

## C O M M E N T S

# ENVIRONMENTAL JUSTICE AND CUMULATIVE IMPACTS IN CALIFORNIA

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**Y**ick Wo immigrated to San Francisco, California, in 1861 and built his own laundry business.<sup>1</sup> San Francisco Order 1569 established a misdemeanor offense for any person who opens a laundry within San Francisco city limits without obtaining a permit from the board of supervisors,<sup>2</sup> which had exclusive discretion to issue permits. Many Chinese individuals like Yick living in San Francisco could not get permits to run their laundry businesses.<sup>3</sup> Yick was arrested for continuing to run his business, along with 150 other Chinese individuals living in San Francisco.<sup>4</sup> The U.S. Supreme Court in *Yick Wo v. Hopkins* held that the biased enforcement of Order 1569 violated the Equal Protection Clause of the Fourteenth Amendment.<sup>5</sup>

This is one example of discriminatory land use and zoning policies in San Francisco. Since the late 19th century, San Francisco has implemented many pieces of environmental justice (EJ) and cumulative impacts legislation to protect the rights of its citizens. How did San Francisco go from discriminatorily enforcing its laws to establishing important EJ protections? This Comment addresses EJ and cumulative impacts legislation in San Francisco, and highlights the continued importance of addressing such legislation at the municipal level.

The California Environmental Protection Agency defines “environmental justice” as “fairness, regardless of race, color, national origin or income, and the meaningful involvement of community in the development of laws and regulations that affect every community’s natural surroundings, and the places people live, work, play and learn.”<sup>6</sup> “Cumulative impacts” are defined as chemical and nonchemical stressors that aggregate and accumulate over time from one or more sources in the built, natural, and social environments that affect individuals and communi-

ties.<sup>7</sup> Many municipalities across the country already have existing EJ and cumulative impacts legislation.

The Natural Resources Defense Council (NRDC) and the Tishman Environment and Design Center at the New School published a 2019 paper (the NRDC Paper) that identifies six types of EJ and cumulative impacts legislation and policies.<sup>8</sup> The first are bans, which seek to prevent unwanted pollution and specific land uses that are harmful to public health and the environment.<sup>9</sup> Second are general EJ policies and programs, which seek to legislate exclusively from an EJ perspective.<sup>10</sup> Third are reviews, which involve instituting a review process through zoning boards for applicants.<sup>11</sup>

Fourth is proactive planning, which involves incorporating EJ and cumulative impacts into a municipality’s comprehensive plan.<sup>12</sup> Fifth is targeting existing land uses, which involves mitigating harmful land use policies that have been grandfathered in and do not account for EJ or cumulative impact considerations.<sup>13</sup> Last, public health codes enforce nuisance protections that can cause or aggravate health issues.<sup>14</sup> San Francisco has created five out of these six types of laws and policies.

This Comment surveys what EJ looks like in San Francisco. I will first discuss the process of creating and implementing EJ laws and programs, then address the impact that state law and community organizations have had on development of San Francisco’s EJ and cumulative impact laws. California state law has had a significant impact; for example, California Senate Bill 1000 requires cities

1. *Yick Wo v. Hopkins*, 118 U.S. 356 (1886).

2. S.F., CAL., ORDER 1569 (1880).

3. Josephine Rosene, *Cancer Alley: A Case Study of Environmental Injustice and Solutions for Change*, 16 U. ST. THOMAS J.L. & PUB. POL’Y 501, 506 (2023) (citing *Yick Wo*, 118 U.S. 356).

4. *Id.*

5. 118 U.S. 356.

6. California Environmental Protection Agency, *Environmental Justice Program*, <https://calepa.ca.gov/envjustice/> (last visited Feb. 11, 2025).

7. U.S. Environmental Protection Agency (EPA), *Cumulative Impacts Research*, <https://www.epa.gov/healthresearch/cumulative-impacts-research> (last updated Feb. 11, 2025).

8. ANA ISABEL BAPTISTA ET AL., NEW SCHOOL TISHMAN ENVIRONMENT AND DESIGN CENTER, LOCAL POLICIES FOR ENVIRONMENTAL JUSTICE: A NATIONAL SCAN (2019), <https://www.nrdc.org/sites/default/files/local-policies-environmental-justice-national-scan-tishman-201902.pdf>.

9. Emily DiGiacomo, *Environmental Justice and Cumulative Impacts: A How-to Guide and Explanation for Interested Municipalities Part 1*, in 47 ZONING AND PLANNING LAW REPORT 1 (Supp. Oct. 2024) (citing BAPTISTA ET AL., *supra* note 8).

