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AN AGENDA FOR SUSTAINABLE COMMUNITIES

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ARTICLE

AN AGENDA FOR SUSTAINABLE COMMUNITIES

*John C. Dernbach**

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I. INTRODUCTION

Ever since the United States endorsed sustainable development at the United Nations Conference on Environment and Development (UNCED or Earth Summit) in 1992, municipalities have been a dominant area for progress on sustainability. This article attempts to answer two questions about the future of these efforts. First, what can we learn from these efforts about the needed characteristics for sustainable communities? Second, what can we learn about the legal and policy structure needed for sustainable communities from an overall assessment of what is needed for a sustainable America?

The primary source material for answering these questions is provided by three separate assessments of U.S. sustainable development efforts since 1992. These assessments were published on or after the five-, ten-, and fifteen-year anniversaries of the Earth Summit. The first assessment was published in a 1997 article to coincide with a United Nations (U.N.) General Assembly Meeting held in New York to review U.S. progress toward sustainability in the first five years.¹ The second, *Stumbling Toward Sustainability*, was published in 2002, just before the World Summit on Sustainable Development was scheduled to meet in Johannesburg, South Africa, to review progress toward sustainability in the ten years since the Earth Summit.² The third, *Agenda for a Sustainable America*, was published more than fifteen years after UNCED and looked at U.S. efforts after 2002.³ Although there was no international conference to mark the fifteen-year anniversary, this book was published in January 2009 as Barack Obama was inaugurated.

In each case, these assessments looked at U.S. efforts toward sustainability and made recommendations for the next five to ten years. These were the only comprehensive assessments of U.S. activities directed at sustainable development. Indeed, these three assessments represent the only continuing effort to systematically assess U.S. sustainable development efforts.

Both questions, then, are efforts to see what we can learn about sustainable communities from a set of assessments that included, but are not limited to, the issue of sustainable communities—to see how things have changed (or not changed) over the course of the three assessments, to discern common

1. See John Dernbach & the Widener Univ. Law Sch. Seminar on Law and Sustainability, *U.S. Adherence to Its Agenda 21 Commitments: A Five-Year Review*, 27 ENVTL. L. REP. (Envtl. L. Inst.) 10504 (1997) [hereinafter *U.S. Adherence*].

2. See STUMBLING TOWARD SUSTAINABILITY (John C. Dernbach ed., 2002).

3. See AGENDA FOR A SUSTAINABLE AMERICA (John C. Dernbach ed., 2009).

characteristics of the leading communities, to learn what kinds of internal and external legal and policy support sustainable communities require, and, ultimately, to use those lessons to discern what next steps are required. These assessments are not the only relevant sources of information concerning these issues; this article will draw on other sources as well. The point, rather, is to see what we can learn from a perspective that is informed primarily by these assessments.

Part I of this article summarizes progress toward sustainable communities since the Earth Summit. It shows the significant initiatives that many communities have undertaken, but also identifies existing state and federal laws as impediments to achieving sustainability. Part II provides a set of key recommendations based on what we have learned about how to achieve sustainable communities. They include not only more and strengthened sustainable community efforts, and broad state and federal legal support, but also deep engagement of all affected citizens.

II. SUSTAINABLE COMMUNITIES: PROGRESS SINCE THE EARTH SUMMIT

Since the 1992 Earth Summit, and particularly in recent years, community efforts regarding sustainability have gained considerable momentum, with climate change a recent and major contributing factor. Yet to a large degree, the basic state and federal legal structure that encourages and supports unsustainable municipal development has remained unchanged.

A. Growing Number and Sophistication of Communities

At the 1992 Earth Summit, nations of the world adopted Agenda 21, an ambitious plan for achieving sustainable development.⁴ Among other things, Agenda 21 calls on each municipality to adopt a “local Agenda 21”—in effect, a local sustainable development strategy.⁵ Agenda 21 contains an ambitious goal for adoption of Local Agenda 21s, stating that

4. U.N. Conference on Env't and Dev., June 3–14, 1992, *Agenda 21*, U.N. Doc. A/CONF.151/26/Rev.1 (Vol. I) (Aug. 13, 1992). The nations also adopted a set of principles, called the Rio Declaration, to guide that effort. U.N. Conference on Env't and Dev., June 3–14, 1992, *The Rio Declaration on Environment and Development*, U.N. Doc. A/CONF.151/5/Rev.1 (Aug. 12, 1992).

5. *Agenda 21*, *supra* note 4, ¶ 28.3. (“Through consultation and consensus-building, local authorities would learn from citizens and from local, civic, community, business and industrial organizations and acquire the information needed for formulating the best strategies.”)

