

Taylor, Bernice

From: marie elena saccoccio <saccocciom@yahoo.com>
Sent: Monday, June 26, 2023 1:35 PM
To: City Council; City Clerk; City Manager
Subject: Fw: POR 2023 #14 Revisited Vote No on BEUDO
Attachments: Trinity Church and BERDO.pdf; NYC II97 adjustments.pdf

Honorable Council Members and Mayor:

Please register my firm opposition to adoption of the BEUDO ByLaw now before you. I am attaching here my prior submissions and at this point not much has changed from the original wording. Not one Councilor responded to the issues I raised; one aide was generous enough to actually render his legal opinion though he is not a lawyer. Note, a municipality cannot do via a ByLaw what it is prohibited from doing by MGL c40A, Section 3. A rose is a rose is a rose. You do not get to back door what is statutorily prohibited under Home Rule. There is enough case law on that issue. We really do not have that many houses of worship left in this fair City. Why would you knowingly seek to burden them to a point to force closure?? As I have already asserted, this would be the only jurisdiction in the country burdening houses of worship this way. Do we really have that many landmarks that their exemption would amount to anything?

Respectfully submitted,

Marie Elena Saccoccio, Esquire

55 Otis Street, Cambridge, MA 02141 BBO#552854

----- Forwarded Message -----

From: marie elena saccoccio <saccocciom@yahoo.com>
To: City Council <citycouncil@cambridgema.gov>; City Clerk <cityclerk@cambridgema.gov>;
citymanager@cambridgema.gov <citymanager@cambridgema.gov>
Sent: Monday, June 12, 2023 at 02:32:15 PM EDT
Subject: POR 2023 #14 Revisited Vote No on BEUDO

Council Members,

I am resubmitting what I emailed previously with the following additions. Despite discussion and further deliberation, the proposed amendments allowing for hardship evaluation simply do not address the looming problem with BEUDO. Though many condo owners seem to have garnered support from the Council, the Houses of Worship have simply been ignored. I have spoken to a member of the clergy here in Cambridge who recently got quotes for replacement of a heating system. Without BEUDO mandate, the heating system replacement would be \$600,000. Abiding by the present BEUDO, the compliant heating system would be \$6,000,000. Under the proposed BEUDO, this City will be putting every House of Worship out of business. Upon further inquiry I direct the Council's attention to M.G.L. c.40A, s. 3 of the Massachusetts Zoning Act which provides inter alia: No zoning ordinance or by-law shall regulate or restrict the interior area of a single family residential building nor shall any such ordinance or by-law prohibit, regulate or restrict the use of land or structures for religious purposes or for educational purposes on land owned or leased by the

commonwealth or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination, or by a nonprofit educational corporation; provided, however, that such land or structures may be subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements. Lands or structures used, or to be used by a public service corporation may be exempted in particular respects from the operation of a zoning ordinance or by-law if, upon petition of the corporation, the department of telecommunications and cable or the department of public utilities shall, after notice given pursuant to section eleven and public hearing in the town or city, determine the exemptions required and find that the present or proposed use of the land or structure is reasonably necessary for the convenience or welfare of the public; provided however, that if lands or structures used or to be used by a public service corporation are located in more than one municipality such lands or structures may be exempted in particular respects from the operation of any zoning ordinance or by-law if, upon petition of the corporation, the department of telecommunications and cable or the department of public utilities shall after notice to all affected communities and public hearing in one of said municipalities, determine the exemptions required and find that the present or proposed use of the land or structure is reasonably necessary for the convenience or welfare of the public. For the purpose of this section, the petition of a public service corporation relating to siting of a communications or cable television facility shall be filed with the department of telecommunications and cable. All other petitions shall be filed with the department of public utilities. The Zoning Act is the principal check on excessive localism in land-use policy, frustrating the Legislature's statewide policies and goals. And, Section 3 is the source of state-law protection for, among others, socially productive uses that are frequently unpopular. Thus the Legislature has seen fit to provide special protections in its Zoning Act proper. The standard for determining the legality of local law, in relation to its consistency with state law, has been coextensive with principles of Federal preemption under the Supremacy Clause, since well before the Home Rule Amendment was enacted, and thus it remains to this day.

I am resubmitting what I emailed previously with the following additions. Despite discussion and further deliberation, the proposed amendments allowing for hardship evaluation simply do not address the looming problem with BEUDO. Though many condo owners seem to have garnered more support from the Council, the Houses of Worship have simply been ignored. Upon further inquiry I direct Council's attention to that MGL. c.40A, s. 3 which provides inter alia: prohibits .

Within this constitutional framework, the Zoning Act is the principal check on excessive localism in land-use policy, frustrating the Legislature's statewide policies and goals. And, Section 3 is the source of state-law protection for, among others, socially productive uses that are frequently locally unpopular.

Thus, this court is construing the scope of an express preemption provision of a state statute that serves an essential function in our Home Rule constitutional system, in relation to land use policy. This context must be considered in rendering a decision.

The standard for determining the legality of local law, in relation to its consistency with state law, has been coextensive with principles of Federal preemption under the Supremacy Clause, since well before the Home Rule Amendment was enacted, and thus it remains to this day. See *West Street Assocs. LLC v.*

Planning Board of Mansfield, 488 Mass. 319, 322 (2021), quoting *Connors v. Boston*, 430 Mass. 31, 35 (1999) ("In determining whether local action is inconsistent with State law, similar to the Federal preemption analysis, 'the touchstone of the analysis is whether the State Legislature intended to preempt the city's authority to act'"); *Bloom*, 363 Mass. at

155 ("In determining whether a local ordinance or bylaw is 'not inconsistent' with any general law within the meaning of those words in § 6 of the Home Rule Amendment and in § 13 of the Home Rule Procedures Act, the same process of ascertaining legislative intent must be performed as has been performed in the Federal preemption cases and in our own cases involving 'inconsistent' or 'repugnant' local ordinances or bylaws").

provides special exemption from abusive zoning that may unfairly impact churches. After Charter Right exercised by Councilor Toner on the Net Zero Amendment, I was curious to find what other jurisdictions are doing, aside from Boston. I came across LL97 of NYC and have learned that NYC has exercised many exemptions to their mandate. After much engagement with condo owners, I see now that the City has wisely revisited to applicability of the mandate to such a class. Not my job to engage in extensive research for this City, and this is such a momentous amendment that it would

be wise to engage an outside entity to provide a more extensive study and survey. To be sure, this will be the only city in the nation to apply such a mandate to Houses of Worship and Historic Landmarks with no accommodation or relief. Please just take another look at the NYC exemptions!!

I also note that the City Solicitor has submitted a rather foreboding opinion essentially warning that you are entering uncharted territory. I also note that by Special Act this City asked to be relieved of the restrictions of the Dover Amendment because the municipality felt overly burdened by the influence of the universities. Were the Houses of Worship overly burdening as well??

Please take a look at the law in NYC:

The law is deliberately comprehensive, although there are a few exemptions to be aware of:

- * City-owned buildings (except senior colleges in the City University of New York system)
 - * A classified religious place of worship
 - * Nonprofit hospitals and healthcare facilities
 - * Industrial buildings used predominantly to generate electric power or steam
 - * Rent-regulated housing
 - * Housing that is owned by (or on land owned by) the NYC housing authority
 - * Buildings that are part of a federal housing program
 - * Housing Development Fund Corporation (HDFC) properties
 - * Multi-family dwellings of 3 stories or lower, with no central HVAC or hot water system
- Most exempt buildings will instead have to commit to a reduction of carbon emissions, rather than a cap.

