Proposed Int. No. 1253-A

By Council Member Constantinides, the Speaker (Council Member Johnson) and Council Members Torres, Kallos, Rosenthal, Levin, Rivera, Koo, Powers, Levine, Reynoso, Richards, Salamanca, Menchaca, Chin, Lander, Ampry-Samuel, Ayala, Cumbo, Rose, Brannan, Williams, Espinal, Rodriguez, Lancman, Dromm, Gibson, Treyger, Cornegy, Van Bramer, Cabrera, Moya, Holden, Cohen, Eugene and Adams

..Title

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

CONFIDENTIAL

..Body

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 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. Creating annual building energy assessment protocols and requiring building owners to submit annual building emissions assessments to illustrate compliance with emissions limits established by the office pursuant to section 28-320.3 of the administrative code, provided that such limits impose a 40 percent reduction in greenhouse gas emissions from covered buildings in the aggregate, relative to such emissions from such covered buildings for the calendar year 2005;

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

4. Receiving and validating annual building emissions assessments;

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

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

7. Overseeing the review and revision of any building emissions assessment methodology, building emissions limits, goals and timeframes to meet any limits or goals;

8. Establishing alternative methods of compliance for building emissions limits, including any requests for an adjustment of emissions limits, purchasing greenhouse gas offsets, trading efficiencies, credit for beneficial electrification, and alternative compliance for buildings with rent regulated housing accommodations; and

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

(a) Establish building emissions limits, which may include limits on the use of fossil fuels in individual buildings where applicable, to reduce greenhouse gas emissions at a minimum, 80 percent by 2050. Such limits shall establish:

(1) An annual building energy or emissions assessment methodology with demonstrated predictive values that account for key variables influencing building energy use; and

(2) Building energy or emissions reduction requirements for city-owned buildings that are required by a date earlier than that required by covered buildings or greater reductions than covered buildings;

(b) Work closely with the advisory board and ensure 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 shall cooperate with the office as requested by the director. Such 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. 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.

§ 3. 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 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 efficient 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 New York city housing authority. There shall be, at minimum a reduction of greenhouse gas emissions of 40 percent by the year 2030 and 80 percent by the year 2050 for the portfolio of housing developments operated by the New York city housing authority. Such reductions may be met by reducing the total emissions of all housing developments operated by New York city housing authority as a portfolio, or reducing building emissions for each individual housing development.

§ 9. 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.

**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 covered building that is owned by the city and for which the city regularly pays all or part of the annual energy bills. A housing development operated by the New York city housing authority shall be deemed a city building.

**Exception**: The term “city building” shall not include:

1. Any building that participates in the tenant interim lease apartment purchase program.

2. Any building that participates in a program administered by the department of housing preservation and development.

3. Any senior college in the city university of New York system.

**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.

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

**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” represents a certificate corresponding to the environmental, social and other non-power attributes of 1 Megawatt-hour of electricity generated and delivered to the electricity grid from a renewable energy resource.

**RENT REGULATED ACCOMODATION.**The term “rent regulated accommodation” means a covered building 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 or containing one or more dwelling units required by law to be registered and regulated pursuant to the emergency tenant protection act of 1974.

**§ 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 to meet the goals described in section 28-320.3. Such recommendations shall include, but not be limited to:

1. A report and recommendations for an approach to assess 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 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; and

1.5. Shall be delivered to the mayor and the speaker of the city council no later than December 31, 2022.

2. A report for energy performance requirements for covered buildings. Such requirements shall achieve a 40 percent greenhouse gas emissions reduction from 2005. Such report shall include, but not be limited to:

2.1. Incentives for reduction of peak energy demand;

2.2. Recommendations to ensure staggered compliance of the energy performance improvements;

2.3. A calculation method for penalties for non-compliance;

2.4. Estimated emissions reductions associated with the recommended limits

2.5. An economic impact study, including benefits, of achieving the limits;

2.6. Recommendations for earlier or larger reductions from city-owned buildings;

2.7 An assessment of separate improvement targets for base building energy systems and tenant-controlled energy systems; and

2.8. Shall be delivered to the mayor no later than December 31, 2022.

**§ 28-320.2.1** **Advisory board composition.**Such advisory board shall be composed of 13 members including the chairperson, 6 of the members of such advisory board shall be appointed by the mayor or the mayor’s designee, and 6 of the members of such advisory board shall be appointed by the speaker of the council. The mayor shall appoint one architect or engineer, one building owner or manager, one public utility industry representative, one green energy industry representative, business sector representative, and one environmental advocacy organization representative. The speaker shall appoint one architect or engineer, one construction trades representative, one green energy industry representative, one residential tenant representative, one environmental justice organization 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.