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

and counties to adopt EJ policies in their general plans.<sup>15</sup> This directly influenced San Francisco, though the robustness of the city's policies is of its own doing. Additionally, San Francisco used California state data and findings to develop its Health Code Article 38.<sup>16</sup>

The Comment will show the importance of EJ and cumulative impact governance coming from municipalities by highlighting a specific case study that has worked. San Francisco is exemplary because of the number and content of the EJ and cumulative impact laws that it has put into effect. I argue that governance on EJ and cumulative impacts through municipalities is more effective because municipalities have the ability to center community needs through holding public hearings, identifying EJ communities and changing zoning laws in those areas, empowering businesses and communities in environmental participation, creating green jobs, and creating EJ education and awareness programs in schools and community centers. Through an EJ lens, it is important to acknowledge the history and the people being disproportionately affected. When focusing on this topic, it is important that EJ policies are community-centered and -led. The overall goal is to inspire municipalities to create programs and laws that address EJ more holistically in their communities.

Part I discusses the current laws, policies, and programs San Francisco has in place to address EJ. Part II addresses the impact state law and local communities have had on creation of the legislation in San Francisco. Part III discusses the importance of EJ and cumulative impact governance coming from municipalities, since responses can be more targeted to community needs and concerns. I will highlight San Francisco as a good model for municipalities to look toward when looking to create their own EJ and cumulative impact laws. Part IV concludes.

## I. Current Laws, Policies, and Programs in San Francisco

San Francisco established its Environmental Justice Grant Program in 2001, which addresses community concerns.<sup>17</sup> The program has awarded more than \$12 million to non-profit groups to improve living conditions in southeast San Francisco.<sup>18</sup> On top of this, San Francisco has five out of the six types of policies identified in the NRDC Paper<sup>19</sup>: a general EJ policy, review, proactive planning, targeted land use, and a Public Health Code.

As for general EJ policy, San Francisco amended its general plan in 2023 to adopt the Environmental Justice Framework in Ordinance 084-23.<sup>20</sup> The framework has

been implemented by the San Francisco Planning Department (SF Planning).<sup>21</sup> It was created in partnership with the Office of Racial Equity and SF Planning's Racial and Social Equity Action Plan.<sup>22</sup> The framework "provides guidance to City agencies on how they can address environmental justice in their work."<sup>23</sup> The topics the framework provides guidance on include health and resilient environments; physical activity and healthy public facilities; healthy food access; safe, healthy, and affordable homes; equitable and green jobs; and empowered neighborhoods.<sup>24</sup>

The EJ Framework also created the Environmental Justice Communities Map.<sup>25</sup> This map identifies EJ communities by highlighting the areas with the highest EJ burden in red.<sup>26</sup> Additionally, the map is publicly available on SF Planning's website.<sup>27</sup> San Francisco's EJ map is based on the California Communities Environmental Health Screening Tool (CalEnviroScreen), which looks at EJ health risks across California.<sup>28</sup>

SF Planning has also published a technical document that describes the methodology of creating the EJ Communities Map and provides a user guide for citizens interpreting the map.<sup>29</sup> In developing the EJ Framework and EJ Communities Map, San Francisco worked with citizens and provided opportunities for participation, including "a virtual open house, focus groups, youth engagement, EJ Working Groups [including community leaders and city agencies], and more."<sup>30</sup> The EJ Framework addressed San Francisco as a whole, and provided long-term goals for the city and its departments to one day achieve.

San Francisco has a review policy in the form of Ordinance 282-08, Conditional Use Requirement for Power Plants.<sup>31</sup> The ordinance limits the use of power plants by requiring steam or fossil fuel power plants to obtain condi-

15. S.B. 1000, 2015-2016 Leg. (Cal. 2016), [https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=201520160SB1000](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201520160SB1000).

16. S.F., Cal., Ordinance 224-14 (Oct. 6, 2014), <https://sfbos.org/ftp/uploadedfiles/bdsupvrs/ordinances14/o0224-14.pdf>.

17. San Francisco Environment Department, *Environmental Justice Grant Program*, <https://www.sfenvironment.org/environmental-justice-grant-program> (last visited Feb. 11, 2025).

18. *Id.*

19. BAPTISTA ET AL., *supra* note 8.

20. S.F., Cal., Ordinance 084-23 (May 19, 2023).

21. SF Planning, *Environmental Justice Framework and General Plan Policies*, <https://sfplanning.org/project/environmental-justice-framework-and-general-plan-policies> (last visited Feb. 11, 2025).

