryland have also filed in the DC Circuit.](#) The Sierra Club, Natural Resources Defense Council and Environmental Defense Fund also plan to file at the D.C. Circuit. The National Rural Electric Cooperative Association is also planning to formally file suit against the PJM decision.

Local government impact: FERC’s decision to deny a rehearing could also push some PJM states with nuclear power subsidies and renewable energy mandates to end their participation in the region’s capacity market, while continuing to utilize its shorter-term real-time and day-ahead markets. This could make meeting local or state renewable energy goals or carbon mitigation goals difficult. PJM has proposed a June deadline for states to leave the market as part of its compliance filing, but some states are concerned that coronavirus complications will make that timeline unworkable.

11. PennEast Pipeline Co. v. New Jersey – U.S. Supreme Court

Update since Congressional City Conference: *In April, the State and Local Legal Center filed an [amicus brief](#) in this case arguing that the Natural Gas Act does not allow private parties to condemn state land. In June, the U.S. Supreme Court held 5-4 that the federal government may constitutionally grant pipeline companies the authority to condemn necessary rights-of-way in which a state has an interest. Pipeline companies likewise may sue states to obtain the rights-of-way.*

Background: PennEast Pipeline Company, a private company, intends to build a pipeline through Pennsylvania and New Jersey. The Natural Gas Act (NGA) authorizes private gas

companies, like PennEast, to obtain necessary rights of way through eminent domain, as long as three conditions are met, including receiving a Certificate of Public Convenience and Necessity from the Federal Energy Regulatory Commission. Upon PennEast receiving the certificate, it asked a federal district court to condemn 131 properties—42 of which belong to New Jersey. New Jersey argued that Eleventh Amendment immunity prevents it from being brought into court by a private company.

At issue in the case is (1) Whether the Natural Gas Act delegates to Federal Energy Regulatory Commission certificate-holders the authority to exercise the federal government's eminent-domain power to condemn land in which a state claims an interest; and (2) whether the U.S. Court of Appeals for the 3rd Circuit properly exercised jurisdiction over this case.

Holding and Reasoning: The Third Circuit ruled in favor of New Jersey holding that PennEast could not bring an imminent domain action against it. The 11th Amendment prohibits states from being sued in federal court unless they have consented to suit but an exception applies to the federal government. New Jersey argued that "the federal government cannot delegate its exemption from state sovereign immunity to private parties like PennEast." The Third Circuit agreed.

The Third Circuit offered three reasons why it "doubt[ed]" the federal government can delegate its exemption to state sovereign immunity from lawsuits:

First, there is simply no support in the caselaw for PennEast's "delegation" theory of sovereign immunity. Second, fundamental differences between suits brought by accountable federal agents and those brought by private parties militate against concluding that the federal government can delegate to private parties its ability to sue the States. Finally, endorsing the delegation theory would undermine the careful limits established by the Supreme Court on the abrogation of State sovereign immunity.

Local interest: This case is important for state and local entities, given strong interests in standing up for our sovereign immunity.

From a state perspective it is not in states' interests that the federal government can delegate its exemption to sovereign immunity to private parties. Allowing a private party to state land via eminent domain gives that private party a lot of power. Also, if the federal government can give away its exemption to sovereign immunity in the imminent domain context, why couldn't it do so in other contexts?

Sovereign immunity does not apply to local governments but it is important to note that in this case several of the properties are co-owned by local entities, primarily municipalities and/or counties. Additionally, for municipalities, takings and eminent domain are extremely unpopular. Allowing private parties to engage in them will make them even more unpopular, which will harm local governments and make them more difficult. Second, local governments may have an interest in pipelines not being built—or not being built in particular locations. For example, it appears in this case the pipeline would be built over parkland.

How Cities Can Ensure Equity for Siting Electric Vehicle Infrastructure

By: Nick Kasza, Program Manager, Sustainable Cities Institute, National League of Cities
June 25, 2021

Just over one hundred years after the internal combustion engine began to revolutionize transportation in the United States, the automobile industry is undergoing an evolution to a cleaner, more electric future. Electric vehicle sales are surging and auto manufacturers like [General Motors have pledged](#) to phase out internal combustion engines and focus production on electric vehicles. With more EVs on our streets and highways, there is an increased demand for charging infrastructure so they can fuel up on electrons. Recognizing the need to develop a modern and decarbonized transportation sector, the White House's American Jobs Plan includes funding for grant and incentive programs aimed to help state and local governments, as well as the private sector, build [500,000 electric vehicle chargers by 2030](#). ACEEE found in its [review of state transportation electrification policies](#) that some states are also increasingly investing in charging infrastructure, including equitable access to charging, and many state utility commissions are enlisting the utilities they regulate in the process. Cities are key stakeholders in the siting and installation of local EV charging networks, and they can help ensure the buildout is done in an intelligent and equitable manner.

A new white paper from the American Council for an Energy-Efficient Economy (ACEEE) brings into focus the importance of [Siting Electric Vehicle Supply Equipment \(EVSE\) with Equity in Mind](#). This paper examines the role of utilities and their actions to date in equitable EVSE siting, which is a crucial component in equitable transportation electrification.

NLC's Nick Kasza held a virtual discussion with ACEEE's Peter Huether about the white paper and the takeaways for city leaders regarding electric vehicle charging infrastructure siting. Some of the responses have been edited for clarity.

Nick Kasza: Before we dive into the report findings, can you provide some background on EV charging infrastructure. What is electric vehicle supply equipment and where is it found within a city?

