



## **CleanLaw 48: Caitlin McCoy Interviews Aladdine Joroff About the Recent Massachusetts Attorney General Decision on Local Natural Gas Usage Laws, August 26, 2020**

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**Caitlin McCoy:** Hello. This is Caitlin McCoy. And welcome to another episode of CleanLaw, our podcast at the Environmental and Energy Law Program at Harvard Law School. Today I am thrilled to have a guest also from Harvard Law School. I am joined by Aladdine Joroff, and she's going to speak with me about the recent decision by the Massachusetts attorney general on local laws that seek to limit the use of natural gas in buildings. So welcome Aladdine.

**Aladdine Joroff:** Thank you, Caitlin.

**Caitlin:** So let me give you all a little introduction into Aladdine's background and her role. She's a lecturer and staff attorney at Harvard Law School's Emmett Environmental Law and Policy Clinic, where she develops and supervises environmental litigation, regulatory policy and law reform projects involving cutting edge environmental and energy issues.

**Caitlin:** Some of her areas of focus include developing climate change mitigation and adaptation strategies for municipalities and advocating for energy justice and innovative grid modernization initiatives. Unsurprisingly, that work led her to write a comment as part of the attorney general's decision-making process. I'll let her explain a little bit more about that later, but that's why we have her as a guest today.

**Caitlin:** She also teaches law and policy courses at Harvard Law School, Harvard College, and the extension and summer schools. Aladdine formerly practiced with the national environmental law firm, Beveridge & Diamond, and before that, Goodwin Procter in Boston. Aladdine received her J.D., cum laude from the University of Pennsylvania School of Law and her M.S. and B.S. from the Massachusetts Institute of Technology. So thank you again. We're really excited to have her as our guest today to chat about all of these issues.

**Aladdine:** Great, thanks. It's great to join such a great series.

**Caitlin:** So I'm going to continue talking a little bit more just to give you all another layer of introduction into why we're talking about limiting natural gas use in buildings. So in any city around the country, buildings are the highest consumers of energy and thus, usually the largest source of emissions. Buildings not only consume



electricity, but also use fossil fuels in their heating systems, hot water systems and for cooking.

Caitlin: There are a lot of efforts that are focused on reducing emissions from the electricity sector and working towards eventually decarbonizing it, moving away from fossil fuels like coal and natural gas toward renewable energy. But even if we succeed in decarbonizing our electricity sector, we still have to grapple with the fact that we use natural gas inside of buildings for those functions like heating and cooking.

Caitlin: Experts tell us that ideally we should work to electrify everything, all of the equipment and functions in buildings and transportation in a parallel process, as we are trying to decarbonize our electric grid. That way one day, both efforts will arrive in a place where we have everything that has been electrified all running on zero carbon electricity, right? That's the ultimate goal in order to mitigate climate change.

Caitlin: So there are climate implications, of course, for continuing to use natural gas. Not only just combusting it inside of buildings, but methane leakage that occurs through the production processing and transport of natural gas. And then there's also public health implications. So when we continue to use natural gas in buildings, particularly for cooking, we're learning more and more about the negative effects of using natural gas on indoor air quality.

Caitlin: And I'll just give you all one example. One study by the Lawrence Berkeley National Laboratory found that 60% of homes have the gas stove that was used at least once per week had nitrogen dioxide, formaldehyde and carbon monoxide in the air at levels that would violate our air quality standards for outdoor air. So that's inside. And I think those of us who have been spending a lot of time indoors over the last few months, I think we can all say we've probably used our stove at least once a week. So it's pretty alarming to think about the impacts there.

Caitlin: So some cities have started to try to take some steps in this transition that I mentioned, trying to move away from natural gas and create part of this transition to an electric and decarbonized future. So these efforts started in California where over the last year, 28 cities have adopted requirements to limit natural gas in new buildings. And some of them are even requiring all electric new construction.

Caitlin: And in addition to those 28, there are 50 more California cities and counties that are considering similar policies. So as I said, this movement really started in California in 2019, but it spread to Massachusetts and particularly to a town called Brookline, the border is right across the street from where I live. I technically live in Boston proper, but right across the street from me is where Brookline begins.



