

The background image shows a rooftop HVAC system on a city building. A large plume of white steam or smoke rises from the units, set against a backdrop of other skyscrapers under a clear sky.

## Understanding and Planning for New York City Local Law No. 97

The New York City Council passed Local Law No. 97 of 2019 on April 18, 2019 and Local Law No. 147, amending Local Law No. 97, on June 26, 2019, both of which became effective as of November 15, 2019 (collectively “LL97”). LL97 ushers in a new era of stringent climate control regulations for the City, applicable to both existing buildings and new buildings. Though LL97’s emissions limitations do not begin until 2024, real estate owners and design professionals are already busy considering how the new limitations will impact current buildings, as well as those being contemplated for the future. This client alert intends to summarize LL97’s emission standards so that our clients may consider them when conceptualizing new projects and, where feasible and appropriate, recommend design elements and building systems to assist owners in meeting their new obligations.

LL97 has been described as one of the most stringent performance-based laws to limit carbon emissions from buildings in the world. By enacting this law, New York City seeks to achieve a 40% reduction in aggregate greenhouse gas emissions from covered buildings by 2030, and 80% by 2050, using 2005 as the baseline comparison. LL97 creates a timeline for building owners to comply with the carbon emission limits set forth in the new administrative code sections.

LL97 amends Chapter 26 (Department of Buildings) of the NYC Charter by adding Section 651. The new Section 651 creates an office of building energy and emissions performance within the NYC Department of Buildings (“DOB”), charged with “[o]verseeing implementation of building energy and emissions performance laws and policies for existing buildings, new construction and major renovations; [e]stablishing or administering protocols for assessing annual energy use in buildings; [m]onitoring

buildings' energy use and emissions, and reviewing building emissions assessment methodologies, building emissions limits, goals and timeframes...; [r]eceiving and validating annual building emissions assessments; [a]uditing building emissions assessments and inspecting covered buildings, as necessary, to ensure proper reporting; [d]etermining recommended penalties, including minimum penalties, for buildings that are noncompliant with applicable emissions limits..." along with other LL97-related duties.

Additionally, LL97 amends the NYC Administrative Code by, among other things, adding Articles 320 and 321 to Chapter 3 (Maintenance of Buildings) of Title 28 (New York City Construction Codes), which establish emission limits for certain buildings and certain time periods, calculations for building emissions from conventional energy sources, rulemaking authority for establishing emission limits and calculations for subsequent time periods and non-conventional energy sources, deductions for using alternative energy sources, reporting requirements for covered buildings, prescriptive energy conservation measures required for certain non-compliant buildings, and potential penalties for non-complying building owners.

### **Article 320 – Building Energy and Emissions Limits**

Article 320 establishes formulas for calculating the annual building emissions limits for covered buildings for 2024-2029 and 2030-2034, authorizes the DOB Commissioner to establish different limits and formulas for 2030-2034 if feasible and in the public interest, and requires the DOB Commissioner to establish emissions limits for 2035-2039, 2040-2049, and 2050 and on. Article 320 also establishes formulas for calculating a covered building's greenhouse gas (CO<sub>2</sub> equivalent) emissions for 2024-2029, based upon its conventional energy usage, and requires the DOB Commissioner to promulgate rules (i) establishing formulas for calculating greenhouse gas emissions for 2024-2029 from certain campus-style electric systems and other energy sources and (ii) establishing formulas for calculating greenhouse gas emissions from all energy sources for 2030-2034, 2035-2039, 2040-2049, and 2050 and on.

For purposes of Article 320, a "covered building" is defined as "(i) a building that exceeds 25,000 gross square feet (2322.5 m<sup>2</sup>) or (ii) two or more buildings on the same tax lot that together exceed 50,000 gross square feet (4645 m<sup>2</sup>), or (iii) two or more buildings held in the condominium form of ownership that are governed by the same board of managers and that together exceed 50,000 gross square feet (4645 m<sup>2</sup>)," in each case as reflected in the records of the NYC Department of Finance.

The Article 320 exceptions to the definition of "covered building" include:

1. An industrial facility primarily used for the generation of electric power or steam;
2. Real property, not more than three stories, consisting of a series of attached, detached or semi-detached dwellings, for which ownership and the responsibility for maintenance of the HVAC systems and hot water heating systems is held by each individual dwelling unit owner, and with no HVAC system or hot water heating system in the series serving more than 25,000 gross square feet (2322.5 m<sup>2</sup>), as certified by a registered design professional to the department;



3. A city building;
4. A housing development or building on land owned by the New York city housing authority;
5. A rent regulated accommodation;
6. A building whose main use or dominant occupancy is classified as occupancy group A-3 religious house of worship;
7. Real property owned by a housing development fund company organized pursuant to the business corporation law and article eleven of the private housing finance law; and
8. A building that participates in a project-based federal housing program.

The building emission limits established by Article 320 and by subsequent rulemaking by the DOB Commissioner may not be exceeded by Article 320-covered buildings except as otherwise provided in Article 320. Article 320, however, allows the DOB to authorize a deduction from a building's annual building emissions where the building owner demonstrates the purchase of greenhouse gas offsets or renewable energy credits, or the use of clean distributed energy resources, in accordance with Article 320. Article 320 also allows the DOB to adjust applicable emissions limits under certain circumstances, upon an application by a building owner, certified by a registered design professional.

