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## Comment on the Second Set of Proposed Rules for Local Law 97

Submitted to the New York City Department of Buildings

*October 24, 2023*

Thank you for the opportunity to comment on the second package of proposed rules for the implementation and enforcement of Local Law 97 (LL97), the City's ambitious law to reduce emissions in buildings over 25,000 square feet. The Citizens Budget Commission (CBC) is a nonpartisan, nonprofit think tank and watchdog devoted to constructive change in the finances, services, and policies of New York State and City governments.

CBC has long advocated to [incentivize cost-effective compliance paths that prioritize emissions reduction](#) over merely paying the fines. The NYC Department of Buildings' (DOB) rulemaking similarly shows a commitment to appropriately balancing incentives to ensure meaningful efforts to reduce emissions, rather than issuing penalties.

We support the following proposals in the draft rules.

- **LL97 gave DOB latitude in implementing the law and stipulated that penalties imposed on building owners may be mitigated if they have made a “good faith effort” to comply with the law.** This set of rules importantly provides a definition of “good faith effort” for the 2024-2029 compliance period, providing building owners with information they need to plan for compliance in 2024, which begins in just two months. The pathways provided for penalty mitigation are reasonable and help ensure that building owners who are actively working to improve the efficiency of their buildings will not be treated punitively.
- **The new rules also provide formulas to determine credits for beneficial electrification—the displacement of fossil-fuel-based heating, cooling, and hot water systems with electric-based systems.** Rules adopted last year reduced emissions factors for electricity consumption beginning in 2030. Combined, these provisions will help encourage

electrification investments that will result in significant emissions reductions as the downstate grid gets greener, even if progress lags the Climate Leadership and Community Protection Act (CLCPA) targets.

These clarifications are critical to building owners who are currently planning their compliance with LL97.

While the CBC supports these proposals, the implementation of LL97 in the first compliance period and beyond could be improved by further changes. Specifically:

- **Additional rules should more clearly define the eligibility criteria for emissions-limit adjustments based on needs, including adjustments for high-density occupancy buildings and buildings facing financial hardship.** Additional clarity would allow building owners to determine whether they are eligible for adjustments or penalty mitigation as-of-right, rather than having to apply and await DOB determination.
- **Allow carbon trading within an owner's portfolio.** Permitting building owners to trade emissions credits across their portfolio of buildings would allow them to target emissions-reduction efforts in buildings where the cost is lowest.
- **Expand allowable Renewable Energy Credits (RECs) to offshore wind and a phased-down portion of Tier 2 RECs.** It remains uncertain when the Tier 4 RECs building owners are currently permitted to use to offset emissions will be available. Owners should be allowed to purchase unlimited amounts of RECs associated with downstate offshore wind projects and limited amounts of RECs from existing generation.
- **Rules for the 2030-34 compliance period, which has much lower emissions limits and will require greater investment, should be released well in advance of 2030 to ensure sufficient time to plan for and make investments for compliance.** The City's *Getting 97 Done* report estimates that 15,000 buildings are currently out of compliance with their 2030 emissions limit and could need building upgrades costing up to \$15 billion to meet the requirements of the second compliance period.