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Comment on the Proposed Rules for Local Law 97

Submitted to the New York City Department of Buildings

November 14, 2022

Citizens Budget Commission

Thank you for the opportunity to comment on the recently released proposed rules for the implementation and enforcement of Local Law 97 (LL97). The Citizens Budget Commission (CBC) is a nonpartisan, nonprofit think tank and watchdog devoted to constructive change in the finances and services of New York State and City governments.

LL97 set ambitious greenhouse gas (GHG) emissions reduction goals for New York City—to reduce emissions from buildings larger than 25,000 square feet by 40 percent by 2030 and 80 percent by 2050, relative to their 2005 emissions level. CBC believes that the law’s implementing regulations should be designed to encourage building owners to cost-effectively reduce energy consumption and convert to low- and no-emission sources rather than simply paying penalties. Regulations that do not appropriately balance the incentives could unfortunately drive up costs, reducing New York’s competitiveness, and not reduce emissions—two bad outcomes.

The proposed rules provide the formulas needed to calculate a building’s emissions and its LL97 emissions limit. The regulations also specify emissions factors for specific building uses, adjust several emissions factors to be more closely aligned with their energy intensity, and provide some clarity on which emissions can be offset with renewable energy credits (RECs).

These proposed rules generally are a welcome and necessary first step—signaling the right approach—but there are several key aspects of implementation that have not yet been covered. With the initial reporting period rapidly approaching, it is important that building owners have more complete information about emissions levels, compliance paths, and fines so they can make smart, informed capital investment decisions and plan their approach to compliance.

CBC's [Balancing Incentives to Maximize Emissions Reduction](#) report offered several recommendations, which still should be addressed in future rulemaking, that would enable the City to meet its building emissions reduction goals while giving building owners the appropriate flexibility in complying with the law.

Specify, expand, and continue emission limit adjustments for density and specific uses: The emissions factors were updated in the recently proposed rules to better capture the energy intensity of each type of use. Additional rules should alleviate counterproductive disincentives to density and certain economically vital uses by clearly defining adjustment parameters and extending adjustments beyond the first compliance period;

Specify and extend need-based building-level adjustments: Set an accelerated, public timeline for rulemaking that includes critical rules governing limit adjustments and penalty mitigation as well as universal criteria, so building owners can determine their eligibility and adjusted requirements as-of-right, rather than through individual petitions. This will encourage building owners to begin planning for compliance in good faith;

Expand allowable RECs to offshore wind and a phased-down portion of Tier 2 RECs: Provide buildings with flexibility to meet emissions goals while the New York City electric grid remains fossil fuel-powered by allowing buildings to purchase unlimited amounts of RECs associated with downstate offshore wind projects and limited amounts of RECs from existing generation; and

Allow carbon trading within an owner's portfolio: Allow owners of multiple buildings to target the most cost-effective emissions reductions across their assets by establishing a carbon trading scheme that allows credits to be traded within a portfolio.

Thank you for the opportunity to comment on the recently proposed LL97 rules. Owners of buildings not already in compliance with their 2024 emissions limits have little time remaining to plan their path to compliance. The information provided in these recently proposed rules is necessary, but more is needed. CBC urges the Administration and the Department of Buildings to consider our recommendations and to release the remaining rules in a timely fashion.