Further, by May 1, 2025 and annually thereafter, Article 320 requires the owner of an Article 320-covered building to file an annual report for the previous calendar year, certified by a registered design professional, that states whether or not the building is in compliance with the applicable building emissions limit and the amount the building exceeds the limit, if any.

If an annual report indicates that the building exceeded the applicable emissions limit, after permitted deductions, the owner is subject to a civil penalty of no more than the difference between the applicable building emissions limit for that year and the building's reported emissions for that year, after permitted deductions, multiplied by \$268.00. This can result in millions of dollars in potential civil penalties for large building owners, subject to consideration of mitigating factors, including those established by Article 320.

For example, if an Article 320-covered building is classified under Occupancy Group B (Business) and its gross floor area is 500,000 square feet, the emission limits for the two periods would be:

$$\begin{aligned} 2024-2029 \text{ annual limit} &= 500,000 \text{ sf} (0.00846 \text{ tCO}_2\text{e/sf}) \\ &= 4,230 \text{ metric tons CO}_2 \text{ equivalent} \end{aligned}$$

$$\begin{aligned} 2030-2034 \text{ annual limit} &= 500,000 \text{ sf} (0.00453 \text{ tCO}_2\text{e/sf}) \\ &= 2,265 \text{ metric tons CO}_2 \text{ equivalent} \end{aligned}$$

If the building has emissions of 6,000 metric tons CO<sub>2</sub> equivalent per year, it exceeds the 2024-2029 annual limit by 1,770 metric tons CO<sub>2</sub> equivalent per year and, therefore, would be subject to a penalty of \$474,360 per year for 2024-2029. That same building with the same emissions would exceed the 2030-2034 annual limit by 3,735 metric tons CO<sub>2</sub> equivalent per year, resulting in an annual penalty of \$1,000,980 per year for 2030-2034.



Article 320 also establishes a civil penalty for failing to submit an annual report as required by Article 320, of not more than an amount equal to the gross floor area of the covered building, multiplied by \$0.50, for each month that the violation is not corrected within the 12 months following the reporting deadline. A 60-day grace period is provided for reports demonstrating compliance with the requirements of Article 320. Using the above example, that would result in a maximum civil penalty of \$250,000 per month and \$3,000,000 total per report/year.

### **Article 321 – Energy Conservation Measure Requirements for Certain Buildings**

Article 321 establishes prescriptive energy conservation measures for certain buildings that are not covered by Article 320 and do not meet certain emission limits. The owner of an Article 321-covered building must either (i) demonstrate that, for calendar year 2024, the building’s annual emissions did not exceed the applicable building emissions limits established by Article 320 for calendar years 2030-2034 or (ii) implement specific energy conservation measures outlined in Article 321.

For purposes of Article 321 a “covered building” is defined as “a building that is (i) a rent regulated accommodation, (ii) a building whose main use or dominant occupancy is classified as occupancy group A-3 religious house of worship, (iii) owned by a housing development fund company organized pursuant to the business corporation law and article 11 of the private housing finance law, or (iv) a building that participates in a project-based federal housing program and, as it appears in the records of the department of finance, such building (i) exceeds 25,000 (2322.5 m<sup>2</sup>) gross square feet, or (ii) is one of two or more buildings on the same tax lot that together exceed 50,000 gross square feet (4645 m<sup>2</sup>), or (iii) is one of two or more buildings held in the condominium form of ownership that are governed by the same board of managers and that together exceed 50,000 gross square feet (4645 m<sup>2</sup>).”

The Article 321 exceptions to the definition of “covered building” include:

1. Real property, not more than three stories, consisting of a series of attached, detached or semi-detached dwellings, for which ownership and the responsibility for maintenance of the HVAC systems and hot water heating systems is held by each individual dwelling unit owner, and with no HVAC system or hot water heating system in the series serving more than 25,000 gross square feet (2322.5 m<sup>2</sup>), as certified by a registered design professional to the department; and
2. An industrial facility primarily used for the generation of electric power or steam.

Further, by May 1, 2025, Article 321 requires the owner of an Article 321-covered building to either (i) file a report, certified by a registered design professional, that, for calendar year 2024, such building was in compliance with the applicable building emissions limit or (ii) file a report, by a retro-commissioning agent, as defined in Article 308, regarding the completion of the required prescriptive energy conservation measures, as more specifically described in Article 321.

Zetlin & De Chiara is monitoring LL97 developments and is currently reviewing how



LL97 may affect the design and construction of buildings, contracts for future buildings and building renovation projects in the wake of LL97, and potential liability for design professionals, contractors, and owners for failure to comply with LL97.

Local Law 97 can be found [here](#).

Urban Green Council's Guide to Understanding Local Law 97 can be found [here](#).

Donna DeCostanzo & Rebecca Behrens, *2019: A Big Year for Reducing Building Emissions in NYC*, NRDC, (December 20, 2019) can be found [here](#).

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