

REBNY Testimony | April 5, 2021

The Real Estate Board of New York to The Committees on Environmental Protection and Capital Budget on the Oversight of Local Law 97 of 2019

The Real Estate Board of New York (REBNY) is the City's leading real estate trade association representing commercial, residential, and institutional property owners, builders, managers, investors, brokers, salespeople, and other organizations and individuals active in New York City real estate. REBNY thanks the Committees for the opportunity to testify as part of the oversight of Local Law 97 of 2019 (LL97).

Nearly two years ago, New York City passed the Climate Mobilization Act (CMA), a slate of laws seeking to make meaningful carbon emissions reductions in the built environment. The centerpiece legislation was LL97, which places strict carbon emissions caps on all buildings 25,000 square feet or greater beginning in 2024, becoming more stringent in 2030 and beyond.

It sounds like a simple and elegant solution – limit building emissions. As written, however, the law demonstrates a lack of understanding of buildings' needs and daily operations. With no recognition of density (which is a defining characteristic of New York City) and only a loose attempt at distinguishing between types of use, the carbon cap approach does not account enough for the difference in building typologies. Moreover, it completely ignores the realities of the City's infrastructure and outdated electric grid, which is sourced almost entirely from fossil fuels and will only get more carbon intensive in the short-term with the recent closure of Indian Point Energy Center as we wait for more renewable energy to come into the city.

The real estate industry does not want to defer responsibility for meeting our shared climate goals. New York City's buildings collectively account for the majority of the city's carbon emissions. If we are to achieve a more sustainable and equitable city, the built environment needs to act and make meaningful carbon reductions. REBNY agrees with the Council's intention of decarbonizing New York's building stock, but the approach it adopted is deeply flawed and needs to be amended, if we have any hope of achieving a carbon-free NYC on the timetable suggested.

What follows is a more detailed review of the law and the City's related environmental record:

Local Law 97 will not accomplish our shared environmental goals

LL97 is often characterized as an energy efficiency bill that seeks to create a more sustainable city by regulating the worst polluting buildings. While that may have been Council's intention, that is not the legislation it enacted.

Important Note

LL97 does not capture the least efficient buildings.

New York City has over one million buildings. Many are old. Over 230,000 of them were constructed before 1920, which tend to be low-rise, low-density, more inefficient, and often operate on fossil-fuel-based systems.¹ Others set the global standard for sustainability. New York is home to the first LEED Platinum building and the first high-rise building that meets passive house standards. Yet, under the regime of LL97, the smaller, less sustainable buildings remain unregulated, while many of the world's most efficient buildings soon face monetary penalties up to millions of dollars a year.

The law does not accurately capture NYC's "dirtiest" buildings. It covers the largest buildings in the city, which total roughly 50,000, or 5% of the building stock. While it is true those buildings account for half of all building-related emissions, they also account for more than 50% of the city's total floor area.² These buildings are our hospitals, offices, and dense multifamily dwellings, which on a per capita basis are more sustainable and efficient than the 950,000 buildings not covered by the law. Because of this, about half of the building-related carbon emissions remain completely unregulated.

Using an unadjusted carbon emissions cap as the metric for the law is deeply flawed.

LL97 subjects buildings to a carbon budget determined solely on a generalized occupancy type and total square footage. The metric gives zero consideration to density and ascribes the same coefficient to all buildings in the same typology, irrespective of the work function. Under the current framework, a law firm with sparsely populated offices is treated the same as a financial firm with dense trading floors and data servers running 24/7. In consequence, two buildings with similarly efficient systems can perform wildly different against their carbon caps because of the varying energy needs of their tenants.

As a result, building owners that made commitments to the environment and invested in sustainable and efficient systems long before any regulatory inducements still face up to millions of dollars a year in fines. The Empire State Building, for example, has cut its carbon emissions by 40% in the past 10 years and yet it currently faces penalties in 2030, which will be avoided if it reaches its goal of cutting emissions by *another* 40% in the next decade.³ One Bryant Park, the world's first LEED Platinum building, faces millions in fines in 2024.⁴

Some efficient buildings pay penalties because LL97 is fundamentally not an energy performance bill.