Local Law 97: everything you need to know

Local Law 97: everything you need to know Local Law 97 outlines new building limitations for carbon emissions across New York city. We explain what it is,...

But also read through the NYC listing of "adjustments." The document is attached here. Truly an acknowledgment that there are other laws and other departments which have jurisdiction over our built environment, namely our historic built environment. Adjustments start on page 16 of the attached document.

Again, as always, thank you for your time and attention.

Marie Elena Saccoccio, Esquire
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From: marie elena saccoccio <saccocciom@yahoo.com>
To: City Council <citycouncil@cambridgema.gov>; City Clerk <cityclerk@cambridgema.gov>;
citymanager@cambridgema.gov <citymanager@cambridgema.gov>
Cc: Paul Toner <ptoner@cambridgema.gov>; Denise Simmons <dsimmons@cambridgema.gov>; Carlone Dennis
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<mommiedear@rocketmail.com>
Sent: Monday, February 6, 2023 at 05:00:31 PM EST

Subject: POR 2023 #14

City Council, City Manager:

To the point, this is a drastic change from anything anyone ever anticipated. This needs study and a real plan with those effected most at the table. I note, I see no mention of hardship waivers or exclusions for historic landmarks or even houses of worship. The faith community was never even at the table. This is exactly the kind of policy that could shutter our churches but then again perhaps this is not high on priority of most of the Council these days.

I am attaching here an eyepopping article from the Boston Business Journal profiling Trinity Church in Copley Square as using 18 times as much fossil fuel as the John Hancock tower. We all know that could never be true but this is the kind of crazy data that is being collected.

Please give this more time. To involve developers like Alexandria, an incredibly successful REIT, and Harvard and MIT who share the highest endowments in the world, while excluding our small developments and houses of worship is just plain outrageous. Please read through the attached article. This is the kind of data this city will be relying upon. This is not a competition. We don't need to be first. We need to be right and efficient and wise.

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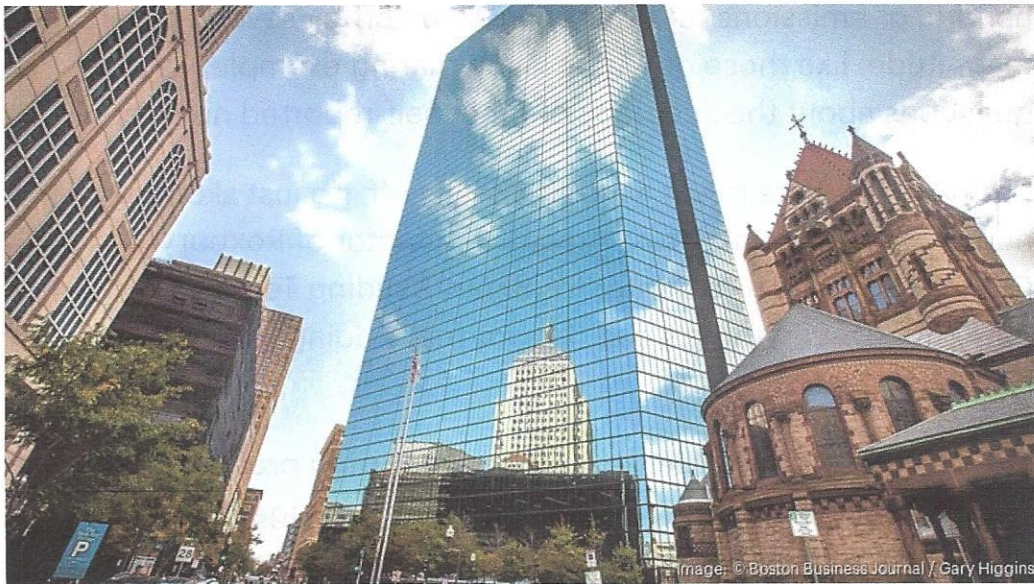
From the Boston Business Journal:

<https://www.bizjournals.com/boston/news/2022/02/13/church-and-skyscraper-flaws-found-in-emissions-dat.html>

SUBSCRIBER CONTENT:

The church and the skyscraper: Flaws found in Boston emissions data

Feb 13, 2022, 7:17pm EST



Gary Higgins / Boston Business Journal

Trinity Church, as reflected in the ground-floor windows of 200 Clarendon.

Trinity Church sits in the shadow of the 200 Clarendon tower, a dark and quiet sanctuary just across St. James Avenue from the

bustle of Boston's largest office building.

But according to data on the city's website, Trinity's recent contribution to climate change is far more vast than that of the former Hancock tower — or any Boston hospital, university, laboratory, office building or factory. As the city's numbers have it, the church emitted 18 times as much greenhouse gas in 2020 as its glass-and-steel neighbor across the street did: over 214,000 metric tons of carbon dioxide equivalent.

Put another way, the house of worship supposedly generated well over 500 times the emissions per square foot as the 62-floor skyscraper next door.

Those numbers, experts say, are clearly wrong. However, Trinity's dubious emissions totals are far from the only problem with the data collected under the city's Building Energy Reduction and Disclosure Ordinance, better known as BERDO, according to a Business Journal analysis.

More than a quarter of the properties are listed on the city's website as having failed to report their energy usage last year. A handful of emissions totals appears to be off by several orders of magnitude, like those of Trinity. Such glaring examples raise questions about the accuracy of other self-reported numbers.

"Some of the data is just so dramatically off, it's just skewing all the numbers," said Frank Mruk, executive director of Roxbury Community College's Center for Smart Building Technology. "If the data is bad, everything's bad. It's not really doing what it's supposed to do."

The city is moving now to revamp the reporting process, to better ensure the data's accuracy. Since the law's passage in 2013, property owners have reported the data themselves using an U.S. Environmental Protection Agency tool. The mistakes, in many cases, are from smaller operators that may not be well-versed in energy usage data. Under a proposal under consideration by city regulators, property owners would need to hire a third-party expert to check their numbers every five years. However, some continue to have concerns that accurate reporting will still be complicated.

The numbers are about to become a lot more important.

Under an update to the city ordinance passed last fall, known as BERDO 2.0, owners of buildings over 20,000 square feet are required to cut their emissions until they reach net zero by 2050. They will be judged against increasingly tougher benchmarks every five years, beginning in 2025 for many of them. If they fail to hit those targets, they could face financial penalties.

The accuracy of the data is critical, too, in the city's fight to limit the effects of climate change. The large buildings subject to the ordinance are responsible for roughly two-fifths of Boston's total greenhouse gas emissions, according to the city.

Compliant, or not compliant?

Some property owners report the publicly available information on their BERDO compliance is inaccurate. For instance, the city's website indicates that Mass General Brigham facilities — including Massachusetts General Hospital and Brigham and Women's Hospital — did not report energy usage this past year.

After the 2020 BERDO data was made public last October, the Business Journal reached out to Mass General Brigham about its purported non-compliance. A spokesperson said the health care system had, in fact, reported its data to the city.

A spokesperson for the city's Environment, Energy and Open Space cabinet later confirmed that Mass General Brigham had submitted the data. But as of Friday, MGB facilities were still listed as non-compliant on the BERDO website.

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A 2020 report from the Boston-based business group A Better City found that of 19 member buildings listed online as non-compliant with BERDO regulations for the previous year, four were in reality compliant. Another nine were in the process of complying, the report said.

"Initially, we were shocked that not all of our members were in compliance. When we dug more deeply, the (causes) of it were more administrative," said Yve Torrie, A Better City's director of climate, energy and resilience.

