

# Did fear of lawsuits lead to ambitious climate plan?



Nicole Capretz played a key role in shaping the contours of San Diego's Climate Action Plan. / photo by Hayne Palmour IV / U-T

- [□](#)
- [□](#)
- [□](#)
- [✉](#)
- [📄](#)

The groundbreaking climate-change strategy that San Diego adopted last week took five long years and could have been derailed multiple times.

## ADVERTISING

## ADVERTISING

Emerging out of somewhat turbulent circumstances, the city's Climate Action Plan may prove instructive for other municipalities looking to get tough on carbon. Still, the political and legal implications that will drive implementation of the plan — and influence policy elsewhere — are anything but clear.

In recent months, Republican Mayor Kevin Faulconer pushed over the finish line one of the most aggressive plans in the nation for reducing greenhouse-gas emissions. Behind the scenes, a few key players and legal pressure from the environmental community set the stage for the ambitious decision.

“What I’ve wanted to do is push for greatness,” said City Councilman Todd Gloria, who preserved the plan’s bold nature during his time as interim mayor. “We’re America’s finest city, but that (by itself) seems like we’re shooting low.”

The plan’s ultimate goal is to cut yearly greenhouse-gas emissions in half by 2035. To help attain that benchmark, the city became the largest in the country to call for obtaining electricity entirely from renewable energy within the same time frame.

The climate plan also requires persuading large numbers of commuters to get out of their cars. It envisions that within two decades, half of all residents living within half a mile of major transit stops will use public transportation, walk or bike to work — up from about one in 10 now.

The linchpin of this blueprint is that it’s legally binding — a distinction that was hotly debated for years behind closed doors.

If the city can’t meet its lofty objectives, which includes a long list of intermediate milestones along the way, environmental nonprofits, public interest attorneys and even the state attorney general could file lawsuits to force expedited compliance, including spending more money. Some of those groups made such intentions publicly known during the City Council’s meeting Tuesday, when the panel voted unanimously to approve the plan.

In the end, San Diego’s leaders may have adopted the landmark plan precisely because of the litigation threat.

In September 2013, Gloria took over as interim mayor after Mayor Bob Filner resigned amid allegations of sexual harassment. Quickly, Gloria brought in Nicole Capretz as director of environmental policy.

Capretz, then an employee of the local advocacy group Environmental Health Coalition, had also worked for former Councilwoman Donna Frye and chaired the city’s Environmental and Economic Sustainability Task Force.

As the task force chair, she pushed the city in 2010 to adopt a climate-change plan under then-Mayor Jerry Sanders.

“We came up with what we thought was a great climate plan in conjunction with city staff that had enforceable measures,” she said.

At the time, Sanders wasn’t a fan of putting the city on the hook legally for curbing greenhouse gases, so the process was put on hold.

“One side always wants everything legally binding, and I think our preference when I was in the mayor’s office was to do things where we tried to get consensus and tried to create the flexibility that allowed people to do things voluntarily,” he said.

With Gloria at the helm, Capretz seized the moment and pushed her vision for a strategy that ties the city to tough mandates for shrinking its carbon footprint. An internal debate heated up, and Capretz said she faced significant resistance from the city's top-ranking brass.

"There was this push and pull that ultimately resulted in this come-to-Jesus meeting with Todd [Gloria] where we laid out two options for him: You can follow the path where some staff and the City Attorney's Office feel we can do a non-enforceable plan, or my perspective," she said.

City Attorney Jan Goldsmith's office has denied ever opposing the use of legally enforceable obligations in the climate plan.

Gloria sided with Capretz, who argued that inaction was even more legally risky than committing to the mandates.

"Nicole and other folks educated me on the legal liability for not going big, for not having measurable, enforceable goals," he said.

At this point, the county of San Diego had been sued for approving a climate plan that lacked quantifiable standards and legally binding mandates.

State law doesn't require cities to adopt climate plans that lay out a road map for reducing carbon emissions. However, under the California Environmental Quality Act, lawyers have sued cities for drafting long-range planning documents that don't spell out how carbon impacts will be reduced in accordance with increasingly tough statewide objectives.

If the city of San Diego had adopted a merely aspirational climate plan, the chance it would've been sued was "110 percent," said public interest attorney Cory Briggs, who along with the Sierra Club has participated in the climate-change litigation against the county.

"Sacramento hasn't explicitly said that cities have to adopt enforceable climate action plans, but the courts are allowing CEQA in such a way that that's the legal landscape," he said.

In the county's case, officials put off this analysis in a general plan update, pledging to show emissions cuts in their subsequent climate plan. When the climate report was completed, the environmental community felt frustrated with its relatively limited scope and filed suit.

The county lost in the lower courts. Then this year, the state Supreme Court declined to hear the county's final appeal. County officials said they're revising their climate plan to address the legal objections.

Even before the high court's decision, Faulconer had picked up where Gloria left off. Last year, he released a draft of the climate plan that left intact all of its most aggressive components.

"The mayor's Climate Action Plan was developed with significant input from a broad spectrum of

stakeholders, including from the environmental and business communities,” said Faulconer spokesman Craig Gustafson. “They agree with the mayor that it is crucial to protect our environment by reducing greenhouse-gas emissions.”

Sanders, now president of the San Diego Regional Chamber of Commerce, came around to the idea of a legally enforceable plan, although not without reservations.

“I think the sentiment is much different now,” he said. “People are concerned about [climate change], as they should be. Obviously, the environmental community’s a lot stronger right now than they have been in the past.

“I have concerns that the plan can maybe be read in different ways, and especially the timelines on it,” he added. “That’s always the dangerous part, because if you have one side that’s looking forward to litigation, it just kind of leaves you open.”

Looking ahead, City Hall staff is developing details for funding and implementing San Diego’s newly adopted blueprint, with a deadline of April 1 to report to the City Council.

**[joshua.smith@sduniontribune.com](mailto:joshua.smith@sduniontribune.com) / (619) 293-2234 / Twitter: @jemersmith**