**§ 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. This section shall not apply to a covered building that is a rent regulated accommodation. Such rent regulated accommodation shall comply instead with section 28-320.4 This section shall also not apply to a covered building that is also a city building. Such city buildings shall comply instead with section 24-803.

**§ 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:

1. For occupancy group A: multiply the building emissions intensity limit of 0.01074 tCO2e/sf by the corresponding gross floor area (sf);

2. For occupancy group B: multiply the building emissions intensity limit of 0.00846 tCO2e/sf by the corresponding gross floor area (sf);

3. For 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 occupancy group I-1: multiply the building emissions intensity limit of 0.01138 tCO2e/sf by the corresponding gross floor area (sf);

5. For occupancy group F: multiply the building emissions intensity limit of 0.00574 tCO2e/sf by the corresponding gross floor area (sf);

6. For occupancy groups B civic administrative facility for emergency response services, B non-production laboratory, H, I-2 and I-3: multiply the building emissions intensity limit of 0.02228 tCO2e/sf by the corresponding gross floor area (sf);

7. For occupancy group M: multiply the building emissions intensity limit of 0.01181 tCO2e/sf by the corresponding gross floor area (sf);

8. For occupancy group R-1: multiply the building emissions intensity limit of 0.00987 tCO2e/sf by the corresponding gross floor area (sf);

9. For occupancy group R-2: multiply the building emissions intensity limit of 0.00675 tCO2e/sf by the corresponding gross floor area (sf);

10. For occupancy groups S and U: multiply the building emissions intensity limit of 0.00426 tCO2e/sf by the corresponding gross floor area (sf);

11. For buildings with spaces classified in more than one occupancy group the sum of the calculated values from items 1 through 10 of this paragraph, as applicable for each space.

**§ 28-320.3.1.1 Greenhouse gas coefficient of utility electricity consumption for calendar years 2024 through 2029.** For the purposes of calculating the annual building emissions of a covered building in accordance with this section, greenhouse gas emissions attributed to utility electricity consumed on the premises of a covered building shall be calculated as 0.000288962 tCO2e per kilowatt hour of site energy consumed.

**§ 28-320.3.1.2 Deductions from reported annual building emissions for calendar years 2024 through 2029.** The department may authorize a deduction from the annual building emissions required to be reported by an owner pursuant to section 28-320.3.5 for calendar years 2024 through 2029 in accordance with this section and rules of the department. A deduction may be authorized for up to 10 percent of the annual building emissions limit.  Such a deduction may be authorized only where within the reporting calendar year:

1. Greenhouse gas offsets equivalent to the size of the deduction as measured in metric tons of carbon dioxide equivalent 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) 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 item, additionality means a requirement that an offset project is not already required by local, national or international regulations; or

2. Renewable energy credits that are produced by renewable energy generation resources located in New York state and certified under the Green-e Renewable Energy Standard for the United States and Canada have been purchased and retired by or on behalf of the owner, in accordance with rules promulgated by the department in consultation with the mayor’s office of long term planning and sustainability.

**§ 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 or as determined by the department pursuant to 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 9 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 occupancy group A: multiply the building emissions intensity limit of 0.00420 tCO2e/sf by the corresponding gross floor area (sf);

2. For occupancy group B: multiply the building emissions intensity limit of 0.00453 tCO2e/sf by the corresponding gross floor area (sf);

3. For 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 occupancy group I-1: multiply the building emissions intensity limit of 0.00598 tCO2e/sf by the corresponding gross floor area (sf);

5. For occupancy group F: multiply the building emissions intensity limit of 0.00167 tCO2e/sf by the corresponding gross floor area (sf);

6. For occupancy groups B civic administrative facility for emergency response services, B non-production laboratory, H, I-2 or I-3: multiply the building emissions intensity limit of 0.01138 tCO2e/sf by the corresponding gross floor area (sf);

7. For occupancy group M: multiply the building emissions intensity limit of 0.00403 tCO2e/sf by the corresponding gross floor area (sf);

8. For occupancy group R-1: multiply the building emissions intensity limit of 0.00526 tCO2e/sf by the corresponding gross floor area (sf);

9. For occupancy groups R-2: multiply the building emissions intensity limit of 0.00407 tCO2e/sf by the corresponding gross floor area (sf);

10. For occupancy groups S and U: multiply the building emissions intensity limit of 0.00110 tCO2e/sf by the corresponding gross floor area (sf);

11. For buildings with spaces classified in more than one occupancy group the sum of the calculated values from items 1 through 10 of this paragraph as applicable for each space.