The city spokesperson acknowledged that a building's current compliance status may not be accurately reflected in the publicly available data.

"As we work on updating BERDO 2.0 we are evaluating ways to support additional data transparency for buildings that comply after the city's reporting deadline," the spokesperson said.

If the city does not receive data from a property, or the data appears inaccurate, staffers will attempt to contact the building owners or managers to help them, according to the spokesperson. But sometimes the city does not have their phone number or email address on file, and the frequency of attempts depend on staffing, she said.

Even if city officials know a building is in compliance, if it is listed as non-compliant on the website, businesses could suffer a hit to their public and community relations efforts, especially as calls to beat back climate change grow more pitched.

Better BERDO ahead?

For some properties, the problem has not been the lack of data. It's been the accuracy of that data.

A 2020 analysis from the Boston Climate Action Network identified six buildings that reported "clearly false" energy data in 2019, including Trinity Church. Those errors severely skewed BERDO's reported total emissions, according to BCAN: The half-dozen facilities were supposedly responsible for more than a third of all greenhouse-gas emissions from the more than 1,700 buildings that fell under BERDO that year.

This past year, the city labeled 66 properties as having submitted possible data errors, though it did not identify Trinity or a few other buildings with unrealistically high emissions as such.

staff to oversee the reporting, or the resources to hire a consultant. For nonprofits, condo buildings and other smaller properties, that's not always the case.

A spokesperson for Trinity Church could not be immediately reached for comment on its BERDO data.

The city is aiming to improve the reliability of the data through third-party verification requirements, part of regulations it rolled out after the City Council passed BERDO 2.0.

Some property owners worry that will not fix their reporting issues. Under the proposal, an outside expert is required only to check the data in 2022, 2026 and every five years afterward. In public comments in response to the proposal, some expressed concern that utilities would not provide them with the information they need in a timely manner.

Tim Scarpa, a Boston-based portfolio management director at the apartment developer and manager AvalonBay Communities, told the Business Journal that in order to fully understand energy usage in multifamily buildings, utilities must consolidate all accounts, including for individual units and common areas, and combine them in one report.

"We need the data in order to plan for potential energy savings updates, upgrades, and retrofits," Scarpa said. "If it takes too long to obtain this critical information, we may miss opportunities to take quick action in planning for 2025."

A Better City's Torrie said that the organization's members are concerned the city does not have enough staff to oversee reporting, especially now that buildings between 20,000 and 35,000 square feet will need to begin reporting under BERDO 2.0.

"You've got to hold the hand of 1,300 new buildings that have never reported before," Torrie said.

The city's Air Pollution Control Commission is holding a virtual meeting on Monday, to hear public testimony on the proposal and

possibly to vote to finalize it.

Greg Ryan

Senior Reporter - *Boston Business Journal*



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**LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 2019**

No. 97

Introduced by Council Members Constantinides, The Speaker (Council Member Johnson) and Council Members Torres, Kallos, Rosenthal, Levin, Rivera, Koo, Powers, Levine, Reynoso, Richards, Salamanca, Menchaca, Chin, Lander, Ampy-Samuel, Ayala, Cumbo, Rose, Brannan, the Public Advocate (Mr. Williams), Espinal, Rodriguez, Lancman, Dromm, Gibson, Treyger, Cornegy, Van Bramer, Moya, Holden, Cohen, Eugene, Barron, Adams, Koslowitz, Cabrera and King.

A LOCAL LAW

To amend the New York city charter and the administrative code of the city of New York, in relation to the commitment to achieve certain reductions in greenhouse gas emissions by 2050

Be it enacted by the Council as follows:

Section 1. Chapter 26 of the New York city charter is amended by adding a new section 651 to read as follows:

§ 651. Office of building energy and emissions performance. a. There shall be in the department an office of building energy and emissions performance. The office shall be headed by a director, who is a registered design professional, who shall be appointed by and shall report to the commissioner. The duties of the office shall include, but not be limited to:

- 1. Overseeing implementation of building energy and emissions performance laws and policies for existing buildings, new construction and major renovations;*
- 2. Establishing or administering protocols for assessing annual energy use in buildings;*
- 3. Monitoring buildings' energy use and emissions, and reviewing building emissions assessment methodologies, building emissions limits, goals and timeframes to further the goal of*

achieving a 40 percent reduction in aggregate greenhouse gas emissions from covered buildings by calendar year 2030, relative to such emissions for the calendar year 2005;

4. Creating an online portal for the submission of annual building emissions assessments by owners;

5. Receiving and validating annual building emissions assessments;

6. Auditing building emissions assessments and inspecting covered buildings, as necessary, to ensure proper reporting;

7. Determining recommended penalties, including minimum penalties, for buildings that are noncompliant with applicable emissions limits;

8. Reviewing applications for alternative methods of compliance with building emissions limits, including adjustments of emissions limits, deductions for the purchase of greenhouse gas offsets or renewable energy credits, deductions for the use of distributed energy resources, and adjustments for special categories of buildings or for special use and occupancies;

9. Working in close coordination with the mayor's office of long-term planning and sustainability; receiving advice and recommendations, as applicable, from the advisory board established pursuant to section 28-320.2 of the administrative code; and

10. Ensuring the participation and cooperation of agencies, including but not limited to the department of environmental protection, the department of housing preservation and development and the department of citywide administrative services. Such participation and cooperation shall include, but not be limited to, detailing agency staff to assist office staff consistent with agency and office functions and reporting to the office on building energy performance issues and related enforcement efforts.

§ 2. Subdivision e of section 24-802 of the administrative code of the city of New York, as added by local law number 22 for the year 2008, is amended to read as follows:

e. "City government operations" means [operations described in the Government Inventory Methodology and the Government Inventory Results sections of the Inventory of New York City Greenhouse Gas Emissions, dated April 2007] *operations, facilities, and other assets that are owned or leased by the city for which the city pays all or part of the annual energy bills.*

§ 3. Paragraph (1) of subdivision a of section 24-803 of the administrative code of the city of New York, as amended by local law number 66 for the year 2014, is amended to read as follows:

(1) Reduction of emissions citywide. There shall be, at minimum, a [thirty] 40 percent reduction in citywide emissions by calendar year 2030, and an [eighty] 80 percent reduction in citywide emissions by calendar year 2050, relative to such emissions for the base year for citywide emissions.

§ 4. Subdivision b of section 24-803 of the administrative code of the city of New York, as added by local law number 22 for the year 2008, is amended to read as follows:

b. (1) Reduction of emissions from city government operations. There shall be, at minimum, a [thirty] 40 percent reduction in city government emissions by [calendar] *fiscal* year [2017] 2025, *and a 50 percent reduction in city government emissions by calendar year 2030*, relative to such emissions for the base year for city government emissions.

(2) The emissions reduction required by paragraph [one] 1 of this subdivision shall be achieved through the applicable policies, programs and actions included in PlaNYC, *energy efficiency retrofits*, and any additional policies, programs and actions to reduce greenhouse gas emissions that contribute to global warming, *including methods to ensure equitable investment in environmental justice communities that preserve a minimum level of benefits for all communities*

and do not result in any localized increases in pollution. If the office determines that such emissions reduction is not feasible despite the best efforts of city government operations, such office shall report such findings and make recommendations with respect to policies, programs and actions that may be undertaken to achieve such reductions.