“most local authorities in each country should have undertaken a consultative process with their populations and achieved a consensus on ‘a local Agenda 21’ for the community” by 1996.⁶ The four-year deadline, which appears to have required national-level encouragement of municipalities, was not met in the United States. And while the term “local Agenda 21” has not been well understood or widely applied in the United States, local sustainability efforts have gained more and more traction. The movement toward sustainable communities makes sense not because of national or state support or encouragement, but rather because the benefits are seen at the local level. In other words, instead of a top-down effort, sustainable communities are being developed through a bottom-up process.

Sustainable communities are attractive because the mutually reinforcing effects of policies that protect the environment, create jobs, and build economies are most obvious at the local level—in the places where people actually live, work, and play. Sustainable communities are “cities and towns that prosper because people work together to produce a high quality of life that they want to sustain and constantly improve. They are communities that flourish because they build a mutually supportive, dynamic balance between social well-being, economic opportunity, and environmental quality.”⁷

Sustainable community efforts were some of the earliest success stories told after the Earth Summit. In 1995, the *Amicus Journal* proclaimed Chattanooga, Tennessee to be the “belle of the sustainable cities ball.”⁸ Still, local sustainability efforts by 2002 were limited to a relatively small number of municipalities—enough to be noticeable and provide useful examples, but not enough to be a movement.⁹

Since 2002, sustainable community efforts have made “tremendous strides.”¹⁰ According to Kent Portney, “American cities may well have done more to contribute to the sustainability of the Earth over the last decade than has the federal government.”¹¹ Of twenty-eight separate areas of sustainable

6. *Id.* ¶ 28.1.

7. PRESIDENT’S COUNCIL ON SUSTAINABLE DEVELOPMENT, SUSTAINABLE COMMUNITIES TASK FORCE REPORT vi, (1997)

8. Steve Lerner, *Brave New City? Chattanooga, Belle of the “Sustainable Communities” Ball*, AMICUS J., Mar. 22, 1995, at 22.

9. John C. Dernbach, *Synthesis*, STUMBLING TOWARD SUSTAINABILITY 1, 2, 39 (John C. Dernbach ed., 2002).

10. Jonathan D. Weiss, *Local Governance and Sustainability: Major Progress, Significant Challenges*, in AGENDA FOR A SUSTAINABLE AMERICA 43, 44 (John C. Dernbach ed., 2009).

11. Kent E. Portney, *Sustainability in American Cities: A Comprehensive Look at What Cities Are Doing and Why*, in TOWARD SUSTAINABLE COMMUNITIES: TRANSITION AND

development activity surveyed in *Agenda for a Sustainable America*, six areas represented much more progress than the rest.¹² One of these was sustainable communities, with the other five areas of greater progress being brownfields redevelopment, business and industry, colleges and universities, kindergarten through twelfth grade schools, and religious organizations.¹³ All of these areas manifest, to at least some degree, at the local level.¹³ Indeed, the bottom-up attribute of sustainable community efforts is underscored by the customer-driven, citizen-driven, member-driven, and parent-and-student-driven quality of all six areas.

Since 2005, SustainLane has ranked the fifty most populous U.S. cities for sustainability.¹⁴ The top-ranking city in 2008 was Portland, Oregon.¹⁵ Regular rankings exemplify a movement that has come of age. Chicago and New York City have also become prominent in recent years, in part because of their size, the ambitiousness of their efforts, and the many and varied measures they have undertaken.¹⁶ There are also a growing number of regional efforts, including a smart growth planning effort in the area between the Great Salt Lake and the Wasatch Mountains that includes Salt Lake City and many other municipalities.¹⁷

This movement involves small cities as well, and cities are continually learning from each other. The city of Eau Claire, Wisconsin (population 61,704) began to embrace sustainability by incorporating sustainability principles into its city operations planning process.¹⁸ Eau Claire's city planner, who had seen sustainability as a vague concept, changed his mind after learning at a workshop about specific things that other municipalities had done to save money and improve local quality

TRANSFORMATIONS IN ENVIRONMENTAL POLICY (Daniel A. Mazmanian & Michael E. Kraft eds., 2d ed. 2009).

12. The Contributing Authors, *Progress Toward Sustainability: A Report Card*, in *AGENDA FOR A SUSTAINABLE AMERICA* 15, 16 (John C. Dernbach ed., 2009).

13. *Id.*

13. *Id.*

14. SustainLane, SustainLane Presents: The 2008 US City Rankings, <http://www.sustainlane.com/us-city-rankings/> (last visited June 13, 2009).

15. *Id.*

16. Weiss, *supra* note 10, at 46–47.

17. *Id.* at 48.