LL97 is a cap on carbon that does not account for (1) the density of occupancy, (2) tenant energy consumption in space controlled by the tenant, (3) efficiency improvements already made by the owner, and (4) the carbon intensity of energy inputs (ex. electricity, district steam).

All of these variables are central to understanding a building's carbon emissions, and not accounting for them in the LL97 metric is not only a disservice to building owners but also to our environment. Highly efficient buildings with dense tenants would be able to comply with LL97 if the owner diluted the tenants over multiple buildings. Sprawl is unsustainable, but it is rewarded by LL97.

¹ http://www.nyc.gov/html/gbee/downloads/pdf/TWGREport_2ndEdition_sm.pdf

² https://www.urbangreencouncil.org/sites/default/files/2020_nyc_benchmarking_report.pdf

³ <https://www.washingtonpost.com/graphics/2020/climate-solutions/empire-state-building-emissions/>

⁴ <https://www.crainsnewyork.com/op-ed/new-yorks-green-buildings-law-focused-more-fines-conservation>

At the same time, the law penalizes buildings for things beyond an owner's control, such as the carbon intensity of the energy inputs. On average, the emissions from electricity and district steam account for 40% of the total carbon emissions from commercial buildings in NYC. In some buildings it is much more. That means that until the electric grid is sourced from renewable energy, highly efficient buildings will have high carbon emissions and, consequently, be left with little choice but to pay fines to the City – money that gets put into the general fund with no obligation to direct it toward our environmental needs or reaching a carbon neutral NYC.

A more reasonable metric would recognize the different variables central to buildings' carbon emissions and appropriately account for them.

Prior to the adoption of LL97, REBNY, along with 32BJ SEIU and the Natural Resource Defense Council (NRDC), called on the Council to require buildings not to achieve an absolute target but rather reduce their carbon output by a percentage of baseline emissions levels.⁵ This position was similarly the consensus view of participants in Urban Green Council's 80x50 Buildings Partnership.⁶

In addition to being conscious of the state of the electric grid, REBNY encourages the Council to consider the importance of a predictable regulatory framework that allows buildings to make and implement capital plans. LL97 is not a fully formed law by design. It grants authority to the Advisory Board to make suggested changes that can be adopted by the NYC Department of Buildings (DOB). While we appreciate that the City affords the opportunity to further engage with stakeholders in determining many of the details of the law, buildings often operate on capital plans of ten years or longer. Design and infrastructure costs are forecasted based on the conditions and regulations at the time of the budgeting. With fewer than ten years until the second compliance period, properties are making their plans now. We ask the Council and the Advisory Board to be conscious of the scale of timing buildings need to adjust to regulations.

The City has failed to live up to its own environmental commitments in implementing the Climate Mobilization Act

This Council has often referred to the CMA as “New York’s Green New Deal,” an allusion to President Roosevelt’s comprehensive plan to rebound from the Great Depression. The original New Deal included a series of programs, regulatory reforms, and public works from government, but the state also relied heavily on partnership from the private sector. Job creation didn’t come as a consequence of punitive regulation alone but was the result of public investment in the private sector – new financing mechanisms and contracting that catapulted the demand for labor. All sectors – public and private – put in the effort. The fight against climate change represents another moment where success will only come if public and private sectors work together. The real estate industry stands ready.

Many real estate firms have for years maintained their own commitments to cut greenhouse gas emissions, lower energy consumption, reduce water consumption, and divert more construction debris from landfill. These efforts – often undertaken in partnership with City policymakers – combined with commitments to

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https://www.rebny.com/content/rebny/en/newsroom/testimony/2018_Testimony/Testimony_of_Carl_Hum_Real_Estate_Board_of_New_York_Before_the_New_York_City_Council_Committee_On_Environmental_Protection_On_Intro_No_1253.html

⁶ <https://www.urbangreencouncil.org/content/news/blueprint-bill>

develop, operate, and maintain energy efficient buildings are central to the industry's guiding principles. REBNY's members invest in their buildings and the environment so they are standing in a hundred years.

A review of the City's own environmental record, however, reveals it is not making good on its end of the "deal."