22. DiGiacomo, *supra* note 9 (citing SF Planning, *Environmental Justice Framework and General Plan Policies: Adoption*, <https://sfplanning.org/project/environmental-justice-framework-and-general-plan-policies#adoption> (last visited Feb. 11, 2025)).

23. SF Planning, *Environmental Justice Framework*, [https://generalplan.sfplanning.org/Environmental\\_Justice\\_Framework.htm](https://generalplan.sfplanning.org/Environmental_Justice_Framework.htm) (last visited Feb. 22, 2025).

24. *Id.*

25. SF Planning, *Environmental Justice Framework and General Plan Policies: EJ Communities*, <https://sfplanning.org/project/environmental-justice-framework-and-general-plan-policies#ej-communities> (last visited Feb. 11, 2025).

26. *Id.*

27. *Id.*

28. DiGiacomo, *supra* note 9 (citing California Office of Environmental Health and Hazard Assessment, *About CalEnviroScreen*, <https://oehha.ca.gov/calenviroscreen/about-calenviroscreen> (last visited Feb. 11, 2025)).

29. SF PLANNING, SAN FRANCISCO ENVIRONMENTAL JUSTICE COMMUNITIES MAP: TECHNICAL DOCUMENTATION (2023), <https://citypln-m-extnl.sfgov.org/SharedLinks.aspx?accesskey=8d8d840a49816b53aa7206cb3d48aaec054b075ca7f76f995c40f2babaca4967&VaultGUID=A4A7DADC-B0DC-4322-BD29-F6F07103C6E0>.

30. DiGiacomo, *supra* note 9.

31. S.F., Cal., Ordinance 282-08 (Nov. 12, 2008).

tional use permits<sup>32</sup> in certain zoning districts.<sup>33</sup> The board of supervisors also considers the criteria set in the Planning Code before taking any steps toward approving a city fossil fuel power plant.<sup>34</sup> The ordinance requires environmental findings to be shared, which can include harms to human health associated with fossil fuel plants.

Ordinance 282-08 is related to a similar San Francisco ordinance, 124-01.<sup>35</sup> Ordinance 124-01 requires city departments to develop plans to integrate “practical transmission, conservation, efficiency, and renewable energy alternatives.”<sup>36</sup> Ordinance 282-08 sets up an environmental review process to slow or stop existing harmful uses and perpetuating more environmental harms.

San Francisco has a form of proactive planning in Resolution 349-11, entitled Electricity Resource Plan Update.<sup>37</sup> The resolution updates the 2002 version, and serves as a “long-term policy guide to be used in proposing and implementing specific energy related programs.”<sup>38</sup> The resolution identifies three strategies toward achieving net-zero greenhouse gas emissions by 2030.<sup>39</sup>

The first strategy is to lift up local businesses and citizens by promoting energy efficiency and developing on-site renewable energy.<sup>40</sup> The second is to implement green pricing options and regulatory proceedings to “increase the amount of zero-[greenhouse gas] electricity supplied to the City’s customers from the wholesale energy market.”<sup>41</sup> Currently, 83% of energy is currently supplied through Pacific Gas and Electric Company in San Francisco.<sup>42</sup> The third strategy relies on San Francisco’s Public Utilities Commission (SFPUC) and expanding the electric service’s ability to provide reliable, environmentally sensitive, and fairly priced services.<sup>43</sup>

SFPUC has Resolution 09-0170, Environmental Justice Policy, that falls under targeting existing land uses.<sup>44</sup> SFPUC commits itself to EJ under its own definition as steward of the community and its lands. SFPUC defines “environmental justice” as “the fair treatment of people of all races, cultures, and incomes and believes that no group of people should bear a disproportionate share of negative environmental consequences resulting from the operations, programs, and/or policies of the SFPUC.”<sup>45</sup>

SFPUC commits its staff to developing EJ training; expanding the work force with community members and green job opportunities; implementing initiatives to eliminate the potentially disproportionate impacts of SFPUC decisions and activities; developing diverse communication strategies to reach all stakeholders and ensure everyone can participate in decisionmaking; and creating the Citizens’ Advisory Committee within SFPUC to develop EJ guidelines for SFPUC to use in assessing actions, decisions, and projects.<sup>46</sup>