18. Julian Emerson, *Does Eau Claire have a Greener Idea?*, EAU CLAIRE LEADER-TELEGRAM (Wis.), May 26, 2009, at 1A. See also, City of Eau Claire, Welcome to the City's Green Website, <http://www.eauclairewi.gov/sustainability> (last visited Sept. 9, 2009). For the population figure, see http://en.wikipedia.org/wiki/Eau_Claire,_Wisconsin.

of life.¹⁹ Other small cities, like Fayetteville, Arkansas (population 67,158) have hired a sustainability coordinator.²⁰

To be sure, it is unlikely that any U.S. municipality is now truly sustainable, and even the most advanced cities still have a long way to go. Moreover, a great many municipalities do not appear to be engaged at all. Still, there has been a significant uptick in the number and intensity of city sustainability efforts.

B. Climate Change as a Driver

In the first ten years after the Earth Summit, climate change had little discernible effect on local sustainability efforts. Since 2002, however, climate change has become a powerful motivating force. Nearly 950 mayors have now signed the Mayors Climate Protection Agreement.²¹ In that agreement, mayors commit to reducing their municipality's greenhouse gas emissions by seven percent from 1990 levels by 2012.²² High or fluctuating fossil fuel prices contribute to this interest in climate change. Indeed, in some cities, sustainable community efforts are defined largely or even entirely by clean energy and climate change.²³

C. Continuing Sprawl

In spite of these efforts, one of the most obvious manifestations of unsustainable development—sprawl—has continued since 1992.²⁴ And the root cause of much sprawl—the existence of many municipalities in a metropolitan area with each making its own decisions—has not changed significantly either. This “fragmented decision-making” causes “sprawling growth patterns that increase traffic, cause air and water

19. *Id.* at 1A.

20. Weiss, *supra* note 10, at 44.

21. U.S. Conference of Mayors Climate Protection Center, List of Participating Mayors, <http://usmayors.org/climateprotection/list.asp> (last visited June 13, 2009).

22. U.S. Conference of Mayors Climate Protection Center, U.S. Mayors Climate Protection Agreement (2005), available at <http://usmayors.org/climateprotection/documents/mcpAgreement.pdf>. This is the same level of reduction as would have been required of the United States under the Kyoto Protocol, had the U.S. ratified that protocol. See Kyoto Protocol to the United Nations Framework Convention on Climate Change, Dec. 10, 1997, U.N. Doc. FCCC/CP/197/L.7/Add. 1, art. 3.1 & Annex B, reprinted in 37 I.L.M. 22 (1998), available at <http://unfccc.int/resource/docs/convkp/kpeng.pdf>.

23. Michele M. Betsill & Barry G. Rabe, *Climate Change and Multilevel Governance: The Evolving State and Local Roles*, in TOWARD SUSTAINABLE COMMUNITIES 201, 208–11 (Daniel A. Mazmanian & Michael E. Kraft eds., The MIT Press 2d ed. 2009). Climate change has also motivated sustainability efforts in other sectors, including business and industry. In fact, climate change has become the public face of unsustainable development. *Progress Toward Sustainability*, *supra* note 12, at 15–16.

24. See *Synthesis*, *supra* note 9, at 39.

pollution, increase water consumption, and destroy wetlands.”²⁵ Because municipalities generally receive their revenue from property taxes, municipalities within a metropolitan area compete with each other for tax revenue in ways that encourage sprawl, deprive center cities of revenue, and contribute to income inequality.

Two key characteristics of sprawl are low-density development and automobile dependence.²⁶ According to the U.S. Environmental Protection Agency, the amount of developed land grew at twice the rate of population growth between 1982 and 2002.²⁷ In large U.S. cities, the overwhelming majority of trips to work are made by car.²⁸ Until very recently, these patterns had not changed substantially. The run-up in gasoline prices in 2008, coupled with the current recession, have changed this pattern for the moment. People are driving less, and land development has slowed.²⁹ It remains to be seen how long this recent behavior lasts, particularly as the economy improves. The underlying legal structure promoting sprawl, including fragmented local decision-making, has not changed.

D. Limited and Uneven State and Federal Support

1. State Government

State government provides much of the legal structure in which municipalities operate, including zoning enabling legislation and legislation setting out the basic legal authority and duties of municipalities. It is virtually impossible for a community to achieve sustainability without significant legal and policy support from the state in which it is located. Put differently, appropriate state laws are needed to assure sustainability at the community level. On some community sustainability issues, there have been significant improvements. Yet many state laws that impede local sustainability continue more or less unchanged.

25. *Id.*

26. Britannica Online Encyclopedia, Urban Sprawl, <http://www.britannica.com/EBchecked/topic/962023/urban-sprawl> (last visited Sept. 9, 2009).

27. U.S. ENVIRONMENTAL PROTECTION AGENCY, EPA'S REPORT ON THE ENVIRONMENT: HIGHLIGHTS OF NATIONAL TRENDS (2008), available at http://www.epa.gov/roehd/pdf/roe_hd_layout_508.pdf.

28. Michael Lewyn, *Sprawl in Europe and America*, 46 SAN DIEGO L. REV. 85, 92–94 (2009) (showing that sixty-five to ninety-one percent of all trips to work in eight out of nine cities over one million were made by car, with New York as the exception (thirty-three percent)).