(3) Reduction of emissions by the New York city housing authority. The New York city housing authority shall make efforts to reduce greenhouse gas emissions by 40 percent by the year 2030 and 80 percent by the year 2050, relative to such emissions for calendar year 2005, for the portfolio of buildings owned or operated by the New York city housing authority. If the office determines that such emissions reduction is not feasible despite the best efforts of city government operations, such office shall report such findings and make recommendations with respect to policies, programs and actions that may be undertaken to achieve such reductions.

§ 5. Chapter 3 of title 28 of the administrative code of the city of New York is amended by adding a new article 320 to read as follows:

ARTICLE 320

BUILDING ENERGY AND EMISSIONS LIMITS

§ 28-320.1 Definitions. *As used in this article, the following terms shall have the following meanings:*

BUILDING EMISSIONS. *The term “building emissions” means greenhouse gas emissions as expressed in metric tons of carbon dioxide equivalent emitted as a result of operating a covered building and calculated in accordance with rules promulgated by the department in consultation with the mayor’s office of long term planning and sustainability. The term “building emissions” shall not include greenhouse gas emissions emitted during a local state of emergency declared by the mayor pursuant to section 24 of the executive law or a state of emergency declared by the governor pursuant to sections 28 of the executive law, where such local or state emergency has an impact on building emissions.*

BUILDING EMISSIONS INTENSITY. *The term “building emissions intensity” means, for a covered building, the number obtained by dividing the building emissions by the gross floor area for such building, expressed in metric tons of carbon dioxide equivalent per square foot per year.*

CARBON DIOXIDE EQUIVALENT. *The term “carbon dioxide equivalent” means the metric used to compare the emissions of various greenhouse gases based upon their global warming potential as defined in the Intergovernmental Panel on Climate Change Fifth Assessment Report (2014).*

CITY BUILDING. *The term “city building” means a building that is owned by the city or for which the city regularly pays all of the annual energy bills.*

Exception: *The term “city building” shall not include any senior college in the city university of New York system.*

CLEAN DISTRIBUTED ENERGY RESOURCE. *The term “clean distributed energy resource” means a distributed energy resource that (i) uses any of the following sources to generate electricity: hydropower, solar photovoltaics, geothermal wells or loops, tidal action, waves or water currents, and wind; or (ii) is designed and operated to store energy, including, but not limited to, batteries, thermal systems, mechanical systems, compressed air, and superconducting equipment.*

COVERED BUILDING. *The term “covered building” means, as it appears in the records of the department of finance, (i) a building that exceeds 25,000 gross square feet or (ii) two or more buildings on the same tax lot that together exceed 50,000 gross square feet (9290 m²), 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 (9290 m²).*

Exceptions:

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 two dwelling units, 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. *The real estate owned by any religious corporation located in the city of New York as now constituted, actually dedicated and used by such corporation exclusively as a place of public 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.*

DISTRIBUTED ENERGY RESOURCE. *The term “a distributed energy resource” means a resource comprised of one or multiple units capable of generating or storing electricity, all at a single location that is directly or indirectly connected to an electric utility distribution system. The resource may serve all or part of the electric load of one or more customers at the same location, and it may simultaneously or alternatively transmit all or part of the electricity it generates or stores onto the electric distribution system for sale to or use by other customers at other locations.*

GREENHOUSE GAS. *The term “greenhouse gas” means a unit of greenhouse gas, including carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), sulfur hexafluoride (SF₆), and nitrogen trifluoride (NF₃).*

GREENHOUSE GAS OFFSET. *The term “greenhouse gas offset” means a credit representing one metric ton of carbon dioxide equivalent emissions reduced, avoided, or sequestered by a project from a measured baseline of emissions and which has been verified by an independent, qualified third party in accordance with offset standards referenced by rules of the department.*

FINANCIAL HARDSHIP (OF A BUILDING). *The term “financial hardship (of a building)” means a building shall be considered to be subject to financial hardship where, for the combined two years prior to the application for an adjustment to annual building emissions limit pursuant to section 28-320.7, the building:*

1. Had arrears of property taxes or water or wastewater charges that resulted in the property's inclusion on the department of finance's annual New York city tax lien sale list;

2. Is exempt from real property taxes pursuant to sections 420-a, 420-b, 446 or 462 of the real property tax law and applicable local law and the owner had negative revenue less expenses as certified to the department by a certified public accountant, or by affidavit under penalties of perjury; or

3. Had outstanding balances under the department of housing preservation and development's emergency repair program that resulted in the property's inclusion on the department of finance's annual New York city tax lien sale list.

METRIC TONS OF CARBON DIOXIDE EQUIVALENT. *The term “metric tons of carbon dioxide equivalent” means the global standard unit in carbon accounting to quantify greenhouse gas emissions, also expressed as tCO₂e.*

RENEWABLE ENERGY CREDIT. *The term “renewable energy credit” means a certificate representing the environmental, social and other non-power attributes of one megawatt-hour of electricity generated from a renewable energy resource, which certificate is recognized and*

tradable or transferable within national renewable energy markets or the New York generation attribute tracking system. This term also means the environmental, social, and other non-power attributes of one megawatt-hour of electricity generated from a hydropower resource that does not trade or transfer renewable energy certificates for those hydropower resources in any renewable energy market or via the New York generation attribute tracking system, provided that the hydropower resource owner certifies the amount of energy produced in each reporting year and that it has not sold the non-power attributes equal to its energy production more than once.

RENT REGULATED ACCOMMODATION. *The term “rent regulated accommodation” means a building (i) containing one or more dwelling units with a legal regulated rent pursuant to the emergency tenant protection act of 1974, the rent stabilization law of 1969 or the local emergency housing rent control act of 1962, (ii) containing one or more dwelling units required by law to be registered and regulated pursuant to the emergency tenant protection act of 1974 or the rent stabilization law of 1969, (iii) buildings developed with subsidies received pursuant to section 1701q of title 12 of the United States code and (iv) buildings participating in a project-based assistance program pursuant to section 1473f of title 42 of the United States code.*

§ 28-320.2 Advisory board. *There shall be an advisory board convened, by the office of building energy and emissions performance upon the effective date of this article, in January of 2029 and in January of 2039, to provide advice and recommendations to the commissioner and to the mayor’s office of long term planning and sustainability relating to effectively reducing greenhouse gas emissions from buildings. Such recommendations shall include, but not be limited to:*

- 1. A report to be delivered to the mayor and 1. A report and recommendations to be delivered to the mayor and the speaker of the city council no later than January 1, 2023 for additional or improved approaches to assessing building energy performance. Such report shall include, but not be limited to:*
 - 1.1. An approach for buildings to submit energy use or greenhouse gas emissions and other information for the purpose of assessing energy performance of covered buildings;*
 - 1.2. A methodology that includes the metric of measure, adjustments to the metric, the approach to comparing the output to a benchmark, alternative compliance paths, credit for beneficial electrification and distributed energy resources, and an approach for a trading mechanism as described in section 28-320.11;*
 - 1.3. Recommendations for addressing tenant-controlled energy usage;*
 - 1.4. Recommendations for amendments to the audit required under section 28-308.2 of the administrative code, including consideration of whether such audit should be replaced by a capital plan;*
 - 1.5 Recommendations for reducing building emissions from rent regulated accommodations;*