Caitlin: And so Brookline adopted a bylaw in November of 2019. And that bylaw limits the use of natural gas in new and renovated buildings. But California and Massachusetts have very different legal regimes for these types of local ordinances that have to do with building energy requirements. And so that has led us all to the moment we're at today and to this recent from the attorney general. And that's what we'll be talking about today. So I wanted to have Aladdine explain a little bit, what is the Brookline bylaw? What did it propose to do?

Aladdine: The bylaw actually originated from a citizen's petition. So a group of citizens put this proposal in front of the town. It was then voted at town meeting. And as you noted a lot of the drivers behind it are ideals, goals of addressing climate change through limiting emissions, including from the building sector for the public health reasons, the climate change reasons, also hoping to avoid sunk costs in large infrastructure projects.

Aladdine: So there's a lot of debate about do we need new, large gas pipelines into the New England region? If we can do more to limit demand for natural gas, we may avoid creating infrastructure that would function typically for decades without some other limitation. I think communities are also looking at the state has the Global Warming Solutions Act, which sets mandatory objectives for reducing our greenhouse gas emissions and they're looking at ways they can contribute to that.

Aladdine: So what the Brookline bylaw did was as you noted, Caitlin, they focused on new construction and significant rehabilitation of existing buildings looking to limit the installation of new onsite fossil fuel infrastructure. So what they were really focused on was piping for gas and fuel oil. And they focused on infrastructure in a building or on a property that was behind the meter, so on the customer side.

Aladdine: So for example, under the bylaw, a building owner could still put a gas furnace in the building and the local utility could put gas pipelines up to the building's meter, but the bylaw would apply to the infrastructure, connect that furnace to the gas behind the meter and say that with limited exceptions, that could not go forward. And they sought to enforce this requirement by prohibiting the issuance of permits to buildings that had this type of fossil fuel infrastructure.

Aladdine: And there was a system proposed in the bylaw for waivers from the limitation and appeals, and those would go through a new entity, a new entity that would be created by the town selectmen called the Sustainability Review Board. So that in essence is what they were trying to do again, focused on new construction, large renovations, and limiting the connection from the building to natural gas or fuel oil infrastructure.

Caitlin: And so Brookline adopts the bylaw in November, but only recently did we receive this opinion from the attorney general's office disapproving of the bylaws. So can



you explain a little bit, why did the bylaw have to be approved by the attorney general's office? Can you give us some background on Massachusetts law in this area?

Aladdine: So Massachusetts law has a requirement that the attorney general's office via the municipal law unit has to approve any town's adoption or amendment of general bylaws or zoning bylaws. We have a little quirk in that this requirement is not applied to cities. So if a city ordinance is appealed or challenged that first happens in litigation in front of a court, versus the first review of a town bylaw is through the attorney general's office.

Aladdine: So as part of the review process, the attorney general's office will often accept comment letters from interested parties. There's generally a 90-day review period, but the attorney general's office can ask to have it extended, which happened in this case as can occur with novel questions. When the attorney general reviews these local bylaws, they do not consider policy issues.

Aladdine: Their review is limited to a legal analysis of consistency with state laws in the constitution, which means preemption analysis is often the heart of their decisions. So for example, even if the attorney general thought there was a better approach to an issue, that wouldn't affect their legal review. And it's okay for local laws to make incremental progress towards a goal like climate change mitigation. Again, that would be a policy impact that's not subject to the review of the attorney general.

Caitlin: So the focus is just on whether there's a conflict with state law and whether the local bylaw can stand essentially within the regime of state law?

Aladdine: Yes. So state laws and the state constitution are really the focus of the attorney general's review.

Caitlin: You mentioned that there is a comment period as part of this process. And I know that you and I initially started talking about this because I found out that you prepared comments on behalf of a local climate group called Mothers Out Front. And I was wondering if you would summarize your arguments that you made in the comment on behalf of the group.