29. Clifford Krauss, *Driving Less, Americans Finally React to Sting of Gas Prices*, *Study Says*, N.Y. TIMES, June 19, 2008, available at <http://www.nytimes.com/2008/06/19/business/19gas.html>.

In the 1990s, during the first years after the Earth Summit, there was significant progress in operationalizing some basic legal and policy tools to promote sustainable communities. Two examples are brownfields redevelopment and smart growth. Brownfields redevelopment occurs when properties contaminated by improper waste handling and disposal are reused and/or cleaned up.³⁰ Smart growth is “a series of principles that includes, among other things, mixed land uses, preservation of open space, choice in transportation options, and a focus on reenergizing communities for growth and infill.”³¹ In writing about the first decade after the Earth Summit, Jonathan Weiss stated, “The word ‘brownfields’ was not even in the dictionary in 1992; it achieved that honor in 1999. The term ‘smart growth’ did not exist in 1992. It is now arguably a movement.”³²

The different trajectories of these two policies in recent years indicate both the challenges of achieving a holistic approach to sustainability and the very different legal and policy challenges associated with different sustainability issues. While brownfields redevelopment continues to be a success story, maintaining a high level of real achievement in smart growth has been much harder.

Brownfields redevelopment can reduce sprawl because new development occurs within the existing urban footprint. It can also provide jobs within existing urban areas, reducing travel time and even, perhaps, the need for a car. By 2002, laws and policies facilitating brownfields redevelopment were already considered to be a success story; virtually all states had such laws, and a great many sites had been redeveloped all over the country.³³ More recently, these programs have been expanded in a variety of ways.³⁴

While smart growth laws were adopted in Maryland and other states in the 1990s, enthusiasm about smart growth has waned considerably. At least two factors have contributed to this decline. The first is the U.S. Supreme Court’s 2005 decision in *Kelo v. City of New London*, holding that a city redevelopment project involving the condemnation of several homes was a lawful

30. U.S. ENVTL. PROT. AGENCY, BROWNFIELDS AND LAND REVITALIZATION, available at <http://www.epa.gov/brownfields/about.htm>.

31. Patricia Salkin, *Land Use: Blending Smart Growth With Social Equity and Climate Change Mitigation*, in AGENDA FOR A SUSTAINABLE AMERICA 349, 350 (John C. Dernbach ed., ELI Press 2009).

32. Jonathan D. Weiss, *Local Governance*, in STUMBLING TOWARD SUSTAINABILITY 683, 683 (John C. Dernbach ed., 2009).

33. Joel B. Eisen, *Brownfields Development: From Individual Sites to Smart Growth*, in AGENDA FOR A SUSTAINABLE AMERICA 57, 60 (John C. Dernbach ed., ELI Press 2009).

34. *Id.* at 57, 59.

public use under the government's eminent domain power.³⁶ Although not directly related to smart growth, the case created a negative public reaction to land use in general that has dampened political interest in smart growth.³⁵ Some issues rise and fall in political salience because they fall in and out of fashion or interest. This results to some degree from the tendency of incoming administrations to take new policy directions regardless of the effect the new direction may have on the level of attention given to already existing programs. It also appears that, on some issues at least, decision makers simply lose interest after a while. So while there is still interest in smart growth, the interest has lacked the continuity and achievement of brownfields redevelopment.³⁸

In addition to these developments, several other types of laws that profoundly influence community development have changed little. Zoning-enabling laws have changed little over the past two decades in spite of abundant evidence that single-use zoning contributes to sprawl and income inequality.³⁶ Nor have there been many successes in establishing regional governance programs that would harmonize policies in metropolitan areas toward sustainability or reduce the environmental and social impacts of sprawl.³⁷

2. Federal Government

America's transportation system contributes to unsustainable communities. This transportation system is perhaps influenced most profoundly through federal law, which has changed in comparatively small ways since the Earth Summit. Federal transportation laws have historically favored the building of highways over other forms of transportation.³⁸ When coupled with state zoning laws favoring single-use zoning and state transportation laws that are similar to local laws, federal law contributes to sprawl and overdependence on personal automobile travel. These things, in turn, reduce economic opportunities for lower-income people. For many low-income families, the cost of owning a car makes it impossible to qualify for a home mortgage.³⁹ As a result, such families are

36. *Kelo v. City of New London*, 545 U.S. 469, 490 (2005).

35. Salkin, *supra* note 31, at 353–54.

38. *Id.* at 351–353.

36. *Id.* at 349–50.

37. Weiss, *supra* note 10, at 48–50.

38. Trip Pollard, *Transportation: Challenges and Choices*, in *AGENDA FOR A SUSTAINABLE AMERICA* 365, 368 (John C. Dernbach ed., ELI Press 2009).