Under public health codes and policies, San Francisco has Health Code Article 38 to install enhanced ventilation for buildings near roadways.<sup>47</sup> The Health Code requires “enhanced ventilation systems for sensitive use projects within the Air Pollutant Exposure Zone.”<sup>48</sup> Additionally, this code establishes document review fees associated with sensitive use projects.<sup>49</sup>

The Building Code was amended to be in accordance with the Health Code. The code states that air pollutant sources include freeways and busy roadways, which both have a tendency to affect people and increase their susceptibility to poor lung functions, asthma, or other respiratory problems.<sup>50</sup> The code created an Air Pollutant Exposure Zone and provides its own environmental findings and those from the California Health and Safety Code.<sup>51</sup> Increased ventilation is required in sensitive use buildings<sup>52</sup> in the Air Pollutant Exposure Zone that are

- (a) newly constructed; or
- (b) undergoing a “Major Altercation to Existing Building” as defined by the San Francisco Green Building Code; or
- (c) the subject of an application for an SF Planning-permitted change of use.<sup>53</sup>

The Air Pollutant Exposure Zone Map highlights various locations across San Francisco where “the cumulative PM<sub>2.5</sub> [fine particulate matter] concentration is more than 10 µg/m<sup>3</sup> [micrograms per cubic meter]”<sup>54</sup> and within 500 feet of any freeway.<sup>55</sup> The Health Code mandates that the Air Pollutant Exposure Zone Map be updated every five years to include new information regarding air pollutants

32. Conditional use permits require discretionary approval from the city. Permit Advisors, *What Is a Conditional Use Permit and How Does It Affect Permit Expediting?*, <https://www.permitadvisors.com/resource/conditional-use-permit/> (last visited Feb. 11, 2025).

33. DiGiacomo, *supra* note 9 (citing S.F., Cal., Ordinance 282-08 (Nov. 12, 2008)).

34. *Id.*

35. S.F., Cal., Ordinance 124-01 (May 21, 2001).

36. DiGiacomo, *supra* note 9 (citing S.F., Cal., Ordinance 124-01 (May 21, 2001)).

37. S.F., Cal., Resolution 349-11 (July 25, 2011).

38. DiGiacomo, *supra* note 9 (citing S.F., Cal., Resolution 349-11 (July 25, 2011)).

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.*

44. S.F., Cal., SFPUC Commission Resolution 09-0170 (Oct. 13, 2009).

45. *Id.*

46. *Id.*

47. S.F., Cal., Ordinance 224-14 (Oct. 6, 2014).

48. DiGiacomo, *supra* note 9 (citing S.F., Cal., Ordinance 224-14 (Oct. 6, 2014)).

49. S.F., Cal., Ordinance 224-14 (Oct. 6, 2014).

50. *Id.* §3802(c).

51. *Id.* §3802.

52. “Sensitive use buildings” are defined as follows: (1) new; (2) undergoing major altercation to an existing building; or (3) undergoing a permitted change of use. *Id.* §3804(a).

53. S.F., Cal., Ordinance 224-14 (Oct. 6, 2014).

54. DiGiacomo, *supra* note 9 (citing S.F., Cal., Ordinance 224-14 (Oct. 6, 2014)).

55. S.F., Cal., Ordinance 224-14 (Oct. 6, 2014).

with significant health concerns, vulnerable locations, and significant land use changes.<sup>56</sup>

San Francisco has been able to pass legislation on EJ and cumulative impacts. This was achieved through implementing different categories of laws. Some are more aspirational toward long-term goals, such as Resolution 09-0170,<sup>57</sup> Resolution 349-11,<sup>58</sup> and Ordinance 084-23.<sup>59</sup> Others, like Health Code Article 38<sup>60</sup> and Ordinance 282-08,<sup>61</sup> provide stricter laws for companies to follow to ensure community members are being protected. All of these laws interact with one another to provide numerous goals and protections for citizens and the local environment.

## II. Impact of State Law and Local Communities

California state law has significantly impacted the creation of and sheer number of EJ and cumulative impact laws. Senate Bill 1000 required municipalities to adopt EJ policies into their general plans.<sup>62</sup> San Francisco developed this in Ordinance 084-23 and has continued to update its general plan with EJ.<sup>63</sup> California state findings have been cited in many of the codes and resolutions in San Francisco in conjunction with its own data, like in Health Code Article 38.<sup>64</sup>

Additionally, Senate Bill 1000 required the creation of the EJ Communities Map.<sup>65</sup> Municipalities are required to “identify where ‘Disadvantaged Communities’ are located, defined as areas facing elevated pollution burden coupled with a high incidence of low-income residents.”<sup>66</sup> San Francisco’s EJ Communities Map used data collected for the CalEnviroScreen 4.0 Map.<sup>67</sup> California state laws and findings helped push forward the creation of San Francisco’s laws and policies.