Aladdine: Sure. And Mothers Out Front, I was working with the Massachusetts group, as you said, a nonprofit organization that does a lot of work on climate change and moving forward with energy system innovations. So as a starting point in our comments, we argued that although the bylaw from Brookline was novel with respect to the particular product that it regulated, we thought it should be reviewed as a traditional exercise of municipal authority.



Aladdine: And municipal authority in Massachusetts, we argue, was broad, both through home rule authority and police powers. And municipal limitations, or even prohibitions on products or commercial activities within their boundaries are not new. So historically, towns have been allowed to prohibit commercial activities and products that state laws otherwise generally recognize as lawful, and even that may be widely accepted in the rest of the common law.

Aladdine: So just as a few examples. The attorney general's office in the past has approved town bylaws that regulate self-service gas stations' use of gas powered leaf blowers, single use plastic water bottles, or plastic straws. This is really a traditional exercise of municipal authority. We next turn to the idea of preemption.

Aladdine: We said there's a very high hurdle for a preemption and that it was not met in this case, in our opinion. So the existence of a state law on a subject does not necessarily bar any local bylaws regarding the same subject. You can have incidental effects on preemptive fields. And the supreme court has recognized that as well. So here we argue that any effect on gas companies or DPU's authority would have been incidental and thus not preempted.

Aladdine: So first we looked at DPU, that's the department of public utilities that's authorized by state law to regulate the storage, transportation, and distribution of gas. But again, it talks about how those activities function, not whether a sale has to occur of natural gas, but if a sale does occur, how is it regulated? So we argue that this bylaw wouldn't interfere with that.

Aladdine: Similarly, the bylaw didn't create or impose any substantive or procedure or requirements for the gas companies themselves. So if a sale of natural gas was going to occur in Brookline, it would be subject to the same requirements it is today, even if the bylaws were in place. And finally, the bylaw wouldn't prevent residents in Brookline from obtaining utility services, especially given the fact that there were waivers available if needed for compliance.

Aladdine: And we argued that the law in Massachusetts that governs natural gas services does not require all residents to have access to natural gas as a heating source. In fact, there are many areas in Massachusetts that don't have gas service as an option. And then finally, we looked at the building code and this chapter 164, again, the state law about natural gas distributors that neither require the use or option to use a specific fuel source in the building.

Aladdine: So for example, just because the building code has standards for a use or type of infrastructure doesn't mean it has to be available for use in all buildings. So just as an example, to think about the building code regulates heliports and



manufactured housing and nightclubs, but towns can prohibit those uses in their boundaries.

Aladdine: And then again, to the extent there still would be fossil fuel infrastructure permitted in Brookline, it would be subject to the requirements of the building code. So we argued there really was no conflict there so that the local bylaw would have to be preempted. So it's a high level overview of the issues that we argued.

Caitlin: I have to say, when I read your comments, I was pretty persuaded. I found them to be very persuasive, and especially the examples that you used around different prohibitions that towns have made in the past that have passed muster under this municipal law unit review process. I found that compelling. And so I remained curious to see what was going to happen.

Caitlin: I think I speak for a lot of people when I say that a lot of us were on the edges of our seats waiting for this decision from the attorney general, to see whether they would adopt some of the arguments that you made in the comments on behalf of Mothers Out Front, or if they would go in a different direction.

Caitlin: And so we finally got an answer on July 21<sup>st</sup>, 2020, and I will give you all a little breakdown of what that decision ultimately provided and then I will turn back to Aladdine for a reaction to some of the findings that were made as part of the decision. So Aladdine already referred to this, but for those listeners who may not be super steeped in the law, I want to give you all a quick primer on two legal terms that are really important to the decision.

Caitlin: So one is express preemption and the other is field preemption. So express preemption in the case of state law here, it's when you have a state law that expressly declares that any local law on the subject is null and void. And so only the state law in that subject can exist. And only the state law on that subject can be enforced. And that's clear just in the language of the state law.