39. John C. Dernbach & Scott Bernstein, *Pursuing Sustainable Communities: Looking Back, Looking Forward*, 35 *URB. LAW.* 495, 514–15 (2003).

deprived of the capital accumulation that home ownership permits.⁴⁰

Federal surface transportation laws have been periodically revised since the interstate highway system was launched in 1956.⁴¹ The last two reauthorizations—in 1991 and 2005—have focused more on repair of existing roads than the building of new roads and on the development of alternatives to driving.⁴² Still, highway spending continues to be about four times that for mass transportation.⁴³ With revenues from the federal gasoline tax down because of the recession and other factors, a significant question arises about whether we can afford our extensive highway system.⁴⁴ However that issue is resolved, federal transportation law has not yet been a strong factor supporting sustainable communities.

Federal transportation law is not the only federal law that works against sustainable communities. Federal tax policy, for example, contributes to sprawl in the form of income inequality within cities. The federal mortgage deduction favors “wealthier home buyers over those who are less wealthy, renters, multi-family property owners, and people who rehabilitate existing structures.”⁴⁵ The mortgage-interest tax deduction appears to create a major incentive for sprawl.⁴⁶ One study concludes “because of increasing lot sizes, home sizes, and correspondingly larger mortgage financing packages, and because the deduction is indexed to income, the deduction is worth more to borrowers in the suburbs and newer areas than in central cities and older areas.”⁴⁷ To be sure, a 1997 amendment to the Internal Revenue Code, which permits homeowners to purchase less expensive homes in cities without incurring capital gains tax for the sale of the more expensive home in the suburbs,⁴⁸ was a step toward sustainability.⁴⁹ Overall, however, the structure of federal tax incentives has not changed.

40. *Id.*

41. Pollard, *supra* note 38, at 368.

42. *Id.*

43. Michael Cooper, *Congress Grapples, Again, With How to Pay for Transportation Projects*, N.Y. TIMES, June 6, 2009, at A11, available at <http://www.nytimes.com/2009/06/06/us/06highway.html>.

44. *Id.*

45. Weiss, *Local Governance*, *supra* note 32, at 689.

46. Roberta F. Mann, *The (Not So) Little House on the Prairie: The Hidden Costs of the Home Mortgage Interest Deduction*, 32 ARIZ. ST. L.J. 1347 (2000).

47. Dernbach & Bernstein, *supra* note 39, at 505.

48. Taxpayer Relief Act of 1997, Pub. L. No. 105–34, § 312, 111 Stat. 788, 836–41 (1997) (codified at 26 U.S.C. § 121).

49. James M. McElfish, Jr. & Eric Feldman, *Env'tl. Law Inst., Linking Tax Law and Sustainable Urban Development: The Taxpayer Relief Act of 1997*, at 30 (1998).

III. NEXT STEPS NEEDED FOR SUSTAINABLE COMMUNITIES

The U.S. experience over nearly two decades with sustainable communities, as described in Part I, suggests many of the key characteristics required for sustainable communities. These include mayoral leadership, a shared local understanding of the benefits that sustainability could bring to a particular municipality, and strategies to achieve those benefits. Furthermore, they include a continued commitment over time; the U.S. municipalities that are considered to be the most sustainable have worked toward sustainability since the early- to mid-1990s.⁵⁰ This is reflected in the fact that local sustainability requires substantial and time-consuming changes in the built infrastructure (both public and private), involves continuous learning over time, and entails adaptation to new information. While municipalities are learning from each other, they also are learning from their own experience.

The recommendations in *Agenda for a Sustainable America* for sustainable communities can be divided into two categories. One category involves law and governance, while the other involves civil society.⁵¹ Although they are not completely separate, the distinction between the two categories underscores an important truth about achieving sustainable communities: while proper governance is essential for achieving sustainable development, it is not sufficient. An engaged citizenry, including business, educational institutions, religious organizations, and others, is also essential.

A. Law and Governance

Community sustainability efforts are more likely to last and be effective if they are supported and encouraged by law. Municipalities should provide a legal structure for sustainability as an organizing principle in local governance. Furthermore, local governments should help provide citizens with more sustainable choices. At the state and federal level, governments should strengthen environmental laws and modify other laws to provide a legal structure that discourages sprawl and encourages sustainability.

Sustainable development should be an organizing principle for all levels of government, including local government.⁵² Local

50. Portney, *supra* note 11, at 230.

51. AGENDA FOR A SUSTAINABLE AMERICA, *supra* note 3. .

52. The Contributing Authors, *supra* note 12, at 28.

officials—both elected and appointed—should make decisions based on the understanding that environmental degradation compromises public health, economic development, and quality of life. Similarly, municipalities should make decisions based on the understanding that improvements in environmental quality create job opportunities, attract businesses and families, and generally make their communities more attractive and prosperous. Thus, municipalities should engage in open, integrated planning and decision-making that takes economic, environmental, and equity considerations into account.

