

**LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 2021**

No. 41

Introduced by Council Members Constantinides, Kallos, Rosenthal, Lander, Cornegy, Levin, Rose, Vallone, Brannan, Rivera, Ayala, Gennaro and Powers.

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to climate resiliency design guidelines and resiliency scoring

Be it enacted by the Council as follows:

Section 1. Subchapter 2 of chapter 1 of title 3 of the administrative code of the city of New York is amended by adding a new section 3-131, to read as follows:

§ 3-131 Climate resiliency design guidelines. a. Definitions. For the purposes of this section, the following terms have the following meanings:

Agency. The term “agency” shall have the same definition as such term is defined in section 1150 of the charter.

Capital Project. The term “capital project” means a capital project as defined in section 210 of the charter.

Climate stressor. The term “climate stressor” means a condition, event or trend related to climate variability and change that can exacerbate an event or condition that may cause damage to assets or cause injury, illness or death to people.

Critical facility. The term “critical facility” means a:

1. Hospital or healthcare facility;

2. *Fire, rescue, ambulance, police station or emergency vehicle facility;*
3. *Jail, correctional facility or detention facility;*
4. *Facility used in emergency response;*
5. *Critical aviation facility;*
6. *Food distribution center with an annual expected volume of greater than 170,000,000 pounds;*
7. *Building or structure that manufactures, processes, handles, stores, disposes or uses toxic or explosive substances;*
8. *Component of infrastructure in transportation, telecommunications or power networks;*
9. *Ventilation building or fan plant;*
10. *Operations center;*
11. *Sanitary pumping station;*
12. *Stormwater pumping station;*
13. *Train and transit maintenance yard or shop;*
14. *Wastewater treatment plant;*
15. *Component of the water supply infrastructure;*
16. *Combined sewer overflow retention tank;*
17. *Fueling station;*
18. *Waste transfer station; and*
19. *Facility where residents have limited mobility or ability.*

Office. The term “office” means the office of long-term planning and sustainability.

Useful life. The term “useful life” means the period over which a building, structure or system is expected to be available for use by an entity and may exceed the design life of such building, structure or system.

b. The office shall establish climate resiliency design guidelines for the design and construction of certain capital projects, to be informed both by any existing climate resiliency design guidelines and by the pilot program pursuant to subdivision c. Such climate resiliency design guidelines shall consider the capacity of a covered project, as defined in section 3-132, to absorb disruption and manage stresses while maintaining the same basic structure and function, and shall provide guidance on incorporating forward-looking climate change data into the design of capital projects and city facilities, as such term is defined in section 203 of the charter, as well as into the design of covered projects, as defined in section 3-132, and instruction on determining the appropriate resilient design strategies, including consideration of the useful life and criticality of facilities.

c. Pilot program. No later than August 31, 2021, each agency shall identify capital projects that comprise no less than five percent of their respective capital construction budgets for fiscal years 2021 through 2024. The pilot program shall be in effect for not more than five years, and the office shall select no fewer than 35 such capital projects to include in the pilot program. No less than 35 percent of all such capital projects shall be located in an environmental justice area, as such term is defined in section 3-1001, and no fewer than four projects shall be located in each borough. Projects selected for the pilot program shall include, but not be limited to, the following:

1. The most common capital projects;

2. *New construction and substantial improvements, as both terms are defined in section G201.2 of chapter G2 of appendix G of the New York city building code;*

3. *Projects with a useful life: (a) less than 10 years; (b) 10 to 50 years; and (c) over 50 years;*

4. *Projects with capital costs: (a) under \$10 million; (b) \$10-49 million; (c) \$50-100 million; and (d) over \$100 million;*

5. *Critical and non-critical facilities; and*

6. *Facilities that are exposed to a variety of climate stressors.*

d. No later than December 31, 2026, the office shall submit to the speaker of the council and publish on its website the climate resiliency design guidelines developed pursuant to the pilot program described in subdivision c. Such guidelines shall be updated as necessary and no less than once every eight years from such date of submission.

§ 2. Subchapter 2 of chapter 1 of title 3 of the administrative code of the city of New York is amended by adding a new section 3-132, to read as follows:

§ 3-132 *Resiliency scores of agency projects. a. Definitions. For the purposes of this section, the following terms have the following meanings:*

Agency. The term “agency” shall have the same definition as such term is defined in section 1150 of the charter.