Caitlin: Now, the other type of preemption is field preemption. So when you have a state law that doesn't have a clear declaration like the express preemption saying, this should be the only law on the issue, but the way that it's written, it's written really comprehensively, and maybe it also expresses a need for uniformity and is trying to create a uniform statutory scheme. Then you can have a court find that it occupies an entire field. So that's why it's called field preemption.

Caitlin: And so by effectively occupying that entire field of law, that entire subject area, then local laws on that same subject can be found to be preempted. So with that in mind, we will jump into the three major parts of the attorney general's



decision. So the first part is where the attorney general considered whether there was a conflict between the Brookline bylaw and the state building code.

Caitlin: And the attorney general's office found that there was express preemption for local ordinances that were in conflict. And so they pointed to a line that appears in the state building code. When the Massachusetts state legislature wrote the building code, they included this statement, "All bylaws and ordinances of cities and towns in conflict with the state building code shall cease to be effective."

Caitlin: So that's a classic example of express preemption there that the attorney general's office pointed to. Then they also pointed to field preemption for the enforcement mechanisms. So if you'll remember, Aladdine referred to the fact that the Brookline bylaw functioned by not allowing that connection between a natural gas appliance and the natural gas infrastructure. And the way that that worked was they would deny a building owner a building permit.

Caitlin: So the attorney general's office said that using the building permit as the enforcement mechanism is preempted because building permits are comprehensively regulated by the building code. So there the attorney general found field preemption. So the next big part of the decision is looking at the gas code. So trying to assess whether there's a conflict and then potential preemption under the state's gas code.

Caitlin: And there the attorney general found that there was field preemption and essentially said that the gas code is so comprehensive, uniform and directly regulates the gas piping targeted by the Brookline bylaw. And she also noted that the gas code regulates when a permit may be issued, it provides a waiver process. And because the bylaw creates an additional layer of regulation by creating a new ground for denial of a permit and a new waiver and appeal procedure that do not exist in the gas code, the bylaw interferes with the express legislative goal of uniformity in the gas code.

Caitlin: So there you can see the attorney general's analysis unfolding in that. It was essentially a quote that I just read, but I did a tiny bit of paraphrasing along the way. You could get to see the flow of her analysis, which is this idea of you can't insert an additional layer of regulation and interfere when you have a code that is meant to be uniform, and then you have field preemption.

Caitlin: So the last ground that the attorney general looked at for potential conflict and preemption was chapter 164, which is where the department of public utilities regulates the sale and distribution of natural gas. And again, the attorney general found field preemption and pointed to a decision by the supreme judicial court in Massachusetts, where they have recognized the "desirability of uniform standards applicable to utilities regulated by the department of public utilities".



Caitlin: So they found that uniformity that they needed to say we have field preemption again, and saying that by prohibiting oil and gas service to the town's residents, the bylaw interferes with the legislative intent of chapter 164, that there be availability of utility services. And the AG recognized that she was referencing a point made actually by a lawyer for the department of public utilities in making that statement.

Caitlin: So ultimately sided with the department of public utilities and their view of services and providing services and the comprehensive regulation in sale of natural gas under chapter 164. So that's a quick overview. There's plenty more to the decision. I think we'll try to find a way to link it up on the website. It's only 12 pages, so it's not a long read, but it is quite dense. So now I will turn to Aladdine and just see, is there anything that I missed? So you can go ahead and add that, and then you can also feel free to just go right into any reactions or thoughts that you have about the decision.

Aladdine: Yes. One initial thought is you set up the types of preemption quite well. And I would just argue that the building code, even though it talks about having uniform standards, I might say that that's still, and maybe it's a minor distinction, an implied form of preemption that we've had to look to the courts and the AG's office to say that means there is field preemption rather than the law specifically discounting future town bylaws, or city ordinances that might require more in terms of construction requirements.

Aladdine: I think it's pretty uniformly agreed that there is preemption from the building code. But what was interesting about the attorney general's opinion, I thought, is that they really focused their preemption analysis I think on the procedural components of Brookline's bylaw rather than the substantive ones, which you've touched on.