- 1.6 Recommendations for allowing additional time to comply with the emissions limits for buildings converting to a new occupancy group or use with lower emissions limits or some other change in status that would affect applicability of the provisions of this article;*
- 1.7 An evaluation of the extent to which the mayor's 80x50 energy infrastructure pathways study is incorporated and addressed within the recommendations made pursuant to items 1.1 through 1.6 of this section; and*
- 1.8 A reference guide to delineate the responsibilities of the building designer and owners to comply with emissions limits.*
- 2. A report to be delivered to the mayor and the speaker of the city council no later than January 1, 2023, providing an analysis of, and any recommendations for improving, energy and emissions performance requirements for covered buildings. Such recommendations shall be targeted to achieve at least a 40 percent reduction in aggregate greenhouse gas emissions from covered buildings by calendar year 2030 relative to such emissions for the calendar year 2005. Such report shall include, but not be limited to assessments of:*
 - 2.1. Incentives for reduction of peak energy demand;*
 - 2.2. Methods to allow for staggered reporting cycles for compliance with energy and emissions performance improvements;*
 - 2.3. Methods for calculating penalties for non-compliance;*
 - 2.4. Estimated emissions reductions associated with any recommended energy performance requirements;*
 - 2.5. The economic impact, including benefits, of achieving the energy and emissions performance requirements;*
 - 2.6. Methods for achieving earlier or larger reductions from city-owned buildings;*
 - 2.7 Separate improvement targets for base building energy systems and tenant-controlled energy systems;*
 - 2.8 Methods for achieving emissions reductions from manufacturing and industrial processes; and*
 - 2.9 Methods for achieving emissions reductions from hospitals while maintaining critical care for human health and safety.*

§ 28-320.2.1 Advisory board composition. *Such advisory board shall be staffed with registered design professionals and be composed of 16 members including the chairperson, 8 of the members*

of such advisory board shall be appointed by the mayor or the mayor's designee, and 8 of the members of such advisory board shall be appointed by the speaker of the council. The mayor shall appoint one architect, one operating engineer, one building owner or manager, one public utility industry representative, one environmental justice representative, one business sector representative, one residential tenant representative, and one environmental advocacy organization representative. The speaker shall appoint one architect, one stationary engineer, one construction trades representative, one green energy industry representative, one residential tenant representative, one environmental justice organization representative, one environmental advocacy representative and one not for profit organization representative. The director of such office, or the designee of such director, shall serve as chairperson of the advisory board. The advisory board may convene in working groups. Such working groups may include individuals not on such advisory board to address the recommendations required by this article. The mayor shall invite the appropriate federal, state and local agencies and authorities to participate, including but not limited to the New York state energy research and development authority. Such advisory board shall convene a working group on hospitals that shall be composed of engineers, architects, and hospital industry representatives.

§ 28-320.3 Building emissions limits. *Except as otherwise provided in this article, or otherwise provided by rule, on and after January 1, 2024 a covered building shall not have annual building emissions higher than the annual building emissions limit for such building as determined in accordance with this section based on the occupancy group of the building.*

§ 28-320.3.1 Annual building emissions limits 2024-2029. *For calendar years 2024 through 2029 the annual building emissions limits for covered buildings shall be calculated pursuant to items 1 through 10 of this section. For the purposes of such calculation the department shall provide a method for converting categories of uses under the United States environmental protection agency Portfolio Manager tool to the equivalent uses and occupancy groups set forth in this section. For a covered building with spaces classified in more than one occupancy group, the annual building emissions limit shall be the sum of the calculated values from items 1 through 10 of this paragraph, as applicable for each space.*

- 1. For spaces classified as occupancy group A: multiply the building emissions intensity limit of 0.01074 tCO₂e/sf by the corresponding gross floor area (sf);*
- 2. For spaces classified as occupancy group B other than as described in item 6: multiply the building emissions intensity limit of 0.00846 tCO₂e/sf by the corresponding gross floor area (sf);*
- 3. For spaces classified as occupancy groups E and I-4: multiply the building emissions intensity limit of 0.00758 tCO₂e/sf by the corresponding gross floor area (sf);*
- 4. For spaces classified as occupancy group I-1: multiply the building emissions intensity limit of 0.01138 tCO₂e/sf by the corresponding gross floor area (sf);*

5. *For spaces classified as occupancy group F: multiply the building emissions intensity limit of 0.00574 tCO₂e/sf by the corresponding gross floor area (sf);*
6. *For spaces classified as occupancy groups B civic administrative facility for emergency response services, B non-production laboratory, Group B ambulatory health care facility, H, I-2 and I-3: multiply the building emissions intensity limit of 0.02381 tCO₂e/sf by the corresponding gross floor area (sf);*
7. *For spaces classified as occupancy group M: multiply the building emissions intensity limit of 0.01181 tCO₂e/sf by the corresponding gross floor area (sf);*
8. *For spaces classified as occupancy group R-1: multiply the building emissions intensity limit of 0.00987 tCO₂e/sf by the corresponding gross floor area (sf);*
9. *For spaces classified as occupancy group R-2: multiply the building emissions intensity limit of 0.00675 tCO₂e/sf by the corresponding gross floor area (sf);*
10. *For spaces classified as occupancy groups S and U: multiply the building emissions intensity limit of 0.00426 tCO₂e/sf by the corresponding gross floor area (sf).*

§ 28-320.3.1.1 Greenhouse gas coefficient of energy consumption for calendar years 2024 through 2029. *The annual building emissions of a covered building in accordance with this section, greenhouse gas emissions shall be calculated as follows for calendar years 2024 through 2029:*

1. *Utility electricity consumed on the premises of a covered building that is delivered to the building via the electric grid shall be calculated as generating 0.000288962 tCO₂e per kilowatt hour, provided, however, that the department, in consultation with the office of long term planning and sustainability, shall promulgate rules governing the calculation of greenhouse gas emissions for campus-style electric systems that share on-site generation but make use of the utility distribution system and for buildings that are not connected to the utility distribution system.*
2. *Natural gas combusted on the premises of a covered building shall be calculated as generating 0.00005311 tCO₂e per kbtu.*
3. *#2 fuel oil combusted on the premises of a covered building shall be calculated as generating 0.00007421 tCO₂e per kbtu.*
4. *#4 fuel oil combusted on the premises of a covered building shall be calculated as generating 0.00007529 tCO₂e per kbtu.*
5. *District steam consumed on the premises of a covered building shall be calculated as generating 0.00004493 tCO₂e per kbtu.*

6. *The amount of greenhouse gas emissions attributable to other energy sources, including but not limited to distributed energy resources, shall be determined by the commissioner and promulgated into rules of the department.*

§ 28-320.3.2 Building emissions limits for calendar years 2030 through 2034. *For calendar years 2030 through 2034 the annual building emissions limits for covered buildings shall be calculated pursuant to items 1 through 10 of this section. For the purposes of such calculation the department shall provide a method for converting categories of uses under the United States environmental protection agency Portfolio Manager tool to the equivalent uses and occupancy groups set forth in this section. For a covered building with spaces classified in more than one occupancy group, the annual building emissions limit shall be the sum of the calculated values from items 1 through 10 of this paragraph, as applicable for each space. The department may establish different limits, set forth in the rules of the department, where the department determines that different limits are feasible and in the public interest. Where such limits are set by rule, the average emission limits for all covered buildings shall not be less restrictive than the average emissions impact of the building emissions limits outlined in items 1 through 10 of this section. The advisory board and the office of long term planning and sustainability shall provide advice and recommendation regarding such limits.*

