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Int. No. 1745

By Council Member Constantinides

A Local Law to amend the administrative code of the city of New York, in relation to green buildings

Be it enacted by the Council as follows:

Section 1. Chapter 8 of title 24 of the administrative code of the city of New York is amended by adding a new section 24-806 to read as follows:

§ 24-806 Fossil fuel consumption and energy efficiency in buildings. a. As used in this section:

Administering agency. The term “administering agency” means one or more agencies designated by executive order of the mayor to administer the provisions of this section or, if no such designation has been made, the office of long-term planning and sustainability.

Adjusted fossil fuel use. The term "adjusted fossil fuel use" means, with respect to a compliance report filed pursuant to subdivision c for a covered building, the fossil fuel use for such building with respect to such report minus the sum of the following:

1. The lesser of 9 percent of such fossil fuel use or the sum of the amounts obtained in subparagraphs (a) and (b):

(a) The total amount of energy, expressed in kBTU/yr, that is (i) generated in the calendar year preceding the due date of such report by each green energy system installed on the premises of such building and consumed on the premises of such building or transferred for consumption on the premises of one or more other buildings and (ii) purchased by the owner of such building in the calendar year preceding the due date of such report and generated by one or more green energy systems that are not installed on the premises of such building; and

(b) One kBTU/yr for each fossil fuel dollar equivalent invested in developing green energy systems in the calendar year preceding the due date of such report, in accordance with rules promulgated by the administering agency in consultation with the department of finance; and

2. One percent of the fossil fuel use for such building with respect to such report, if such report is due in or before 2050 and the lighting system for such building is in compliance with the standards for new lighting systems set forth in the New York city energy conservation code, as in effect on (i) December 31, 2030, if such report is due in 2031 but in or before 2040 or (ii) December 31, 2040, if such report is due after 2041 but in or before 2050.

Affordable unit. The term “affordable unit” means a dwelling unit, other than a rent-regulated unit, for which the rent or sale price of such unit, as applicable, is limited or otherwise regulated by law, rule or an agreement with a federal, state or city governmental entity for the purpose of creating or preserving affordable housing.

Building fossil fuel use target. The term “building fossil fuel use target” means for a covered building the sum of the space fossil fuel use target for (i) the primary use of such building, (ii) the second use of such building and (iii) the third use of such building, except if the primary use of such building occupies 75 percent or more of the conditioned floor area in such building, then the owner of such building may, in a time and

manner established by rule of the administering agency, elect to have the building fossil fuel use target for such building be equal to the space fossil fuel use target of the primary use of such building, calculated as if all conditioned floor area in such building was contained within such space.

Conditioned floor area. The term “conditioned floor area” shall have the meaning ascribed to such term in the New York city energy conservation code.

Covered building. The term “covered building” shall have the meaning ascribed to such term in section 28-309.2.

Department. The term “department” shall mean the department of environmental protection.

Energy Star rating. The rating a building earns using the United States environmental protection agency ENERGY STAR portfolio manager to compare building performance to similar buildings in similar climates.

Fossil fuel. The term “fossil fuel” means a fuel consumed through a combustion process on the premises of a covered building. Such term does not include:

1. A green energy source;
2. Natural gas that is (i) combusted by a cogeneration system permitted for use as of January 1, 2025, or (ii) combusted by a cogeneration system where more than 25 percent of the electricity and heat output from such system is used on a site other than the premises of such building;
3. For a cogeneration system permitted for use after January 1, 2025, that was not permitted for use as of January 1, 2025, (i) 65 percent of natural gas consumed in microturbines or reciprocating engines less than 150 kilowatts (kW) in size and (ii) 45 percent of natural gas consumed in reciprocating engines 150 kW in size or larger;
4. Fuel oil or natural gas combusted by a cogeneration system serving space in such building that is classified, pursuant to the New York city building code, as occupancy group I-2 hospital, occupancy group I-3, occupancy group I-4 or occupancy group B civil administrative facility for emergency response services;
5. Utility-pipeline quality biomethane that is produced from biomass and that exceeds any minimum

percentile required by law or rule;

6. The biodiesel portion of a bioheating blend, as such terms are defined in section 24-104, that exceeds the minimum percentile required by section 24-168.1 or by other applicable law or rule; or

7. Fuel oil or natural gas consumed for process loads in spaces classified in occupancy group A, B, F, H or I pursuant to the New York city building code.

Fossil fuel dollar equivalent. The term "fossil fuel dollar equivalent" for a given calendar year means a dollar amount established by rule of the administering agency in consultation with the department of finance that is equal to:

1. One cent;

2. The estimated average number of metric tons of carbon dioxide equivalent, as such term is defined in section 300.2 of title 10 of the code of federal regulations in effect on January 1, 2017, emitted by the fossil fuels most commonly used in buildings in the city multiplied by the social cost of carbon calculated for such year pursuant to section 3-125; or

3. Such other dollar amount that such agency, in consultation with the department of finance, determines to be appropriate for the purposes of calculating the adjusted fossil fuel use of a building.

Fossil fuel use. The term "fossil fuel use" means, with respect to a compliance report filed pursuant to subdivision c for a covered building, the amount of fossil fuels combusted on the premises of such building and consumed by such building in the calendar year preceding the due date of such report, expressed in thousand British thermal units per year (kBtu/yr) and weather-normalized in a manner that is established by the administering agency and consistent with the method used in the United States environmental protection agency energy star portfolio manager.

Green energy source. The term "green energy source" means a source of energy that is:

1. A qualified energy resource, as such term is defined in section 45 of title 26 of the United States code in effect on January 1, 2017;

2. A source that is determined to be renewable by the head of the administering agency or by the head of another agency or office designated by the mayor;

3. A source that is determined by the head of the administering agency, or by the head of another agency or office designated by the mayor, to have (i) a positive environmental impact or (ii) a substantially lower negative environmental impact than fossil fuels.