Aladdine: So the attorney general agreed in the opinion that the building code does not directly regulate the fossil fuel infrastructure as defined by the Brookline bylaw. So instead, they really were looking at it's the bylaws' enforcement in waiver and appeals process that's regulated by the building code and thus preempted. And I think there was a similar analysis under the gas code that procedurally you can't set up a dual process.

Aladdine: Local building officials are the ones that issue building permits. They decide whether a building or often speed permit application complies with the building code. So the concern here from the attorney general's perspective was the building official would be required to deny a permit application that otherwise complied with the building code, because it didn't comply with the Brookline bylaw.



Aladdine: And you combine this, that the conventional role of appeal would be given to a separate town body, this would frustrate the statutory purpose of having a centralized statewide process for building permits. Now, there is an exception where this is allowed. So for example in zoning, building officials can deny a building permit application that may comply completely with the building code if it doesn't also comply with town zoning.

Aladdine: But that's specifically allowed in state law, it's just not provided for more broadly. So even though building officials are municipal employees, the AG's decision assumes they can't be given other powers that affect their decisions on building permit applications. But it does, I think, leave open the door, the question of if this was set up by Brookline as a completely separate permitting process, so that it wasn't the building official who decided in the context of a building permit application, would that be permissible?

Aladdine: So for example, right now in most communities, if your project is in or affects a wetland resource area, you have to get a wetlands approval, a permit from the town. And that is separate from your building code application. So in theory, somebody could get a building code approval, still not have the wetlands approval they need for their project. They could proceed at risk under the building code permit, but they would still need that wetlands approval.

Aladdine: So to my mind, this leaves open the question, maybe that set up would work in this instance, too. If the attorney general's focus was on that, the Brookline bylaw didn't comport with the procedural requirements of the building code and the statute that creates the building code, but maybe the substance is fine, then having a different procedure for it would be allowed.

Aladdine: It still leaves open the question of preemption concerns under chapter 164. I think that this is a very novel question. We're new to looking at what chapter 164 allows, what does this mean about uniform access to utility services? So I think there's still room for discussion there.

Caitlin: Well, that's really interesting. Thank you for that analysis. I think that that remains an interesting question. I agree and I would be curious to see what it might look like to set up a separate approval process or a different type of requirement that was separate because there was a lot of focus in the AG's decision on the actual enforcement mechanism itself as you noted.

Caitlin: With that, I wanted to ask you looking forward now from this moment, I think they're a couple of different paths for Brookline. And we also know that there's a group of other towns and cities who were interested, but were using Brookline as the test case in adopting a bylaw like this or a city ordinance like this. So I think in



my mind, when I look at it, there are two paths and I don't think they're mutually exclusive, but one is potentially Brookline could challenge the decision in court.

Caitlin: And then another path would be for Brookline to try to pursue another approach to trying to regulate natural gas, or at least discourage the use of natural gas or encourage electric buildings in some capacity. So let's explore that first pathway a little bit. Brookline can challenge this decision, right? And what is the process for doing so?

Aladdine: Right. So in the past, these types of decisions by the attorney general's office are appealed to the Massachusetts Supreme Judicial Court, which is the highest court in Massachusetts. It does not appear to be an automatic right of review, rather a petition for review is filed and the court has the option to decide whether to review the attorney general's decision. My understanding is I don't know that that's being contemplated at the moment, but that would be the litigation pathway forward.

Caitlin: And then let's explore then this second pathway, which would be looking at other options to try to limit natural gas use in buildings, discourage it, or encourage electrification. What might you say seems to be some options or maybe even something that's on the horizon?

Aladdine: So I think there's a couple of routes that could be explored. And I'm going to save for last what the town could do itself with its bylaws. One option would be to go to the legislature, so the house and senate, and file a home rule petition. And this would be a request for Brookline specifically to get permission from the state legislature to pass a law that says Brookline has the authority to do this. Regardless of any concerns about preemption or other issues we give Brookline this authority.

Aladdine: Now home rule petitions, as the name suggests, the outcome is specific to one community at a time. So an alternative would be since there are multiple communities interested in this idea would be to propose legislation on behalf of multiple communities. So it would be general legislation that would be passed, a general law that would either authorize any town or city that wants to do this to do so or require them to do so.