1. *For spaces classified as occupancy group A: multiply the building emissions intensity limit of 0.00420 tCO₂e/sf by the corresponding gross floor area (sf);*
2. *For spaces classified as occupancy group B other than as described in item 6: multiply the building emissions intensity limit of 0.00453 tCO₂e/sf by the corresponding gross floor area (sf);*
3. *For spaces classified as occupancy groups E and I-4: multiply the building emissions intensity limit of 0.00344 tCO₂e/sf by the corresponding gross floor area (sf);*
4. *For spaces classified as occupancy group I-1: multiply the building emissions intensity limit of 0.00598 tCO₂e/sf by the corresponding gross floor area (sf);*
5. *For spaces classified as occupancy group F: multiply the building emissions intensity limit of 0.00167 tCO₂e/sf by the corresponding gross floor area (sf);*
6. *For spaces classified as occupancy groups B civic administrative facility for emergency response services, B non-production laboratory, Group B ambulatory health care facility, H, I-2 or I-3: multiply the building emissions intensity limit of 0.01193 tCO₂e/sf by the corresponding gross floor area (sf);*
7. *For spaces classified as occupancy group M: multiply the building emissions intensity limit of 0.00403 tCO₂e/sf by the corresponding gross floor area (sf);*

8. *For spaces classified as occupancy group R-1: multiply the building emissions intensity limit of 0.00526 tCO₂e/sf by the corresponding gross floor area (sf);*
9. *For spaces classified as occupancy groups R-2: multiply the building emissions intensity limit of 0.00407 tCO₂e/sf by the corresponding gross floor area (sf);*
10. *For spaces classified as occupancy groups S and U: multiply the building emissions intensity limit of 0.00110 tCO₂e/sf by the corresponding gross floor area (sf).*

§ 28-320.3.2.1 Greenhouse gas coefficients of energy consumption for calendar years 2030 through 2034. *For the purposes of calculating the annual building emissions of a covered building in accordance with this section, the amount of greenhouse gas emissions attributed to particular energy sources shall be determined by the commissioner and promulgated into rules of the department by no later than January 1, 2023. The commissioner shall consult with the advisory board required by this article to develop such greenhouse gas coefficients for utility electricity consumption. When developing such coefficient, the commissioner shall consider factors including, but not limited to, the best available New York state energy research and development authority and State Energy Plan forecasts for Zone J for the end of the compliance period and beneficial electrification.*

§ 28-320.3.4 Building emissions limits for calendar years 2035 through 2050. *No later than January 1, 2023, the commissioner shall establish by rule annual building emissions limits and building emissions intensity limits applicable for calendar years 2035 through 2039 and building emissions limits and building emissions intensity limits applicable for calendar years 2040 through 2049. Such limits shall be set to achieve an average building emissions intensity for all covered buildings of no more than 0.0014 tCO₂e/sf/yr by 2050.*

§ 28-320.3.5 Building emissions limits on and after calendar year 2050. *No later than January 1, 2023 the commissioner shall establish by rule annual building emissions limits and building emissions intensity limits applicable for calendar years commencing on and after January 1, 2050. Such limits shall achieve an average building emissions intensity for all covered buildings of no more than 0.0014 tCO₂e/sf/yr.*

§ 28-320.3.6 Deductions from reported annual building emissions. *The department may authorize a deduction from the annual building emissions required to be reported by an owner pursuant to section 28-320.3 where the owner demonstrates the purchase of greenhouse gas offsets or renewable energy credits, or the use of clean distributed energy resources, in accordance with this section.*

§ 28-320.6.1 Deductions from reported annual building emissions for renewable energy credits. *A deduction from the reported annual building emissions shall be authorized equal to the number of renewable energy credits purchased by or on behalf of a building owner, provided (i) the renewable energy resource that is the source of the renewable energy credits is considered by the New York independent system operator to be a capacity resource located in or directly deliverable*

into zone J load zone for the reporting calendar year; (ii) the renewable energy credits are solely owned and retired by, or on behalf of, the building owner; (iii) the renewable energy credits are from the same year as the reporting year; and (iv) the building that hosts the system producing the energy does not receive a deduction under § 28-320.6.3. Covered buildings claiming deductions for renewable energy credits under this section must provide the department with the geographic location of the renewable energy resource that created the renewable energy credits. The department, in consultation with the mayor's office of long term planning and sustainability, shall promulgate rules to implement this deduction.

§ 28-320.3.6.2 Deductions from reported annual building emissions for purchased greenhouse gas offsets. For calendar years 2024 through 2029, a deduction shall be authorized for up to 10 percent of the annual building emissions limit. Such a deduction shall be authorized only where within the reporting calendar year, greenhouse gas offsets equivalent to the size of the deduction as measured in metric tons of carbon dioxide equivalent and generated within the reporting calendar year have been (i) purchased by or on behalf of the owner in accordance with an offset standard referenced by rules of the department, (ii) publicly registered in accordance with such offset standard, and (iii) retired or designated to the department for retirement. Such greenhouse gas offsets must exhibit environmental integrity principles, including additionality, in accordance with rules promulgated by the department in consultation with the office of long term planning and sustainability. For the purposes of this section, additionality means a requirement that an offset project is not already required by local, national or international regulations. Prior to the department promulgation of rules, the department shall consult the advisory board on environmental justice as established in local law 64 of 2017.

§ 28-320.3.6.3 Deductions from reported annual building emissions for clean distributed energy resources. For calendar years 2024 through 2029, a deduction from the reported annual building emissions shall be authorized based upon the calculated output of a clean distributed energy resource located at, on, in, or directly connected to the building subject to the report. The department shall promulgate rules to set forth how such deduction shall be calculated, in accordance with the following:

1. For a clean distributed energy resource that generates electricity, the department shall establish separate calculations for each type of commercially available clean distributed energy resource, which shall not be revised more frequently than once every three years.
2. For a clean distributed energy resource that stores electricity, the deduction shall be based on the size of the resource and its ability to reduce greenhouse gas emissions during designated peak periods.

§ 28-320.3.7 Reports. By May 1, 2025, and by May 1 of every year thereafter, the owner of a covered building shall file with the department a report, certified by a registered design professional, prepared in a form and manner and containing such information as specified in rules of the department, that for the previous calendar year such building is either:

1. In compliance with the applicable building emissions limit established pursuant to section 28-320.3; or

2. *Not in compliance with such applicable building emissions limit, along with the amount by which such building exceeds such limit.*

§ 28-320.3.7.1 Extension of time to file report. *An owner may apply for an extension of time to file an annual report required by section 28-320.3.7 in accordance with this section and the rules of the department. An extension may be granted where the owner is unable to file the certified report by the scheduled due date despite such owner's good faith efforts, as documented in such application. An extension granted pursuant to this section shall not modify the owner's obligation to comply with the applicable emission limits for such calendar year.*

§ 28-320.3.8 Continuing requirements. *In 2055, the office of building energy and emissions performance shall prepare and submit to the mayor and the speaker of the council recommendations whether to repeal or amend any of the requirements of this article.*

§ 28-320.3.9 Extension for certain income-restricted housing. *This section is applicable to covered buildings that are owned by a limited-profit housing company organized under article 2 of the private housing finance law, or contain one or more dwelling units for which occupancy or initial occupancy is restricted based upon the income of the occupant or prospective occupant thereof as a condition of a loan, grant, tax exemption, or conveyance of property from any state or local governmental agency or instrumentality pursuant to the private housing finance law, the general municipal law, or section 420-c of the real property tax law. Such buildings are exempted from the annual building emissions limits set forth in section 28-320.3.1 and 28-320.3.2 and from any applicable reporting requirements.*

§ 28-320.3.10 Changes in building status. *The department may establish by rule procedures for a building to apply for additional time to comply with the emissions limits when such building converts to a new occupancy group or use with lower emissions limits, or undergoes a change affecting the applicability of this article to such building.*