**§ 28-320.3.2.1 Greenhouse gas coefficient of utility electricity 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, greenhouse gas emissions attributed to utility electricity consumed on the premises of a covered building may be determined by the commissioner and promulgated into rules of the department by no later than December 31, 2021. The commissioner may consult with the advisory board required by this article to develop such greenhouse gas coefficient for utility electricity consumption. The determination of such greenhouse gas coefficient shall be based upon the best available utility forecasts of infrastructure investments and projected demand.

**§ 28-320.3.4 Building emissions limits for calendar years 2035 through 2050**. No later than January 1, 2021, the commissioner shall establish annual building emissions limits and building emissions intensity limits applicable for calendar years 2030 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, 2025 the commissioner shall establish 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 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.

**§ 28-320.3.6.1 Extension of time to file report.** An owner may apply for an extension of time to file an annual report required by section 28-320.3.5 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.

**§ 28-320.3.7 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.

**§ 28-320.4 Rent regulated accommodations.** Covered buildings that are rent regulated accommodations shall not be subject to the provisions in section 28-320.3. Rent regulated accommodations shall implement the following prescriptive energy conservation measures:

**§ 28-320.4.1 Prescriptive energy conservation measures.** By December 31, 2024, rent regulated accommodations shall implement the following energy conservation measures:

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 and/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.

**§ 28-320.4.1,1 Reporting of prescriptive energy conservation measures.** By May 1, 2025, the owner of a rent regulated accommodations shall submit a report to the department to demonstrate completion of the prescriptive energy conservation measures required by this section. A registered design professional shall prepare and certify such 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 in building.

**§ 28-320.5** **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.

**§ 28-320.6** **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.

**§ 28-320.7** **Penalties**. An owner of a covered building who has submitted a report pursuant to section 28-320.3.5 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.

**§ 28-320.7.1 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;

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 28-320.8;

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; and

5. The respondent’s access to financial resources.

**§ 28-320.7.2 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 28-320.3.5 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 no civil penalty shall accrue 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.

**§ 28-320.7.3 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.

**§ 28-320.7.4 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.

**§ 28-320.8. Adjustment to applicable annual building emissions limit**. The department 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 this 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. 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;

2.3. 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

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.

**§ 28-320.8.1 Effective period.** An adjustment granted pursuant to item 1 of section 28-320.8 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.

**§ 28-320.8.2 Application.** An application for such an adjustment shall be made in the form and manner determined by the department.

**§ 28-320.9 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 not more than 70 percent of the reported 2018 building emissions for the covered building. Such an adjustment may be granted upon submission of a plan to the department demonstrating a schedule of alterations to the covered building or amendments to the operations and management of the covered building such 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 3. If such covered building does not have a plan to be in compliance with the annual building emissions limits for calendar years 2030 through 2034 as required by section 28-320.3.2.3, the department may grant such an adjustment if it determines that the covered building has demonstrated special circumstances and has submitted a plan to reduce greenhouse gas emissions.

**§ 28-320.9.1 Effective period.** An adjustment granted pursuant to section 28-320.9 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.

**§ 28-320.9.1.1 Extension of effective period.** The commissioner may 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 amendments to the operations and management of the covered building in accordance with section 28-320.9 and the owner demonstrates that such schedule will result in a required building emissions limit that is not more than 50 percent of the reported 2018 building emissions for the covered building.

**§ 28-320.9.2 Application.** An application for an adjustment shall be submitted to the department before January 1, 2020 in the form and manner determined by the department.

**§ 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 carbon trading scheme 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 three years of the effective date of this article. 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 and should be integrated into the development and analysis of the building energy performance assessment methodology, target setting, penalty calculations, and adjustments recommended by the advisory board.  The recommendations of the findings of this study should be considered as an integral component of the system of annual building emissions performance submissions the office creates.

§ 10. This local law takes effect 90 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.

NKA/APB

LS 145

4:46pm

3/15/2019