The San Francisco community is very engaged in EJ issues. In 2017, San Francisco participated in the People’s Climate March that occurred in various cities across the country to protest the rollbacks of environmental protection under President Donald Trump’s first Administration.<sup>68</sup> There are numerous community groups that have been fighting for EJ.

Play Streets SF is a program under the San Francisco Municipal Transportation Agency (SFMTA) that empowers communities to “transform their block into an accessible, car-free open space” for the community to enjoy.<sup>69</sup> The program is in partnership with SF Planning, the Department of Children, Youth, and Their Families, and the Department of Public Health.<sup>70</sup> The program is targeted at communities that need it most—“African American, Latino, Chinese, Pilipino, and Samoan/Pacific Islander who all experience disproportionately high rates of poor health.”<sup>71</sup>

Another community group is Literacy for Environmental Justice, which works toward promoting “ecological health, environmental stewardship, and community development.”<sup>72</sup> One example of a project they promoted in San Francisco is the Candlestick Point Native Plant Nursery. The nursery is a community hub that employs local community members to help regrow plants, restore local habitats, and preserve biodiversity through the propagation of native plants.<sup>73</sup> Another community hub is a farmers market hosted every Thursday by the Bayview-Hunters Point neighborhood.<sup>74</sup> The market provides essential fresh produce and other resources to the community, while also giving business to local farmers.<sup>75</sup>

Although the community is very engaged with EJ issues in San Francisco on its own, many of its EJ laws and policies require community involvement. Resolution 09-0170 requires development of diverse communication strategies to reach all stakeholders, assurance that everyone can participate in decisionmaking processes, and the creation of the Citizens’ Advisory Committee within SFPUC to develop EJ guidelines for SFPUC to use in assessing actions, decisions, and projects.<sup>76</sup>

In developing the EJ Framework and EJ Communities Map, San Francisco worked with citizens and provided opportunities for participation, including “a virtual open house, focus groups, youth engagement, EJ Working Groups [including community leaders and city agencies], and more.”<sup>77</sup> Although it is important for laws to mandate community involvement, it is also important for communities to take action themselves to help create laws that are beneficial to their specific needs. Community residents have firsthand knowledge about environmental issues and can come up with effective solutions for municipalities to implement.

56. DiGiacomo, *supra* note 9 (citing S.F., Cal., Ordinance 224-14 (Oct. 6, 2014)).

57. S.F., Cal., SFPUC Commission Resolution 09-0170 (Oct. 13, 2009).

58. S.F., Cal., Resolution 349-11 (July 25, 2011).

59. S.F., Cal., Ordinance 084-23 (May 19, 2023).

60. S.F., Cal., Ordinance 224-14 (Oct. 6, 2014).

61. S.F., Cal., Ordinance 282-08 (Nov. 12, 2008).

62. S.B. 1000, 2015-2016 Leg. (Cal. 2016).

63. S.F., Cal., Ordinance 084-23 (May 19, 2023).

64. S.F., Cal., Ordinance 224-14 (Oct. 6, 2014).

65. S.B. 1000, 2015-2016 Leg. (Cal. 2016).

66. San Francisco General Plan, *Environmental Justice Framework*, [https://generalplan.sfplanning.org/Environmental\\_Justice\\_Framework.htm](https://generalplan.sfplanning.org/Environmental_Justice_Framework.htm) (last visited Feb. 11, 2025) (citing S.B. 1000, 2015-2016 Leg. (Cal. 2016)).

67. California Office of Environmental Health and Hazard Assessment, *supra* note 28.

68. *People’s Climate March: Thousands Rally to Denounce Trump’s Environmental Agenda*, GUARDIAN (Apr. 29, 2017), <https://www.theguardian.com/us-news/2017/apr/30/peoples-climate-march-thousands-rally-to-denounce-trumps-environmental-agenda>.

69. SFMTA, *Play Streets*, <https://www.sfmta.com/projects/play-streets> (last visited Feb. 11, 2025).

70. *Id.*

71. *Id.*

72. Literacy for Environmental Justice, *About Us*, <https://www.lejyouth.org/index.php/about-us/> (last visited Feb. 11, 2025).

73. Literacy for Environmental Justice, *Native Plant Nursery*, <https://www.lejyouth.org/index.php/native-plant-nursery/> (last visited Feb. 11, 2025).