Covered project. The term “covered project” means a capital project of an agency with an estimated construction cost of no less than \$10,000,000, provided that the office may by rule set such construction cost at a lower amount, that consists of:

1. *New construction as defined in section G201.2 of chapter G2 of appendix G of the New York city building code of a building or structure;*

2. *Substantial improvement as defined in section G201.2 of chapter G2 of appendix G of the New York city building code of an existing building or structure; or*

3. *Construction of new or improvement of existing infrastructure including but not limited to sewers and other utilities, streets, landscape and transportation facilities with a minimum threshold construction value to be determined by rule or by meeting other specifications or qualifications to be set forth in such rules by the director of long-term planning and sustainability, provided that such term shall not include a public betterment consisting solely of a street that does not involve subsurface utility work, drainage or roadway grading, fencing, or combination thereof.*

Such term shall include capital projects of the New York city housing authority and the New York city school construction authority provided that each such entity, in consultation and coordination with the office, may establish a distinct scoring metric for its respective capital projects to address climate hazards in accordance with subdivision c.

Office. The term “office” means the office of long-term planning and sustainability.

b. The director of long-term planning and sustainability, in consultation with the New York city panel on climate change, the commissioner of design and construction, the commissioner of environmental protection, the commissioner of citywide administrative services, the commissioner of transportation, the commissioner of emergency management, the commissioner of buildings, the commissioner of parks and recreation, the commissioner of housing preservation and development, the commissioner of health and mental hygiene, the fire commissioner, the director of management and budget, the director of city planning, the head of any other office or agency as appropriate, the president of the New York city economic development

corporation, environmental justice organizations with expertise in climate resiliency, and members of the public with expertise in climate resiliency, climate design, the built environment, engineering, and environmental justice issues shall develop a resiliency score metric. For the purposes of calculating such resiliency score, the office shall by rule establish a system of points or metrics, considering potential performance of resiliency features, and develop a methodology for applying such scoring to covered projects, provided such methodology shall include one or more minimum thresholds of resiliency that covered projects shall meet, to be informed by and include features detailed in the climate resiliency design guidelines pursuant to section 3-131, and which may also include but need not be limited to features such as:

- 1. Elevation to reduce the risk of flooding over the anticipated useful life;*
- 2. Flood-proofing of structures or equipment;*
- 3. Site elevation or responsible site considerations;*
- 4. Heat mitigation;*
- 5. Efficient energy resilience, including energy storage with or without use of on-site renewable energy generation;*
- 6. On-site storm water capture and management;*
- 7. Integration with naturally resilient shoreline features;*
- 8. Salt or flood tolerant landscaping;*
- 9. Green infrastructure;*
- 10. Pervious pavement;*
- 11. Resilient building materials;*
- 12. Living walls or structures; and*

13. Integration with and preservation of naturally occurring vegetation and habitat.

c. No later than December 31, 2026, the office shall establish by rule a minimum resiliency score that could be met or exceeded by most covered projects, provided that separate minimum resiliency scores may be established for: i) new construction; ii) substantial improvements; and iii) infrastructure. The New York city housing authority and the New York city school construction authority may each also establish, with the review and approval of the office, an alternative resiliency scoring metric for its capital projects to address climate hazards.

d. The office shall publish on its website the minimum resiliency score and the number of points that resilient features are assigned for calculating the resiliency score or scores, and other resiliency score methodology.

e. Each covered project that is a new construction of buildings and structures or new infrastructure shall be required to meet or exceed the minimum resiliency score. The project design shall be submitted to the office for calculation of a resiliency score and scored by such office prior to being made available for review by the respective council committee, borough president and the community board pursuant to section 223 of the charter. If a covered project is not subject to section 223 of the charter, the project design shall be submitted to the office for the calculation of a resiliency score prior to registration of a construction contract. Agencies must resubmit the covered project to the office for scoring if there are design changes that could result in a change to the resiliency score.

f. Each covered project that is a substantial improvement or the reconstruction, installation, retrofit, improvement or alteration to infrastructure shall be required to either:

1. Meet or exceed the minimum resiliency score; or

2. *Receive approval from the office, after submission of the project design with a written statement explaining how resilient features have been incorporated into the design to the extent practicable.*

g. After each update of the climate resiliency design guidelines pursuant to subdivision d of section 3-131, the office shall review the resiliency score methodology developed pursuant to subdivision b and, if necessary, revise such score methodology.

§ 3. Section 2 of this local law shall not apply to any projects for which the design has been made available for review by the respective council committee, borough president and the community board pursuant to section 223 of the charter prior to the effective date of this local law, except section 2 of this local law shall apply to such projects if registration of a capital project change order occurs after the effective date of this local law and such change order has a value that exceeds 60 percent of the original registered construction contract value of such project.

§ 4. This local law takes effect 120 days after it becomes law.

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 March 18, 2021 and returned unsigned by the Mayor on April 19, 2021.

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. 41 of 2021, Council Int. No. 2092-A of 2020) 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.

STEPHEN LOUIS, Acting Corporation Counsel.