Aladdine: So there are some climate bills in the state legislature that are being considered to the extent that this particular issue would be covered, remains to be seen similar to the service provision requirements in chapter 164. But there's definitely room to go to the legislature and to say, "Look, we need amendments either directly to the building code statute or to chapter 164, or we need a new law clarifying that communities' municipalities do have this authority to take this type of action." So



that's one option.

Caitlin: I think what you said about the climate bills is really interesting because I took a look at the two climate bills that are being considered at the moment. So the house has adopted one, which is known as the 2050 Roadmap Bill and the senate has adopted one known as the Next Generation Bill. And they're currently going into the conference committee process to try to work out a compromise on these two different bills before the end of the legislative session.

Caitlin: And I noticed there that there is a line in the senate bill that says, "nothing in this section shall preempt a city or town from maintaining an energy use benchmarking program or from setting and enforcing energy performance standards for buildings". So that's just one line. It's not necessarily granting them the authority to do so, but just saying nothing here should be read as preempting them from doing that.

Caitlin: But I at least thought it was interesting even if there isn't a matching statement in the house bill and we are headed into this conference process so who knows what will emerge from that. But I wanted to flag that, that there at least seems to be some openness to thinking about what cities and towns might be allowed to do as part of this work to achieve net zero emissions by 2050 in Massachusetts.

Aladdine: And I think that just flags a really great point that came up in the discussion in front of the attorney general's office about the Brookline bylaw. And that was some people argued, well, we have this Global Warming Solutions Act, which is the Massachusetts law mandating that we reduce our emissions on a certain timeframe. And so there were some arguments, "Well, does that give municipalities authority to go and take actions like this that help meet the goals of the Global Warming Solutions Act?"

Aladdine: However, because the Global Warming Solutions Act doesn't specifically say municipalities should go and take this type of action regardless of other state laws that might preempt that activity, it in and of itself does not give that authority. So I think it's just something that's on people's minds. And I'm glad to see it's at least as you said, being considered in the senate bill about how does this interact with other laws and how does it interplay with municipal authority. But ideally it would go a step further and specifically say municipalities have the authority to take this type of action.

Caitlin: Right. And it seems when you read the AG's decision, that she is in a way appealing to the cities and towns to put pressure on the legislature. She says, "Yet to the extent that commonwealth has not yet taken necessary steps to ensure the



state will achieve the 2050 net zero emissions limits, the bylaw proponents remedy lies with the legislature and the courts."

Caitlin: So she's saying to them the opposite of what you were saying, which is does the Global Warming Solutions Act authorize cities and towns to do what needs to be done to reach those goals? And she seems to say, "No, your role is to put pressure on the legislature and sue perhaps if necessary, but that that's where the action needs to come from," from her perspective.

Aladdine: And I think definitely it'd be great to have some uniform authorizations or requirements at the state level because it would save time and administrative capacity. But I think we will continue to see towns and cities move forward with initiatives in the meantime. So in addition to going to the legislature for authority, communities can also look to what the BBRS is doing.

Aladdine: This is the Board of Building Regulations and Standards that implements the building code. So for example, they are reviewing net zero proposals of varying scopes, but communities can petition for an amendment to the building code. Generally likely to be more successful, be a petition for an amendment to the building code itself rather than an amendment specific to one community, because you'd have to show very unique circumstances to have an amendment just for one community, which I think would be difficult to do in the climate change context.

Aladdine: But then in addition to that, as you said, there's a whole group of them that are already thinking about this particular issue of natural gas infrastructure. And then there are communities thinking more broadly about reducing emissions from the building sector and from other municipal controlled activities and operations. So one is looking at what about going as a bylaw that's not connected to the building code as we already discussed, or what about using zoning? Whether it's a mandate or as incentive program.

Aladdine: Zoning incentives and other forms of incentives have been a rather common way of trying to advance goals that a town wants to see achieved, a step before mandating them. And depending on how the incentive is set, it may be significant enough to move progress in the direction the town's seeking.