74. Michelle Peters, *Farmers Market Returns to the Southeast Community Center*, SFPUC (May 20, 2024), <https://www.sfpuc.gov/about-us/news/farmers-market-returns-southeast-community-center>.

75. *Id.*

76. S.F., Cal., SFPUC Commission Resolution 09-0170 (Oct. 13, 2009).

77. DiGiacomo, *supra* note 9.

When developing the Environmental Justice Framework, SF Planning worked with many community and city partners. Between October and December 2022, SF Planning held six focus groups on EJ to reach out to community members “who are often overlooked in community outreach and engagement.”<sup>78</sup> Community organizations who co-hosted the focus groups included Promotoras Activas de San Francisco, Carnaval San Francisco (CANA), Booker T. Washington Community Service Center, Potrero Hill Neighborhood House, City of Dreams, and Wu Yee Children’s Services.<sup>79</sup>

Additionally, SF Planning formed an Environmental Justice Working Group that worked to create policy recommendations, identify community needs, and provide specific feedback on needs for the implementation of the EJ Framework.<sup>80</sup> The group was created to include the viewpoints of community leaders most impacted by EJ and staff from city agencies who work with EJ.<sup>81</sup> Community organizations included the American Indian Cultural District, Bayview Hunters Point Community Advocates, Brightline Defense, Chinatown Community Development Center, People Organizing to Demand Environmental and Economic Rights, and San Francisco African American Faith-Based Coalition.<sup>82</sup> City agencies included the San Francisco Department of Public Health, Department of the Environment, Human Rights Commission, Municipal Transportation Agency, SFPUC, and Public Works.<sup>83</sup>

### III. Why Governance Needs to Come From Municipalities

The Environmental Justice Movement began tackling issues from the ground up. EJ concerns rose during the Civil Rights Movement.<sup>84</sup> One of the main catalysts for the Environmental Justice Movement was a sit-in protest at a landfill in North Carolina.<sup>85</sup> EJ movements have started on a smaller scale and moved up to bigger issues. EJ and cumulative impact governance needs to follow the same pattern and start at the bottom and work its way up.

Municipalities are better at addressing community needs because they are more connected to their communities. “Cities and Towns experience their local environmental conditions most directly and are therefore ideally suited to writing ordinances that address their communities’ specific needs.”<sup>86</sup> Municipalities are more connected to their local environment and constituents, and can there-

fore make more targeted legislation. They can tailor their responses to what the community wants and needs.

Resolution 09-0170 and Ordinance 084-23 both have done this through requiring community involvement and giving opportunities for constituents to get involved in the decisionmaking and planning processes.<sup>87</sup> Municipalities can also create green job opportunities to give community members a formal opportunity to participate in creating fairer environmental processes. Municipal governance can focus more on creating effective solutions tailored by the responses given by community members.

Municipal law has been used to perpetuate and create EJ issues in the past. “Racist segregationist laws and policies, such as redlining, zoning, and land use planning, directly contributed to the environmental injustices suffered” to this day across the country.<sup>88</sup> Through targeted land uses, we can reverse harmful land use policies that have been grandfathered in and have enabled disproportionate burdens and environmental racism for centuries.<sup>89</sup> State and federal law cannot cancel out the harms municipal laws have had in the past. Municipal law needs to be utilized to help mitigate the effects of harmful zoning practices.

One way to do this is to use a map like the EJ Communities Map<sup>90</sup> and create green zones. Minneapolis, Minnesota, passed a city council resolution designating green zones in 2017.<sup>91</sup> The resolution established green “zones across the city with the goals of achieving racial equality and preventing gentrification.”<sup>92</sup> Task forces are assigned to specific green zones to help develop working plans, community outreach, targeted strategies, expected outcomes, and to identify resources.<sup>93</sup> San Francisco has identified their EJ communities in an Environmental Justice Communities Map.<sup>94</sup> Identifying and establishing green zones can be utilized by municipalities to specifically focus on EJ areas in the city. Municipalities can better address the more harmful policies they had once created by focusing on EJ communities.

Federal law can support and amplify municipal law. If municipal law were the ceiling, federal law is the floor. Federal law helps set the standard below which states and municipalities cannot drop. For example, the Clean Air Act (CAA) sets emissions levels across the country, and states can set their own emission levels, so long as they are higher.<sup>95</sup>

Federal EJ initiatives were passed. Executive Order No. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, was signed by President William Clinton in 1994.<sup>96</sup>

78. SF Planning, *Environmental Justice Framework and General Plan Policies: Engagement*, <https://sfplanning.org/project/environmental-justice-framework-and-general-plan-policies#engagement> (last visited Feb. 11, 2025).

