

New Rules Under New York City Local Law 97 Provide Building Owners a Small Break

*By Andrew Otis, Charles S. Warren, Toni L. Finger and Lauren T. Katz**

In this article, the authors discuss new developments under a New York City law seeking to reduce greenhouse gas emissions from New York City buildings.

In 2019, the New York City Council enacted Local Law 97 (LL97) in an effort to reduce greenhouse gas (GHG) emissions to net zero by 2050 from the sector of the New York City economy that emits the most GHGs: buildings.

BACKGROUND

LL97 establishes increasingly stringent emissions caps during five-year compliance intervals that will affect approximately 40,000 buildings located across New York City beginning on January 1, 2024. The first reporting requirement is set for May 1, 2025, when affected building owners must submit an annual emissions estimate and compliance report to the New York City Department of Buildings (DOB) for the year 2024 or face civil penalties.

It had been estimated that approximately 75% – 80% of buildings would be in compliance with emissions reduction requirements by 2024. More recently, that estimate rose to 90%.

NEW RULES

On September 12, 2023, as part of its “Getting 97 Done” plan to implement LL97, DOB released proposed rules to further clarify ambiguities in LL97. Building on the rules issued in December 2022, the proposed rules recognize the challenges LL97 will present for many building owners and reinforce New York City’s clear commitment to reducing GHG emissions from buildings.

Emission reporting deadlines remain the same for most buildings, but the reporting deadline for owners of multifamily buildings with affordable housing is extended from May 1, 2025, to May 1, 2027. The proposed rules, however, recognize that emission reduction requirements may present a challenge for some building owners and establish mitigating factors for penalty assessments against those buildings that fail to achieve required emissions reductions in the 2024 - 2026 compliance period. In order to mitigate a penalty, a building owner must provide evidence of the

*The authors, attorneys with Kramer Levin Naftalis & Frankel LLP, may be contacted at aotis@kramerlevin.com, cwarren@kramerlevin.com, tfinger@kramerlevin.com and lkatz@kramerlevin.com, respectively.

mitigating factors under DOB's criteria in the filed building emissions report. Mitigating factors include an "unexpected or unforeseeable event" such as a natural disaster or casualty or showing "good faith efforts" to comply.

Good faith efforts require building owners to make some progress toward retrofitting their buildings to comply with LL97. Good faith efforts also include submitting the annual building emissions report and maintaining compliance with any DOB-approved adjustment, providing benchmarking information pursuant to Local Law 84 for the prior calendar year, and complying with the lighting upgrades and sub-meter installation requirements of Local Law 88.

In addition, a building owner must demonstrate one of the following for a given building:

- (i) The work necessary to achieve compliance is currently underway (via proof of a fully approved application and a permit issued for such work);
- (ii) Electrification readiness work is underway (by securing an approved alteration application and a letter from a utility company attesting to the work);
- (iii) The building was previously under the emissions limit in a previous reporting year;
- (iv) The building is a critical facility, such as a hospital, whose services would be significantly impacted by a full penalty;
- (v) The building has applied for or has been granted an adjustment pursuant to Section 28-320.7 of the New York City Administrative Code; or

- (vi) The building owner has provided a "decarbonization plan" by May 1, 2025, that will bring the building into compliance with its 2024 limits no later than 2026 and with its 2030 limits no later than 2030 (via annual evidence through 2030 that the work pursuant to the decarbonization plan is proceeding on schedule).

The December 2022 rules do allow building owners to deduct Renewable Energy Credits (RECs) against emissions attributed to consumption of utility-supplied electricity but not against emissions from heat generated by an on-site boiler. However, a building owner that has filed a decarbonization plan cannot purchase any RECs to offset emissions in excess of standards in the first reporting cycle (2024 – 2029).

While the proposed rules establish mitigating factors to lessen the brunt of the first cycle limits, the New York City Council has made it clear that the much more stringent 2030 limits will not be negotiated or delayed. The proposed rule also includes other key provisions, such as the definition of an "energy audit" under LL97, qualifications for energy auditors, a definition of "beneficial electrification," the need to file additional reports regarding energy conservation and the qualifications for a "retro-commissioning (RCx) Agent."

CONCLUSION

The public comment period on the proposed rules expired on October 24, and the proposed rules became law. Although the vast majority of building owners meet the 2024 emissions standards, it is imperative that building owners begin retrofitting New York City real estate to

New Rules Under New York City Local Law 97 Provide Building Owners a Small Break

meet the looming 2030 standards. To meet the stringent 2030 limits, New York City officials have projected that between \$12 billion

and \$15 billion will be expended on compliance efforts with only \$6 billion recouped from “going green” savings.