Peter Huether: Electric vehicle supply equipment (EVSE) encompasses all the infrastructure required to charge a plug-in vehicle from the electricity grid's distribution wires to the meter to the charger itself. The charger that a driver sees is only the end of this chain, which all need upgrading to support widespread transportation electrification. Public chargers are generally either Level 2 (L2) or fast charging (DCFC) with the former charging a vehicle in 6-8 hours while DCFC can charge a vehicle 80 percent in 30 minutes or less. DCFC is common along heavily trafficked routes such as interstates, downtown cores, and busy shopping centers but is significantly more expensive to install compared to L2, which is more common in residential, workplace, and some commercial parking facilities. DCFC can also support charging for those who cannot do so at home because they do not have access to consistent and charging-enabled off-street parking, including many apartment dwellers and renters more generally. Low- and moderate-income (LMI) drivers have lower access to charging-enabled off-street parking, so expanding public charging where they live is crucial for equity. Equitable charging

can also include charging for transit buses, which are disproportionately used by low-income Americans, and charging for large commercial vehicles, which disproportionately contribute to air pollution that harms low-income communities and communities of color.

Nick: That's very helpful background information. Let's turn to the report, what were the key takeaways?

Peter: Overall, there has been progress in some states but most states and utilities are not doing enough to ensure that electric vehicle charging infrastructure investments are reaching all communities. Utilities nationwide have pledged \$2.4 billion in EVSE investment, with \$646 million specifically earmarked for LMI communities and communities of color. However, the vast majority of the investment has been in just two states, California and New York. Additionally, at the time of our research, only six states required their investor-owned utilities to include considerations for LMI communities or communities of color in their investments or plans. We also emphasize the importance of looking beyond just charging for personal vehicles, including for buses and trucks, and the importance of good and early community engagement by utilities. To create equitable EV programs, utilities will need to undertake comprehensive community engagement to identify community-specific opportunities and gaps for transportation electrification. The best community engagement centers community needs throughout the planning and investment process and in doing so, builds long-term trust.

Nick: How can these takeaways translate to what cities can do to help ensure equitable EVSE siting?

Peter: Cities have a key role to play to ensure equitable EVSE siting given their close relationship to their communities, jurisdiction over siting and land use decisions, and authority over transit. Through their own community engagement, cities are likely to have a better sense of where EV investments may be most useful for underserved communities or may have insights from their own equitable transportation planning processes about key passenger and freight mobility needs. Cities also often have some authority over transit and transit agencies, which need to cooperate closely with utilities when electrifying their bus fleets. Cities can facilitate this cooperation as they can also facilitate the siting of EVSE throughout their communities with easier zoning, permitting, and departmental coordination. In particular, cities have control over their right of ways, including on-street parking spots, and can also decide whether areas are allowed to have chargers installed. Cities can also update their building codes to ensure that a portion of parking in new apartment buildings can be easily outfitted with chargers in the future. Given that apartment buildings disproportionately house low-income families, ensuring they can serve their charging needs is a core equity issue.

Nick: How can city leaders facilitate meaningful community engagement, particularly with underserved communities that might be overlooked for EVSE siting?

Peter: Cities can be partners with utilities in the latter's community engagement efforts to ensure the engagement is meaningful and informs investment decisions. This can involve sharing best practices that the city has learned over time, providing public facilities for meetings, and connecting utilities with relevant community organizations. Cities should also

stress to utilities that they provide support, including financial compensation and translation services, to community members to ensure that there is broad participation in the community engagement process. It is important that overburdened communities are listened to and their needs are included in EVSE siting plans as much as possible to ensure the EVSE has the biggest impact possible and that these communities benefit.

Nick: Do you have any good city examples?

Peter: Our white paper highlights the example of Seattle City Light, the municipally owned utility primarily serving Seattle, Washington, and its ongoing efforts to engage with communities as part of its broader transportation electrification plans. City Light partnered with the city's Department of Neighborhoods during the engagement process and met with more than 50 stakeholder groups, including 25 environmental justice community leaders. City Light also relied on the City of Seattle's Equity and Environment Agenda, which identified communities to prioritize engagement and investment. This process then led to the utility prioritizing investments in EVSE serving apartment dwellers, the electrification of city buses, ride-hailing vehicles, and commercial fleets in environmental justice communities. The utility also made sure to meet with organizations when it was convenient for them, solicited input on how they wanted to be involved, budgeted for childcare, food, and interpretations services, and empowered community voices in decision-making. These are all principles that can work for cities as much as they can work for utilities. For more information on city efforts to encourage EV adoption, see ACEEE's [City Clean Energy Scorecard](#) report.

[Siting Electric Vehicle Supply Equipment \(EVSE\) with Equity in Mind](#) is authored by Peter Huether from the American Council for an Energy-Efficient Economy.



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- Leslie Pool, Councilmember, City of Austin, TX
- Cynthia Pratt, Deputy Mayor, City of Lacey, WA
- Christopher Roberts, Councilmember, Position 7, City of Shoreline, WA
- Paul Roberts, Council member, City of Everett, WA
- Michael Sesma, Council Vice President, City of Gaithersburg, MD
- Pat Showalter, Councilmember, City of Mountain View, CA

- Rick Skinner, Mayor, City of Williamstown, KY
- Gill Sorg, Council Member, City of Las Cruces, NM
- Harvey Ward, Commissioner, City of Gainesville, FL
- Sam Weaver, Mayor, City of Boulder, CO
- Cheryl Wink, Council Member, City of Englewood, CO