On one level, sustainability is a cognitive issue for individuals, particularly those in local government leadership positions. People either see the world this way or they don't. There is abundant evidence that many people automatically discount, treat less seriously, or ignore issues that can be labeled as "environmental" or "green."⁵³ Fortunately, decision makers increasingly understand the costs of ignoring the environment and the many opportunities that a sustainability worldview provides.

The on-again, off-again quality of many sustainability efforts—which so often seem dependent on the presence of a single committed leader, and which suffer when that leader is no longer in charge—suggests the need for some legal or institutional mechanism to make sustainability an organizing principle. Reflexive law provides an option to address this need. It improves the capacity of governmental institutions and other entities to learn about themselves and their actions, and stimulates these institutions and entities to use this information to make appropriate changes.⁵⁴ For sustainable communities, reflexive law can provide information to government agencies and institutions on the effectiveness and impacts of particular laws and policies, which can then be used to modify those laws and policies.⁵⁵ Reflexive law can also encourage or prod nongovernmental entities, including businesses, to make their activities more sustainable, without being overly prescriptive.⁵⁶

53. See, e.g., Robert Brulle & J. Craig Jenkins, *Fixing the Bungled U.S. Environmental Movement*, 7 CONTEXTS 14 (2008); Andrew Rowell, GREEN BACKLASH: GLOBAL SUBVERSION OF THE ENVIRONMENTAL MOVEMENT (1996).

54. Sanford E. Gaines, *Reflexive Law as a Legal Paradigm for Sustainable Development*, 10 BUFF. ENVTL. L.J. 1, 22 (2003).

55. René Kemp, Saeed Parto & Robert B. Gibson, *Governance for Sustainable Development: Moving from Theory to Practice*, 8 INTL. J. SUSTAINABLE DEV. 12, 23–26 (2005).

56. Eric W. Orts, *Reflexive Environmental Law*, 89 NW. U. L. REV. 1227, 1311–13 (1995).

Several options are suggestive of the kinds of reflexive laws likely to encourage and maintain local sustainability efforts over the extended period required to achieve sustainability. These options include requirements for the mayor or other local chief executive to adopt, implement, and update a local sustainability strategy; to develop and publish local sustainability indicators; to set and accomplish specific measurable goals; to involve the public in the creation and implementation of these efforts; and to have a high-ranking sustainability coordinator who is responsible for directing or managing sustainability efforts within the entire municipality. These requirements would make sustainability an operating principle of local governance that would, in principle, survive after any particular official has left office. They would force municipalities to learn what they can do to be more sustainable and would stimulate appropriate responses. When other laws and policies create barriers to a more sustainable community, these procedural requirements would expose them to public scrutiny and possible change.

B. More and Better Personal Choices

Agenda for a Sustainable America recommends that individuals, families, and consumers “have more sustainable options in the decisions they make.”⁵⁷ Perhaps the most obvious example of the need for such choices at the local level is the inability of many children to walk or take their bicycle to school, and the inability of many parents and adults to walk or bicycle to work or nearby stores. The obvious culprits are land use laws that foster single-use zoning, tax laws that keep tax revenues (including property tax revenues) within the municipality in which they were generated, and the proliferation of many virtually autonomous local governments in metropolitan areas.

The necessary remedy here is not more law, but different law, perhaps most importantly at the state and federal level. Renewed attention to smart growth is a necessary part of this effort. Smart growth would require modification of state zoning-enabling laws to eliminate or modify requirements for single-use zoning. Smart growth would also require or encourage development to occur where there is already existing infrastructure—including roads, water systems, and sewer systems—rather than in undeveloped greenfields.

Similarly, local, state, and federal law should also provide and promote greater choice in transportation. More people would walk, use bicycles, or use mass transit if those choices were more

57. The Contributing Authors, *supra* note 12, at 33.

available and convenient. One way to accomplish this is reduce driving subsidies and improve price signals.⁵⁸ The American Recovery and Reinvestment Act, the stimulus legislation adopted by Congress in early 2009, has taken some significant steps in that direction by, for example, providing more money for mass transit.⁵⁹

1. Strengthened Environmental Laws

While sustainable development addresses issues that are broader than those addressed by environmental law, environmental law provides an important part of the foundation for sustainable development. Strengthened environmental and natural resources laws would not only improve environmental quality, they would also improve public health and foster new technological developments.⁶⁰ Air pollution in particular tends to be concentrated in large cities, with continuing adverse effects on human health despite improvements in air quality over the past several decades.⁶¹ Thus, efforts to strengthen enforcement of the Clean Air Act—by strengthening air quality standards, reducing emissions from stationary sources such as power plants, and promoting cleaner, more efficient vehicles—will all contribute to sustainable development.⁶²