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.*

84. U.S. EPA, *Environmental Justice Timeline*, <https://www.epa.gov/environmentaljustice/environmental-justice-timeline> (last updated June 6, 2024).

85. *Id.*

86. Kristen Burby, *Making It Stick: Local Environmental Review Statutes*, 44 ENVIRONS ENV’T L. & POL’Y J. 67, 68 (2020).

87. S.F., Cal., SFPUC Commission Resolution 09-0170 (Oct. 13, 2009); S.F., Cal., Ordinance 084-23 (May 19, 2023).

88. Rosene, *supra* note 3, at 506.

89. DiGiacomo, *supra* note 9.

90. SF Planning, *supra* note 25.

91. Minneapolis, Minn., Resolution 2017R-188 (May 4, 2017).

92. DiGiacomo, *supra* note 9 (citing Minneapolis, Minn., Resolution 2017R-188 (May 4, 2017)).

93. *Id.*

94. SF Planning, *supra* note 25.

95. Clean Air Act, 42 U.S.C. §§7401-7671.

96. Exec. Order No. 12898, 59 Fed. Reg. 7629 (Feb. 16, 1994).

This directed federal agencies to address adverse human health and environmental impacts on minority populations, develop strategies, promote nondiscrimination in federal programs, and ensure public access to information.<sup>97</sup> Executive Order No. 14008, Tackling the Climate Crisis at Home and Abroad, was signed a few days after President Joseph Biden took office in 2021.<sup>98</sup> This affirmed federal commitments to advancing EJ.<sup>99</sup> Executive Order No. 14096, Revitalizing Our Nation's Commitment to Environmental Justice for All, was signed in April 2023.<sup>100</sup> This built off of Executive Order No. 14008, established an Office of Environmental Justice, and required federal agencies to develop and assess their own EJ efforts.<sup>101</sup>

Federal law can be a tool to affirm EJ across the country, like these Executive Orders did. But they did not direct states or municipalities to do anything regarding EJ, nor do they institute any sort of EJ protections besides requiring development of strategies to address EJ. Unfortunately, many of these Executive Orders have now been rolled back. Executive Orders No. 12898, 14096, and 14008, along with many others,<sup>102</sup> were rescinded on the first day of Trump's presidency on January 20, 2025, with the passage of Executive Order No. 14148.<sup>103</sup> In light of this revocation of the executive orders that affirmed EJ on the federal level, municipal law can be more specific and tailored to what communities need.

As these developments suggest, federal law cannot solely be relied on to protect EJ. The problem in addressing EJ at the federal level has been sweeping changes from administration to administration. "Since the 1990s, across presidential administrations, federal engagement with environmental justice has waxed and waned and mostly disappointed—even as environmental justice has become a foundational principle and aspiration within the field."<sup>104</sup> The federal government has not been consistent with ensuring environmental protections, which is why we need stricter protections at the municipal level as well as more protections at the federal level.

Even during the first Trump Administration, EJ in San Francisco still thrived despite 112 environmental rollbacks,<sup>105</sup> and will continue to do so in his second Administration. Municipalities across the country, includ-

ing San Francisco, have implemented EJ laws, regardless of the presidential administration.<sup>106</sup> Municipalities creating EJ legislation helps to avoid individuals' rights and environmental protections being rolled back with the change of an administration.

San Francisco is a very robust example of what EJ governance can look like in a municipality. But any municipality can model itself after San Francisco by creating its own laws. Although San Francisco had applicable state law to mandate the addition of EJ in its general plan, San Francisco has gone above and beyond in prioritizing EJ and cumulative impacts.<sup>107</sup>

My prior research, "Environmental Justice and Cumulative Impacts: A How-to Guide and Explanation for Interested Municipalities Part 2," identifies 20 strategies that municipalities can utilize when creating EJ and cumulative impact legislation, based on current municipal laws from across the country like San Francisco's.<sup>108</sup> These strategies include creating green jobs, creating an environmental review process for new or expanded developments, developing renewable energy alternatives and offering tax breaks for using renewable energy, establishing opportunities for community engagement, having processes and information publicly accessible, and outright banning harmful uses.<sup>109</sup>

Having a community with a strong interest for EJ could motivate a municipality toward pursuing EJ legislation, but is not a prerequisite for a municipality doing so. San Francisco has protests like the People's Climate March and local groups like Literacy for Environmental Justice to push forward EJ issues. San Francisco has been able to create comprehensive environmental protections through their EJ and cumulative impact laws.