Citywide carbon emissions are effectively unchanged in the last seven years and have actually increased since the end of the Bloomberg Administration. Although City government's carbon emissions have fallen marginally during the same timeframe, progress has been inconsistent as City government emissions are higher today than they were in 2017.⁷

Paradoxically, though the Council ultimately decided to impose rigid carbon limits on private building owners, it gave itself a percent reduction model for its own buildings. The City is holding private buildings owners accountable for limiting their carbon emissions but was not willing to hold itself to the same standard. In contrast, the City is only required to reduce emissions across its entire portfolio by a set percentage.

With no discernable plan to retrofit each building it owns, the City's apparent strategy to comply with its more practicable standard starts and ends with buying hydropower from Canada in a maneuver widely critiqued by environmental advocates. Despite making a commitment to purchase this power years ago, the de Blasio Administration has yet to make this investment a reality. Moreover, when building owners sought to decarbonize their buildings by purchasing New York-generated renewable power required to make such efforts possible, the City opposed it and claimed it is a rollback of local law.

Beyond creating statutory deadlines for building owners to meet their carbon limits, LL97, as well as related legislation, outlined a series of time sensitive requirements the City has failed to meet:

- **LL97 Advisory Board:** The Advisory Board was appointed on December 19, 2019, over a month after it was supposed to become effective under LL97.
- **LL97 Advisory Board Working Groups:** The Advisory Board has created working groups and it is unclear whether all of the working groups are currently fully formed.
- **Carbon Limit Adjustment:** LL97 allows for the DOB to grant an adjustment of the annual building emissions limit applicable to a covered building in existence should they meet certain criteria. The deadline for the adjustment application is July 1, 2021. The City has yet to release the criteria for eligibility as well as provide any information as to how buildings would apply.
- **NYC Accelerator:** The Mayor's Office of Sustainability runs a program previously known as the retrofit accelerator but rebranded as NYC Accelerator. It is advertised as their "flagship" program that provides bespoke guidance (through contracted entities) to building owners to make cost-saving, energy-efficiency upgrades and carbon reductions. The City claims the program, which has existed since 2012 and finally relaunched in 2021, was delayed because of COVID, but no version of the program has been active since LL97 was enacted.
- **C-PACE Financing:** The Mayor's Office of Sustainability also is supposed to run a program called C-PACE Financing, which adopted through Local Law 96 in 2019 with the intention to help owners

⁷ <https://nyc-ghg-inventory.cusp.nyu.edu/#:~:text=The%20City%20of%20New%20York,achieve%20carbon%20neutrality%20by%202050.>

finance energy efficiency improvements. The program was delayed and finally launched in 2021 for consulting services. Our understanding is that it has yet to confer any money.

- Delayed Studies:
 - Carbon Trading Study: LL97 required completion of a carbon trading study by January 1, 2021. Currently, it is not projected to be complete until June 2021 at the earliest.
 - Annual GHG Emissions Inventory: The Mayor's Office of Sustainability is required to annually update an inventory of greenhouse gas emissions in New York City. It was most recently updated in 2020 for 2019 and 2018 data after not being updated for the better part of two years. The 2018 data, which showed an increase in citywide greenhouse gas emissions, was held and released at the same time as the 2019 data, which showed a drop from the year before.
 - Long Term Energy Plan: The Council recently enacted legislation (Int 1593A) to delay the submission of the City's Long Term Energy Plan from December 31, 2021 to June 1, 2022.

Finally, it is worth noting that this City Council recently enacted legislation that creates a loophole in LL97 to protect certain fossil-fuel powered systems in buildings.

The City Council has labeled LL97 as nation-leading legislation, but true leadership involves listening and thinking pragmatically, not political expedience or press releases. If we want to have any hope of achieving a more sustainable and equitable New York, the City needs to be transparent about the state of our local environment and take a serious assessment of its own environmental record.

REBNY members are early adopters and innovators of energy efficiency and represent some of the world's leading experts in reducing carbon from the built environment. We encourage the City to lean on their knowledge and experience as it looks for data-driven, pragmatic paths to achieve our shared goals.

Thank you for the consideration of these points.

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