Recently enacted and proposed clean energy and climate change legislation—aimed at reducing the use and effects of fossil fuels—will also contribute to sustainable communities. This is true not only of federal legislation, but state and local efforts as well. Municipalities need to implement their commitments to reduce greenhouse gas emissions under the Mayors Climate Protection Agreement.⁶³ For example, energy efficient upgrades and rehabilitation of existing residential and commercial structures in Milwaukee, Houston, and other cities are reducing energy prices for poor and low income people, saving money for businesses, creating green jobs, providing needed business for many companies, encouraging investment in energy efficient technologies, and reducing greenhouse gas emissions.⁶⁴

58. Pollard, *supra* note 38, at 373–74.

59. American Recovery and Reinvestment Act of 2009, H.R. 1, 111th Cong. Title XII (2009).

60. The Contributing Authors, *supra* note 12, at 34–36.

61. AM. LUNG ASS'N, STATE OF THE AIR 2009, at 6 (2009).

62. *Id.* at 8–9 (2009). See David M. Driesen, *Air Quality: The Need to Replace Basic Technologies With Cleaner Alternatives*, in AGENDA FOR A SUSTAINABLE AMERICA 239, 239 (John C. Dernbach ed., 2009).

63. Weiss, *supra* note 10, at 52.

64. See generally VAN JONES, THE GREEN COLLAR ECONOMY: HOW ONE SOLUTION CAN FIX OUR TWO BIGGEST PROBLEMS 118 (HarperOne 2008) (illustrating that energy efficiency upgrades can cut utility costs and create green jobs).

2. Supportive State and Federal Laws

A fourth element, already alluded to, is federal and state support. National and state leadership, including strategies for sustainable development, appropriate implementing mechanisms, and indicators, are all essential parts of any serious sustainability effort.⁶⁵ Yet such efforts could have significant and positive consequences for sustainable communities as well. The national government should lead, support, and encourage sustainable development efforts by individuals, nongovernmental organizations, corporations, and state and local governments. For municipalities, this support and encouragement should include federal incentives for smart sustainability policies in many areas, including regional coordination, energy efficiency, housing, and transportation, environment, and land use.

State laws and policies have a profound effect on local governments, and thus states can, and should, influence and encourage local sustainability efforts. For example, states need to move toward systems that better promote regional governance and smart growth, and that help reduce harmful regional inequities. States need to move “toward a system that better promotes regional governance and shares taxes within a region” by establishing appropriate incentives and disincentives, as well as regional coordinating entities.⁶⁶ States should also modify their zoning laws to encourage more mixed-used zoning (that is, zoning that allows many different but compatible uses in the same zoning areas).⁶⁷ Mixed-use zoning can permit a blending of commercial and residential uses as well as a blending of high-income and low-income residential uses. Thus, people can get to work more easily, regardless of their income, and social interaction is promoted. State brownfields redevelopment laws have encouraged and contributed to the cleanup and/or reuse of thousands of properties contaminated by improper waste handling and disposal.⁶⁸ A new generation of state brownfields laws—encouraging the use of area wide brownfields initiatives, requiring measures to assess the role brownfields redevelopment plays in achieving sustainability, and promoting the use of green buildings on redeveloped sites—would further advance community sustainability.⁶⁹

65. Weiss, *supra* note 10, at 50–51.

66. Weiss, *Local Governance*, *supra* note 32, at 696 (explaining, for example, that a state mandated tax-sharing system has led to a four-fold decrease in property value disparity in the Minneapolis-St. Paul area).

67. *Id.* at 697.

68. Eisen, *supra* note 33, at 58–59.

69. *Id.* at 62–66.

C. Civil Society

In a democracy like the United States, there is no bright line between government and civil society. Government can foster and encourage public engagement, and the public (through elections and other means) influences what government does. Still, the following short list is illustrative of the many ways that nongovernmental entities and individuals can contribute to community sustainability.

1. Public Participation

Public participation is at the heart of local sustainability efforts. Public participation includes widespread public access to information, opportunities for citizens to organize and take part in collective decision-making, and broad representation across race and class. Local governments need to engage citizens on community sustainability. For local efforts, sustainable development goals and indicators are particularly good ways to engage individuals and groups; they provide easily understood objectives and ways of measuring their achievement, which enables them to motivate private and governmental behavior.⁷⁰ Goals and indicators can be particularly effective supplements to the growing use of the Internet, Google Earth[®], and other new ways of providing information. Government entities at all levels should work harder to provide citizens with more and better information about new issues such as climate change and ecosystem services, better indicators of the relationship between humans and ecosystems, and better information about climate change impacts, particularly on the poor.⁷¹

2. Colleges and Universities

Public and private educational institutions—not only colleges and universities but also primary and secondary schools—are essential parts of any sustainable community effort, and not only because of the obvious importance of a well-educated workforce and citizenry. If students learn at an early age that everything they care about depends on the environment, rather than see the environment as unrelated to everything they care about, they are more likely to make more sustainable

70. See generally John C. Dernbach, *Targets, Timetables and Effective Implementing Mechanisms: Necessary Building Blocks for Sustainable Development*, 27 WM. & MARY ENVTL. L. & POL'Y REV. 79 (2003) (suggesting that setting goals and milestones that are readily ascertainable is critical to achieving sustainable development at the local level).