§ 28-320.4 Assistance. *The office of building energy and emissions performance shall establish and maintain a program for assisting owners of covered buildings in complying with this article, as well as expand existing programs established to assist owners in making energy efficiency and renewable energy improvements. These programs shall be made available to assist building owners without adequate financial resources or technical expertise.*

§ 28-320.5 Outreach and education. *The office of building energy and emissions performance shall establish and engage in outreach and education efforts to inform building owners about building emissions limits, building emissions intensity limits and compliance with this article. The materials developed for such outreach and education shall be made available on the office's website. Such outreach shall include a list of city, state, federal, private and utility incentive programs related to energy reduction or renewable energy for which buildings reasonably could be eligible. The office of building energy and emissions performance shall also provide outreach, education, and training opportunities for buildings' maintenance and operations staff.*

§ 28-320.6 Penalties. *An owner of a covered building who has submitted a report pursuant to section 28-320.3.7 which indicates that such building has exceeded its annual building emissions limit shall be liable for a civil penalty of not more than an amount equal to the difference between the building emissions limit for such year and the reported building emissions for such year, multiplied by \$268.*

§ 28-320.6.1 Determination of penalty. *In considering the amount of the civil penalty to be imposed pursuant to this article, a court or administrative tribunal shall give due regard to aggravating or mitigating factors including:*

- 1. The respondent's good faith efforts to comply with the requirements of this article, including investments in energy efficiency and greenhouse gas emissions reductions before the effective date of this article;*
- 2. The respondent's history of compliance with this article;*
- 3. The respondent's compliance with the conditions of any adjustment to the applicable building emissions limit, issued by the department pursuant to section 28-320.7;*
- 4. Whether the non-compliance was directly related to unexpected and unforeseeable events or conditions during the calendar year outside the control of the respondent;*
- 5. The respondent's access to financial resources; and 6. Whether payment of such penalty would impact the operations of facilities critical to human life or safety .*

§ 28-320.6.2 Civil penalty for failure to file report. *It shall be unlawful for the owner of a covered building to fail to submit an annual report as required by section 28-320.3.7 on or before the applicable due date. An owner of a covered building subject to a violation for failure to file a report shall be liable for a penalty of not more than an amount equal to the gross floor area of such covered building, multiplied by \$0.50, for each month that the violation is not corrected within the 12 months following the reporting deadline; provided, however, that an owner shall not be liable for a penalty for a report demonstrating compliance with the requirements of this article if such report is filed within 60 days of the date such report is due.*

§ 28-320.6.3 False statement. *It shall be unlawful to knowingly make a material false statement in a report or other submission filed with the department, pursuant to this article. A violation of this section shall be a misdemeanor and subject to a fine of not more than \$500,000 or imprisonment of not more than 30 days or both such fine and imprisonment. A person who violates this section shall also be liable for a civil penalty of not more than \$500,000.*

§ 28-320.6.4 Penalty recovery. *Civil penalties provided for by this article may be recovered in a proceeding before an administrative tribunal within the jurisdiction of the office of administrative trials and hearings. Administrative summonses returnable to such tribunal for violations of this*

article may be issued by the department or by an agency designated by the department. Civil penalties provided for by this article may also be recovered in an action by the corporation counsel in any court of competent jurisdiction.

§ 28-320.7. Adjustment to applicable annual building emissions limit. *The department, in consultation with the mayor's office of long term planning and sustainability or any other agency designated by the mayor, may grant an adjustment of the annual building emissions limit applicable to a covered building in existence on the effective date of this article or for which a permit for the construction of such building was issued prior to such effective date, provided that the owner is complying with the requirements of this article to the maximum extent practicable.*

1. Such an adjustment may be granted upon a specific determination that:

1.1. Capital improvements are necessary for strict compliance with the limit set forth in section 28-320.3 and it is not reasonably possible to make such improvements due to (i) a constraint imposed by another provision of law including but not limited to designation as a landmark, landmark site, interior landmark, or within a historic district pursuant to chapter 3 of title 25 of the administrative code, or (ii) a physical condition of the building or building site including but not limited to lack of access to energy infrastructure, space constraints, or lack of access to a space within a building covered by a lease in existence on the effective date of this section;

1.2. The owner has made a good faith effort to purchase greenhouse gas offsets to comply with section 28-320.3 but a sufficient quantity is not available at a reasonable cost; and

1.3. The owner has availed itself of all available city, state, federal, private and utility incentive programs related to energy reduction or renewable energy for which it reasonably could participate.

2. Such an adjustment may be granted upon a specific determination that:

2.1. The cost of financing capital improvements necessary for strict compliance with the limit set forth in section 28-320.3 would prevent the owner of a building from earning a reasonable financial return on the use of such building or the building is subject to financial hardship as defined in this article. In evaluating the ability of an owner to earn a reasonable financial return, the department may consider future savings expected from such capital improvements;

2.2. The owner is not eligible for any program funded by the city or enabled by a local law that provides financing for the purpose of energy reduction or sustainability measures. Proof of ineligibility for financing must be demonstrated by rejection from any such program funded by the city or enabled by a local law or an affidavit explanation why such owner could not reasonably participate in such programs;

2.3. *The owner has made a good faith effort to purchase greenhouse gas offsets or renewable energy credits to comply with section 28-320.3 but a sufficient quantity is not available at a reasonable cost; and*

2.4. *The owner has availed itself of all available city, state, federal, private and utility incentive programs related to energy reduction or renewable energy for which it reasonably could participate.*

§ 28-320.7.1 Effective period. *An adjustment granted pursuant to item 1 of section 28-320.7 may be effective for a period of not more than three calendar years. An adjustment granted pursuant to item 2 of such section may be effective for a period of not more than one calendar year.*

§ 28-320.7.2 Application. *An application for such an adjustment shall be made in the form and manner determined by the department and certified by a registered design professional.*

§ 28-320.8 Adjustment to applicable annual building emissions limit for calendar years 2024-2029. *The department may grant an adjustment of the annual building emissions limit for calendar years 2024 through 2029 applicable to a covered building in existence on the effective date of this article where such covered building emissions in calendar year 2018 exceeds the building emissions limit as prescribed by section 28-320.3.1 by more than 40 percent, as reported to the department by a registered design professional. The adjustment shall result in a required building emissions limit that is 70 percent of the calendar year 2018 building emissions for the covered building. Such adjustment may be granted where:*

1. *The owner of a covered building demonstrates that the building emissions in excess of the building emissions limit is attributable to special circumstances related to the use of the building, including but not limited to 24 hour operations, operations critical to human health and safety, high density occupancy, energy intensive communications technologies or operations, and energy-intensive industrial processes;*
2. *The owner of a covered building demonstrates that the energy performance of the covered building is equivalent to a building in compliance with the New York city energy conservation code in effect on January 1, 2015; and*
3. *The owner of the covered building has submitted a plan to the department setting forth a schedule of alterations to the covered building or changes to the operations and management of the covered building sufficient to ensure that the covered building will be in compliance with the annual building emissions limits for calendar years 2030 through 2034, as required by section 28-320.3.2.*

§ 28-320.8.1 Effective period. *An adjustment granted pursuant to section 28-320.8 may be effective for the reporting years 2025 through 2030, as prescribed by section 28-320.3.7, provided that the certificate of occupancy has not been amended after December 31, 2018.*

§ 28-320.8.1.1 Extension of effective period. *The commissioner may also grant an extension of the effective period of the adjustment to applicable annual building emissions limit for calendar years 2030-2035, as prescribed by section 28-320.3.8. Such extension may be granted upon submission of a schedule of alterations to the covered building or changes to the operations and management of the covered building in accordance with section 28-320.8 sufficient to ensure that by 2035 the covered building will comply with a required building emissions limit that is 50 percent of the reported 2018 building emissions for the covered building.*

