



Local Law 97 Compliance Deadline Looming: 'One Way or Another – This Darkness Got to Give'



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Compliance deadlines for Local Law 97 of 2019 are steadily approaching, with the first reporting date being May 1, 2025, at which time owners of buildings covered by the law will be required to report compliance with the prior 2024 fiscal year mandates. Conformity to the carbon emission requirements will require building owners in New York City to undertake immediate action, if not already started.

In May 2019, under Mayor Bill de Blasio, New York City enacted the Climate Mobilization Act as part of the Mayor's New York City Green New Deal, which was a landmark package of new and aggressive mandates to limit greenhouse gas emissions by 2050. One cornerstone of the Climate Mobilization Act is Local Law 97 of 2019, which sets forth limits on permissible greenhouse gas emissions of most New York City buildings over 25,000 square feet. If covered buildings are not in compliance with the strict emissions caps, as required by Local Law 97, property owners will face hefty fines of \$268 per metric ton of emissions over the limits imposed, which limits are based on calendar year and occupancy group and are calculated by multiplying emissions intensity limits and corresponding gross floor area in square feet^[1]. There are different benchmarks to calculate building emissions limits – first, for the calendar years of 2024 through 2029, and second, which will be more stringent than the prior limits, for calendar years 2030 through 2034. Building corresponding gross floor area emission limits for calendar years beyond 2034 will be established by the New York City Department of Buildings through rulemaking, with limits of not more than 0.0014 tCO₂e/sf/yr. Some building owners would be facing millions of dollars in penalties in just a few short months.

Local Law 97 is one of the most ambitious plans for reducing emissions in the nation. Lincoln Restler, New York City Councilmember and Environmental Protection committee member, says that "Local Law 97 is the single most consequential piece of legislation in New York City in the last decade, and it has the potential to successfully drive down emissions from our city's largest polluter: big buildings." He adds: "New York City can be a model for how to tackle the climate crisis and create green jobs, and we need everyone in City government to do everything we can to fully implement and enforce LL97." Besides cutting emissions, Local Law 97 is expected to create a significant number of jobs through the construction, design, and renovation of buildings, and the city workers on the Climate Advisory Board and various departments to educate, implement and regulate the requirements of the law. Massachusetts Institute of Technology urban studies professor David Hsu estimates that the law will create 141,000 new jobs by 2030.

Local Law 97 generally covers, with some exceptions: (i) residential and commercial buildings that exceed 25,000 gross square feet; (ii) two or more buildings on the same tax lot that together exceed 50,000 square feet; and (iii) two or more buildings owned by a condo association that are governed by the same board of managers and that together exceed 50,000 square feet. The goal of Local Law 97 is to reduce the emissions produced by the city's largest buildings by 40 percent between the compliance periods of 2025 to 2030 and by 80 percent by 2050.

Now, in 2022, there are looming doubts as to whether Local Law 97 can be as successful as initially predicted by the de Blasio administration and its supporters. In practice, the law requires a momentous upheaval of environmental code regulations on some of the largest skyscrapers and institutionally-owned buildings in Manhattan. One such example is the renowned Bank of America Tower at One Bryant Park, which was developed by The Durst Organization with an eye on using groundbreaking energy-saving features when it was completed in 2010. According to the Durst Organization, "One Bryant Park was the first skyscraper in North

America to achieve LEED Platinum certification and ranks among the most environmentally advanced skyscrapers in the world." Under Local Law 97, One Bryant Park no longer seems so green. The Durst Organization believes that it will exceed the Local Law 97 cap by approximately 50% in 2024 and incur an annual fine of \$2.4 million dollars unless they find ways to alter the building's energy use.

Sophisticated real estate families and institutional owners are putting immense pressure on New York City to take a practical approach to our global energy crisis and the implication of Local Law 97 on their business and assets.

According to the *Real Deal New York Real Estate News*, the Adams administration has seemed to hint and laid out possible options for building owners who face an "insurmountable barrier" to complying with Local Law 97. Although there are signs of possible discussions, Rit Aggarwala, the city's chief climate officer and commissioner of the Department of Environmental Protection, stresses that Mayor Adams and City departments are all committed to achieving the law's goals. Aggarwala says: "We have no intention of giving anyone a free pass or letting anyone off the hook.... but we also see no benefit to the environment in punishing someone who is actually doing everything possible."^[2] With signs of leniency, others fear implementation of the law will not be realized. Pete Sikora, Climate & Inequality Campaigns Director at New York Communities for Change, voices his opinion on Adams, stating: "This isn't complicated. He should ensure developers don't break the law by making clear his administration will penalize them as set by the law and will not let them evade their obligation to clean up their high-polluting properties." Sikora further adds that the law would be "rendered toothless and easily disregarded" without a rigid fine structure.

Further evidence of tension, as the compliance deadline looms, is a lawsuit that was filed in New York Supreme Court on behalf of Glen Oaks Village Owners, 9-11 Maiden LLC, and Bay Terrace Cooperative Section I. The lawsuit marks the first formal legal challenge to Local Law 97 since its enactment and was filed in May 2022. The complaint names New York City and the Department of Buildings as defendants and alleges that the city's Local Law 97 is "ill conceived and unconstitutional" amongst various other allegations. The lead counsel for the plaintiffs has said: "Local Law 97 is simply too harsh....There's a difference between a big stick and a death sentence."

According to the current law, commencing on May 1, 2025, and every subsequent May 1 thereafter, building owners are required to file a report with the Department of Buildings detailing their annual greenhouse gas emissions, and certified by a registered design professional, stating that either the building has complied with the emissions limit or gone over it. The New York City Sustainable Buildings Department provides that: "Starting in 2025, an owner of a covered building who submits a report indicating that their building exceeded its annual building emissions limit will be liable for a civil penalty. The City estimates that about 20-25% of buildings will exceed their emissions limits in 2024, if they take no action to improve their building's performance. In 2030, if owners take no action to make improvements, approximately 75-80% of buildings will not comply with their emission limits." Furthermore, The New York City Sustainable Buildings Department confirms that: "Starting in 2025, building owners that fail to submit their report on their building's energy usage will face stiff penalties and fines."^[3] Buildings that do not comply with Local Law 97 will face a penalty of \$268 per metric ton of emissions over the allotted limit on an annual basis. It is also unlawful for a building owner to fail to file a report by the applicable due date and unlawful to falsify a report. The civil penalty for failure to file a report shall be no greater 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 (subject to a 60-day grace period to report compliance). The penalty for knowingly making a material false statement in a submission shall be a misdemeanor, and the building owner shall be subject to a fine of not more than \$500,000 or imprisonment of not more than 30 days or both such fine and imprisonment and may also be liable for a civil penalty of not more than \$500,000.

As the compliance date for Local Law 97 approaches, questions remain if some building owners will receive emissions-cap reprieve and if other leniency measures will be given to those able to evidence that they are diligently pursuing remedies to comply with the law, or if stiff penalties will prevail and slower progress towards global warming progress will be made.

^[1] Building Emissions Limits for Calendar Years 2024 through 2029 and limits for calendar years 2030 through 2034 can be found on the following New York City Department of Buildings website:
<https://www1.nyc.gov/site/buildings/codes/greenhouse-gas-emission-reporting.page>.

^[2] <https://therealdeal.com/2022/04/13/city-eyes-emissions-cap-relieve-for-some-buildings/>.