71. Carl Bruch et al., *Public Access to Information, Participation, and Justice: Forward and Backward Steps Toward an Informed and Engaged Citizenry*, in AGENDA FOR A SUSTAINABLE AMERICA 459, 470–72 (John C. Dernbach ed., ELI Press 2009).

decisions as adults. Thus, state educational requirements that include sustainability are important to community sustainability.⁷² In addition, students and teachers in colleges and universities can be of particular assistance to local communities in solving local problems relating to a variety of sustainability issues, and are playing a greater role in that effort.⁷³

3. Business and Industry

Businesses need to step up their sustainability activities. The growing number of corporations engaged in sustainable practices contributes to community sustainability. The “triple bottom line” espoused by an increasing number of U.S. corporations—involving not only economic growth but also environmental protection and social contributions—makes these corporations better contributors to the sustainability of the communities in which they are located.⁷⁴ Companies can do this by contributing to local sustainability efforts, reducing their greenhouse gas emissions, making and selling more environmentally sustainable products and services, and using nationally or internationally recognized metrics to assess their progress toward sustainability.⁷⁵

4. Religious Organizations

Religious organizations—churches, synagogues, mosques, temples, and other religious communities and organizations—need to play a greater role in achieving local sustainability. They can do so through the vision and values that they teach; the simpler living, energy saving, and community building that they practice; their advocacy and the partnerships they create with other institutions; and by the support and nurturing they provide their members.⁷⁶

72. Carmela Federico & Jaimie Cloud, *Kindergarten Through Twelfth Grade Education: Fragmentary Progress in Equipping Students to Think and Act in a Challenging World*, in AGENDA FOR A SUSTAINABLE AMERICA 109, 119–20 (John C. Dernbach ed., ELI Press 2009).

73. Wynn Calder & Julian Dautremont-Smith, *Higher Education: More and More Laboratories for Inventing a Sustainable Future*, in AGENDA FOR A SUSTAINABLE AMERICA 93, 98 (John C. Dernbach ed., ELI Press 2009).

74. Ira Robert Feldman, *Business and Industry: Transitioning to Sustainability*, in AGENDA FOR A SUSTAINABLE AMERICA 71, 72 (John C. Dernbach ed., ELI Press 2009).

75. *Id.* at 82–84.

76. Dieter T. Hessel, *Religion and Ethics Focused on Sustainability*, in AGENDA FOR A SUSTAINABLE AMERICA 129, 138–40 (John C. Dernbach ed., ELI Press 2009).

5. Individuals

Finally, individuals have a significant role to play in achieving local sustainability efforts, apart from the places where they work or the religious organizations to which they belong. They can help by leading or participating in local sustainability efforts, advocating or supporting particular policies, and by voting. Individuals can also contribute by changing their own behavior—using less energy, buying locally-grown food, and reducing their carbon footprint. Governments (including local governments) should encourage these behavioral changes by publishing appropriate information and providing incentives.⁷⁷

IV. CONCLUSION

Sustainable communities require a continuing, intensive commitment over time, supported by not only law and appropriate legal institutions, but also by the individuals, businesses, religious institutions, colleges, and universities that live or operate within these communities. Because the social, economic, and environmental aspects of issues are most obvious at the local level, communities can and should be incubators of the kinds of changes that are needed for sustainable development.

We have no experience with a modern industrial society that is truly, or even nearly, sustainable. Therefore, we are deeply dependent on innovation—invention, testing, and refinement—not only for technology, but also for law and governance. Sustainable communities are important to the people who live and work in those communities. But they are also important for what they have to teach us about how to create a sustainable society.

77. See, e.g., GERALD T. GARDNER & PAUL C. STERN, ENVIRONMENTAL PROBLEMS AND HUMAN BEHAVIOR (Pearson 2d ed. 2002) (1996); Hope M. Babcock, *Assuming Personal Responsibility for Improving the Environment: Moving Toward a New Environmental Norm*, 33 HARV. ENVTL. L. REV. 117 (2009); John C. Dernbach, *Harnessing Individual Behavior to Address Climate Change: Options for Congress*, 26 VA. ENVTL. L. J. 107 (2008); Michael P. Vandenbergh & Ann C. Steinemann, *The Carbon-Neutral Individual*, 82 N.Y.U.L. REV. 1673 (2007).