

**Before the New York City Council Committee on Environmental Protection  
Hearing on Building Electrification and Intro. 2317  
November 17, 2021**

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Thank you to Chair Gennaro and to the entire committee for allowing me to participate in today's hearing.

My name is Amy Turner. I am an Associate Research Scholar at Columbia Law School and Senior Fellow at the Sabin Center for Climate Change Law, where I lead the Cities Climate Law Initiative. I research city decarbonization law and policy and advise cities across the country on building decarbonization and building electrification policies.

I am here today to testify in support of Intro. 2317. This is critical legislation not only to New York City's decarbonization goals, but also to building a climate-forward, resilient, and equitable building stock in New York City. I'll let others here today speak about the imperative to electrify our City's buildings, and the many climate, public health, and equity benefits to doing so. I am here to speak specifically to the City's legal authority to enact Intro. 2317.

As you know, local laws and other requirements enacted by New York City must be authorized by some delegation of authority from the State of New York. The local law or other requirement must also not be preempted by state or federal law. Intro. 2317 passes both of these tests, as I'll describe in further detail.

New York City is Duly Authorized to Enact the Requirements of Intro. 2317

*Municipal Home Rule & the Police Power*

First, New York City has ample police powers delegated by New York State's Municipal Home Rule Law, specifically the authority to govern in relation to the public health and welfare and "the protection and enhancement of [the City's] physical and visual environment." N.Y. Municipal Home Rule Law §§ 10(1)(ii)(a)(11) & (12). Intro. 2317 relates to the built and natural environments, local air pollution and global greenhouse gas pollution, public health, and housing quality – all well within the scope of the City's police power as delegated by the State's Municipal Home Rule Law.

*Air Pollution Control Authority*

Second, New York City, like other municipalities in the State, is permitted by the New York State Air Pollution Control law to enact local laws relating to air pollution so long as they "comply with at least the minimum applicable requirements set forth in" State air pollution laws and regulations. N.Y. Env'tl Conserv. L. § 19-0709. Intro. 2317 would regulate carbon dioxide emissions from buildings in New York City. As there is no State law or regulation limiting building carbon dioxide emissions, Intro. 2317 therefore "compl[ies] with at least the minimum applicable requirements set forth in" State law. In other words, there is no State air pollution law that would preempt the building carbon dioxide limit proposed by Intro. 2317.

## *Building Code Authority*

Finally, New York City also has the authority under State law to set and amend its own building code provisions. As you know, the City maintains its building code in Title 28 of the City's Administrative Code. While the City's municipal home rule authority, police powers, and air pollution control authority are sufficient for an air emissions limit on newly constructed buildings, the City's building code authority buttresses that authority and provides a statutory home for Intro. 2317's requirements.

### Intro. 2317 Would Not Be Preempted by State or Federal Law

Local authority may be curtailed through preemption by State and federal laws. There are two main preemption concerns that arise in the context of building electrification policies, neither of which would lead to preemption of the requirements in Intro. 2317.

First, much is made of the so-called "obligation to serve" provision found in Section 30 of the New York State Public Service Law. N.Y. Public Service L. § 30.<sup>1</sup> I generally take issue with the broad readings of the obligation to serve that some put forth, but in the case of Intro. 2317, the question of preemption is not a close one. Section 30, like the Public Service Law as a whole, relates to the *energy distribution system* in New York State. Intro. 2317 would regulate *buildings*. Intro. 2317 does not conflict with gas utilities' ability or obligation to serve customers, nor does it regulate in the field of energy distribution. Therefore, neither Section 30 nor the new York State Public Service Law would preempt the requirements of Intro. 2317.

Second, in some formulations building electrification policies may invite preemption scrutiny under the U.S. Energy Policy & Conservation Act, or EPCA (42 U.S.C. §§ 6201 et seq.), which preempts state and local standards relating to "the energy conservation [or] energy use of" building appliances like furnaces, HVAC systems, and more. 42 U.S.C. § 6297(b). It is important to be clear about what EPCA does and does not preempt. EPCA preempts *energy* standards for *appliances*. It does not preempt *air emissions* standards for *buildings*, as are set by Intro. 2317. Therefore, EPCA would not preempt the requirements of Intro. 2317.

### Conclusion

New York City has ample legal authority to enact Intro. 2317 and its building carbon dioxide emissions limit, or any other building emissions limit that revised versions of Intro. 2317 may contain, and no provision of State or federal law preempts the City's authority with respect to Intro. 2317.

What's more, New York City has the legal authority to require new building electrification *today*. There is no reason why the City cannot require that new building permit applications meet Intro. 2317's proposed code requirement as soon as it is enacted. And the City will already be behind if it does not. More than fifty all-electric building requirements of various kinds are *already in effect today* in the U.S. A long time horizon for implementation signals that New York City is a follower, not a leader, on building decarbonization.

I encourage the Council to demonstrate New York City's leadership on climate change by exercising its clear authority to require that new buildings in New York City be built to the standard set in Intro. 2317.

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<sup>1</sup> N.Y. Public Service L. § 30 declares it "to be the policy of this state that the continued provision of all or any part of such gas, electric and steam service to all residential customers without unreasonable qualifications or lengthy delays is necessary for the preservation of the health and general welfare and is in the public interest."