Caitlin: Right. And I'm glad you mentioned the zoning incentive option because I was doing a little digging into this and there seems to be some precedent for something similar to what might be crafted as an all electric zoning incentive. Which is important because zoning bylaws have to go through the same process that town bylaws have to go through, which is to say that they have to be approved by the attorney general's municipal law unit in exactly the same way.



- Caitlin: So it's important to ensure that there is perhaps precedent for a similar zoning incentive. And years ago, in 2004, in Acton, Mass, they adopted a bylaw to incentivize LEED certified buildings and provided a zoning incentive for that. And a lot of these incentives, I should mention, often are increasing the floor to area ratio, which essentially just allows you to build a taller building in certain districts, or it can be also town-wide if you are adding certain features or complying with LEED in the case of Acton or potentially creating an all-electric building in a potential future zoning incentive scheme in one of these towns.
- Aladdine: Exactly. So the zoning incentives can be for a greater height, greater floor area, which can impact the size of yards and setbacks. And another example of an incentive was Hull gave a permitting fee reduction. So it wasn't even a zoning change, it was a permitting fee reduction for buildings and certain floodplain areas to build higher than would be required by the building code.
- Aladdine: So that's an example where they specifically incentivized an action beyond what the building code would require. They did it through a financial incentive and had, I believe, some success with that. At least in the early years, I haven't seen a report about later implementation.
- Caitlin: Interesting. I know that what I read about Acton, it was hard to chart the progress that the zoning incentives there made because as it was coming into effect, we were going into the 2008 financial crisis. And so it never really took off. And so some speculated that maybe it was because of the economic downturn at that time or that it just wasn't structured to be compelling enough for developers to want to take advantage of it. So...
- Aladdine: And another limitation of using zoning, which is why it's not always the first choice, is it may narrow the scope of buildings that's subject to the either requirement or the incentive. Because oftentimes a lot of single-family houses, smaller residential projects don't need zoning approval. So if you don't need zoning approval, those incentives aren't going to impact the project. So you need to see also in your analysis how many large buildings came through that would have been affected by the incentive. And like you said, an economic downturn could have affected that.
- Caitlin: I think ultimately when I think about this whole situation, just circling back to what I mentioned at the beginning about California is this situation really demonstrates the challenge of trying to export some climate strategies or de-carbonization strategies that are happening on a local level from one state to another.
- Caitlin: And California often has really innovative and exciting things happening and really tries to serve as a proving ground for a lot of new policies and strategies. But then



ultimately it can become really complex to try to bring those to another jurisdiction. Because in contrast to Massachusetts, California has a really well established process as part of its building and energy efficiency standards that allows local governments to adopt and enforce more stringent standards and actually has an approval process for them through the California Energy Commission.

Caitlin: That looks a lot more like facilitating these local laws and less like searching for conflict. So it's a different legal regime. And I think that that's important to keep in mind as we continue to study the progress of states and local governments in responding to climate change. That it's not always a clean process to try to copy a strategy from another jurisdiction and adapt it somewhere else in the country.

Aladdine: I would wholly agree. You can come up with best practices and best ideas, but then you have to do the authority analysis per location. But I do think we'll keep seeing municipalities, including in Massachusetts, trying to innovate and push the boundaries on these issues until there's more requirements or more permission from the state level. They could be through again, state legislation or the department of public utilities changing some of its procedures. But I think municipalities will continue to innovate in this area.

Caitlin: Right. And I'm glad you mentioned potential action by the department of public utilities, because that's another thing for listeners to keep an eye on, is that in June, the attorney general sent a petition to the department of public utilities to open an investigation into the future of the use of natural gas as Massachusetts transitions away from fossil fuels and tries to reach that 2050 target. So I think maybe there will be some space opened up as part of that process. So that's another thing to watch. Well, Aladdine, I think we have reached the end of our discussion here today. Is there anything else that you'd like to add?

Aladdine: No, this was great. Thank you for your time and for inviting me on.

Caitlin: It was our pleasure. Thank you so much.

Aladdine: Take care.

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