§ 28-320.8.2 Application. *An application for an adjustment shall be submitted to the department before July 1, 2021 in the form and manner determined by the department and certified by a registered design professional.*

§ 28-320.9 Adjustment to applicable annual building emissions limit for not-for-profit hospitals and healthcare facilities. *The department shall grant an adjustment of the annual building emissions limits for calendar years 2024-2029 and 2030-34 where:*

- 1. The building is classified as a not-for-profit hospital, not-for-profit health center, or not-for-profit HIP center, in existence on the effective date of this article; and*
- 2. By no later than July 21, 2021, the owner of the covered building submits an application to the department for such adjustment in a form and manner prescribed by the department.*

For calendar years 2024 through 2029, the adjustment shall result in the covered building being subject to an emissions limit that is 85 percent of the calendar 2018 building emissions for such covered building. For calendar years 2030 through 2034, the adjustment shall result in the covered building being subject to an emissions limit that is 70 percent of the calendar 2018 building emissions for such covered building.

§ 28-320.10 Fee schedule. *The department may establish by rule a schedule of fees that shall be paid upon the filing of a report or an application for an adjustment to the applicable building emissions limit pursuant to this article. Such schedule may include a fee for the late filing of a report.*

§ 28-320.11 Carbon trading study. *The office of long term planning and sustainability shall conduct a study on the feasibility of a citywide trading scheme for greenhouse gas emissions from buildings and submit a report and implementation plan with the findings of such study to the mayor and the speaker of the council no later than January 1, 2021. Such study shall include methods to ensure equitable investment in environmental justice communities that preserve a minimum level of benefits for all covered buildings and do not result in any localized increases in pollution. Such study shall also include an approach to a marketplace for credit trading, pricing*

mechanisms, credit verification, and mechanisms for regular improvement of the scheme. Such study should also consider the reports and recommendations of the advisory board.

§ 6. Chapter 3 of title 28 of the administrative code of the city of New York is amended by adding a new article 321 to read as follows:

ARTICLE 321

ENERGY CONSERVATION MEASURE REQUIREMENTS FOR CERTAIN BUILDINGS

§ 28-321.1 Definitions. *As used in this article, the following terms shall have the following meanings:*

COVERED BUILDING. *The term “covered building” means a building (i) containing one or more dwelling units with a legal regulated rent pursuant to the emergency tenant protection act of 1974, the rent stabilization law of 1969 or the local emergency housing rent control act of 1962, (ii) containing one or more dwelling units required by law to be registered and regulated pursuant to the emergency tenant protection act of 1974 or the rent stabilization law of 1969, (iii) buildings developed with subsidies received pursuant to section 1701q of title 12 of the United States code and (iv) buildings participating in a project-based assistance program pursuant to section 1473f of title 42 of the United States code , (v) real estate owned by any religious corporation located in the city of New York as now constituted, actually dedicated and used by such corporation exclusively as a place of public worship and, as it appears in the records of the department of finance, (i) a building that exceeds 25,000 gross square feet or (ii) two or more buildings on the same tax lot that together exceed 50,000 gross square feet (9290 m²), 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 (9290 m²).*

Exceptions:

- 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 two dwelling units, as certified by a registered design professional to the department.*
- 2. An industrial facility primarily used for the generation of electric power or steam.*
- 3. A covered building as defined in article 320.*

§ 28-321.2 Required energy conservation measures for certain buildings. A covered building must comply with either section 28-321.2.1 or section 28-321.2.2.

§ 28-321.2.1 Energy compliant buildings. The owner of a covered building shall demonstrate that, for calendar year 2024, the annual building emissions of such covered building did not exceed what the applicable annual building emissions limit would be pursuant to section 28-320.3.2 if such building were a covered building as defined in article 320 of this chapter.

§ 28-321.2.2 Prescriptive energy conservation measures. By December 31, 2024, the owner of a covered building shall ensure that the following energy conservation measures have been implemented where applicable:

1. *Adjusting temperature set points for heat and hot water to reflect appropriate space occupancy and facility requirements;*
2. *Repairing all heating system leaks;*
3. *Maintaining the heating system, including but not limited to ensuring that system component parts are clean and in good operating condition;*
4. *Installing individual temperature controls or insulated radiator enclosures with temperature controls on all radiators;*
5. *Insulating all pipes for heating and/or hot water;*
6. *Insulating the steam system condensate tank or water tank;*
7. *Installing indoor and outdoor heating system sensors and boiler controls to allow for proper set-points;*
8. *Replacing or repairing all steam traps such that all are in working order;*
9. *Installing or upgrading steam system master venting at the ends of mains, large horizontal pipes, and tops of risers, vertical pipes branching off a main;*
10. *Upgrading lighting to comply with the standards for new systems set forth in section 805 of the New York city energy conservation code and/or applicable standards referenced in such energy code on or prior to December 31, 2024. This provision is subject to exception 1 in section 28-310.3, provided that July 1, 2010 is replaced by January 1, 2020 for the purposes of this section;*
11. *Weatherizing and air sealing where appropriate, including windows and ductwork, with focus on whole-building insulation;*
12. *Installing timers on exhaust fans; and*

13. Installing radiant barriers behind all radiators.

§ 28-321.3 Reports. *By May 1, 2025, an owner of a covered building shall submit a report to the department to demonstrate compliance with this section in accordance with section 28-321.3.1 or section 28-321.3.2.*

§ 28-321.3.1 Energy compliant buildings reports. *The owner of a covered building shall file with the department a report, certified by a registered design professional, prepared in a form and manner and containing such information as specified in rules of the department, that for calendar year 2024 such building was in compliance with the applicable building emissions limit established pursuant to section 28-320.3.2.*

§ 28-321.3.2 Prescriptive energy conservation measures reports. *A retro-commissioning agent, as defined in article 308, shall prepare and certify a report in a form and manner determined by the department. The report shall include such information relating to the completion of the prescriptive energy conservation measures as shall be set forth in the rules of the department including, at a minimum:*

1. Project and team information:

1.1. Building address.

1.2. Experience and certification of persons performing the prescriptive energy conservation measures and any staff involved in the project.

1.3. Name, affiliation, and contact information for persons performing the prescriptive energy conservation measures, owner of building, and facility manager of building.

2. Building information:

2.1. List of all HVAC, domestic hot water, electrical equipment, lighting, and conveyance equipment types serving the covered building.

§ 28-321.4 Penalties. *Penalties that may be assessed for violations of section 28-321.2 shall be determined by department rule.*

§ 7. This local law takes effect 180 days after it becomes law, except that prior to such effective date the department of buildings and the office of long term planning and sustainability may take such measures as are necessary for the implementation of this local law, including the promulgation of rules.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s.:

I hereby certify that the foregoing is a true copy of a local law of The City of New York, passed by the Council on April 18, 2019 and returned unsigned by the Mayor on May 20, 2019.

MICHAEL M. McSWEENEY, City Clerk, Clerk of the Council.

CERTIFICATION OF CORPORATION COUNSEL

I hereby certify that the form of the enclosed local law (Local Law No. 97 of 2019, Council Int. No. 1253-C of 2018) to be filed with the Secretary of State contains the correct text of the local law passed by the New York City Council, presented to the Mayor and neither approved nor disapproved within thirty days thereafter.

STEVEN LOUIS, Acting Corporation Counsel.