

New Rules Set to Clarify “Good Faith” Efforts to Comply with Local Law 97

The commencement of the Local Law 97 (LL 97) compliance period is quickly approaching, beginning in January of 2024. Condominiums and Cooperatives will soon be assessed hefty fines for non-compliance. See our previous guidance on timelines and compliance with LL97. Thankfully, the New York City Department of Buildings (DOB) is offering coops and condos some reprieve from the stringency of LL97 by allowing mitigation of penalties when a building can demonstrate its good faith efforts to comply.

The DOB’s proposed new rules help to clarify “good faith efforts.” According to the new rules, a board can demonstrate “good faith” if it has complied with laws that require energy and water usage benchmarking (Local Law 85), energy audits and retro-commissioning work (Local Law 87), and lighting upgrades and submetering (Local Law 88). In addition to the foregoing, a board must also prove any one of the following:

1. work necessary to achieve compliance is currently underway by having a fully approved application and a permit issued for such work;
2. electrification readiness work (i.e., use of energy-efficient electric-based heating, cooling, and domestic hot water systems to displace the use of fossil fuels) is underway, as evidenced by an approved alteration application and a letter from a utility attesting to the work;
3. the building was previously under the emissions limit for the previous reporting year; or
4. a decarbonization plan by May 1, 2025, that will bring the building into compliance with its 2024 limits no later than 2026 and with its 2030 limits no later than 2030, and demonstrating each year through 2030 that the work is proceeding on schedule. However, buildings that pursue this option are restricted in purchasing renewable energy credits to offset the building’s emissions.

The new rules also authorize mediation between the DOB and a board prior to the issuance of an administrative summons for such non-compliance.

DOB will hold an online public hearing on the proposed rules scheduled for October 24, 2023, at 11:00 a.m.



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