## IV. Conclusion

San Francisco is an important case study to which municipalities can look when trying to implement EJ and cumulative impacts legislation. Every municipality is different, with their own set of EJ issues that their communities face, different demographics, population sizes, bodies of governing law, and resources they can allocate toward EJ. A smaller town in Minnesota might not be able to replicate what happened in San Francisco. The power of municipalities is that they can address the specific concerns and issues facing their communities. Their responses can be tailored to the unique set of circumstances that their citizens deal with. San Francisco is a leading example of why EJ and cumulative impact governance need to come from municipalities.

Through the five laws discussed, San Francisco has addressed EJ and cumulative impacts from many angles.

97. *Id.*

98. Exec. Order No. 14008, 86 Fed. Reg. 7619 (Jan. 27, 2021).

99. *Id.*

100. Exec. Order No. 14096, 88 Fed. Reg. 25251 (Apr. 21, 2023).

101. *Id.*

102. See also Exec. Order No. 13985, 86 Fed. Reg. 7009 (Jan. 20, 2021); Exec. Order No. 13990, 86 Fed. Reg. 7037 (Jan. 20, 2021); Exec. Order No. 14091, 88 Fed. Reg. 10825 (Feb. 16, 2023).

103. Exec. Order No. 14148, 90 Fed. Reg. 8237 (Jan. 20, 2025). See also Harvard Law School Environmental and Energy Law Program, *Rollback: Trump Rescinded Biden's Executive Order 14096 to Advance Environmental Justice* (Jan. 22, 2025), <https://eelp.law.harvard.edu/tracker/president-biden-issued-executive-order-14096-to-advance-environmental-justice/>.

104. Uma Outka & Elizabeth Kronk Warner, *Reversing the Course of Environmental Justice Under the Trump Administration*, 54 WAKE FOREST L. REV. 393, 394-95 (2019).

105. Nadja Popovich et al., *The Trump Administration Rolled Back More Than 100 Environmental Rules. Here's the Full List*, N.Y. TIMES (Jan. 20, 2021), <https://www.nytimes.com/interactive/2020/climate/trump-environment-rollbacks-list.html>.

106. See DiGiacomo, *supra* note 9; see also BAPTISTA ET AL., *supra* note 8.

107. S.B. 1000, 2015-2016 Leg. (Cal. 2016).

108. Emily DiGiacomo, *Environmental Justice and Cumulative Impacts: A How-to Guide and Explanation for Interested Municipalities Part 2*, in 47 ZONING AND PLANNING LAW REPORT 1 (Supp. Nov. 2024).

109. *Id.*

Ordinance 084-23 addresses EJ in San Francisco's general plan.<sup>110</sup> Ordinance 282-08 requires conditional use permits in certain zoning districts to mitigate the disproportionate impacts EJ communities face.<sup>111</sup> Resolution 349-11 identifies strategies toward achieving zero greenhouse gas emissions by 2030.<sup>112</sup> Resolution 09-0170 commits SFPUC to expanding its work force to community members, creating green job opportunities, and undertaking other EJ initiatives.<sup>113</sup> Health Code Article 38 requires enhanced ventilation to be installed within 500 feet of a roadway or when the PM<sub>2.5</sub> concentration is more than 10 µg/m<sup>3</sup>.<sup>114</sup>

State laws like Senate Bill 1000,<sup>115</sup> and community involvement like that from Literacy for Environmental Justice,<sup>116</sup> can help bolster municipal laws, either by helping develop strategies or by mandating creation of EJ laws. Governance needs to come from municipalities because they can better address community needs, and municipal law can be more consistent than changing federal administrations and help mitigate the effects of harmful zoning and land use practices. EJ and governance of cumulative impacts can be strengthened at the municipal level, which could help secure EJ rights across the country.

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110. S.F., Cal., Ordinance 084-23 (May 19, 2023).

111. S.F., Cal., Ordinance 282-08 (Nov. 12, 2008).

112. S.F., Cal., Resolution 349-11 (July 25, 2011).

113. S.F., Cal., SFPUC Commission Resolution 09-0170 (Oct. 13, 2009).

114. S.F., Cal., Ordinance 224-14 (Oct. 6, 2014).

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115. S.B. 1000, 2015-2016 Leg. (Cal. 2016).

116. Literacy for Environmental Justice, *supra* note 72.