Green energy system. The term “green energy system” means a system that generates energy (i) substantially from one or more green energy sources, in accordance with rules promulgated by the administering agency, or (ii) wholly from one or more green energy sources.

Primary use. The term “primary use” means, with respect to a covered building, the type of space that occupies the largest amount of conditioned floor area in such building.

Registered design professional. The term “registered design professional” shall have the meaning ascribed to such term in section 28-101.5.

Rent-regulated unit. The term “rent-regulated unit” means a dwelling unit that satisfies each of the following conditions:

1. The rent for such unit is limited by law or rule; and

2. The law or rule that limits such rent for such unit allows for such rent to be increased upon a showing by the owner of such unit that an improvement has been made to such unit or the building containing such unit and such law or rule does not expressly exclude from such provisions improvements made for the purpose of complying with this section, with local laws or rules or with laws or rules relating to building energy use.

Second use. The term “second use” means, with respect to a covered building, the type of space that occupies the second largest amount of conditioned floor area in such building.

Space fossil fuel use target. The term “space fossil fuel use target” means, for space within a covered building, the amount obtained by multiplying the conditioned floor area in such space by the following factor based on the occupancy group into which such space is classified pursuant to the New York city building code:

1. Occupancy group A: 60 kBTU/yr;
2. Occupancy group B: 35 kBTU/yr;
3. Occupancy group E: 45 kBTU/yr;
4. Occupancy group F or occupancy group B non-production laboratory: 80 kBTU/yr;
5. Occupancy group B civic administrative facility for emergency response services, I-1 or I-4: 50 kBTU/yr;
6. Occupancy group H, I-2 or I-3: 100 kBTU/yr;
7. Occupancy group M: 45 kBTU/yr;
8. Occupancy group R that does not contain any rent-regulated units or affordable units: 50 kBTU/yr;
9. Occupancy group R that contains one or more affordable units and no rent-regulated units: 55 kBTU/yr;
10. Occupancy group R that contains one or more rent-regulated units: an amount established by rule pursuant to subdivision b;
11. Occupancy group R that (i) contains no rent-regulated units and (ii) is receiving steam produced within a separate building or producing steam for use in two or more buildings that are in existence as of January 1, 2018: 70 kBTU/yr; and
12. Occupancy group S: 35 kBTU/yr.

Third use. The term “third use” means, with respect to a covered building, the type of space that occupies the third largest amount of conditioned floor area in such building.

Whole building energy target. The term “whole building energy target” means, with respect to a covered building, (i) a limit, specified by rule of the administering agency pursuant to subdivision b, on the amount of energy, other than energy generated by green energy systems, that may be consumed by such building and on the premises thereof, to be applicable on and after January 1, 2030, or (ii) if no such limit has been established, a requirement established by rule of the administering agency that the amount of energy consumed by such

building and on the premises thereof be such that the Energy Star rating of such building is equal to or exceeds the sixtieth percentile of Energy Star ratings received by similar covered buildings in the city in 2016, to be applicable on and after January 1, 2030.

Working group. The term “working group” means an entity that:

1. Is convened by the administering agency for the purpose of providing to such agency recommendations pursuant to subdivision b; and

2. To the extent practicable, includes representatives of (i) engineers; (ii) architects; (iii) building owners and managers; (iv) the construction trades; (v) the energy industry; (vi) public utilities; (vii) the green energy industry; (viii) residential and commercial tenants; (ix) the business sector; (x) environmental advocacy organizations; and (xi) other persons with experience or expertise deemed relevant by the administering agency.

b. 1. On and after January 1, 2030, the adjusted fossil fuel use for a covered building, other than a covered building that contains at least one rent-regulated unit, shall not exceed the building fossil fuel use target for such building. On and after January 1, 2035, the adjusted fossil fuel use for a covered building that contains at least one rent-regulated unit shall not exceed the building fossil fuel use target for such building.

2. By January 1, 2021, the administering agency shall, after receiving and considering recommendations from the working group, establish by rule (i) a whole building energy target, (ii) penalties for failing to comply with such target and (iii) a space fossil fuel use target for spaces that contain at least one rent-regulated unit or a building fossil fuel use target for buildings that contain at least one rent-regulated unit.

3. On and after January 1, 2030, each covered building, other than a covered building that contains at least one rent-regulated unit, shall comply with the applicable whole building energy target for such building. On and after January 1, 2035, each covered building that contains at least one rent-regulated unit shall comply with the applicable whole building energy targets for such building.

4. In 2035, the administering agency shall, after receiving and considering recommendations from the working group, establish by rule (i) a limit on fossil fuel use for buildings and (ii) a limit on the amount of

energy, other than energy generated by green energy systems, that may be consumed by buildings and on the premises thereof. Such limits shall be applicable on and after January 1, 2050.

5. In 2060, the administering agency shall, after receiving and considering recommendations from the working group, prepare and submit to the mayor and the speaker of the council recommendations on continuing any of the requirements of this section.

c. By May 1, 2031, and by May 1 in every year thereafter, the owner of a covered building shall verify that such building is in compliance with this section for the previous calendar year by filing with the department a report certifying that such building does not exceed the applicable limits on fossil fuel use and energy use established pursuant to subdivision b. Such report shall be submitted in a form and manner established by the administering agency and shall be certified by a registered design professional. If such report indicates that such building is not in compliance with such applicable limits, such report shall identify the amount by which such building exceeds such limits.

d. 1. Upon application by an owner of a covered building in existence on the effective date of the local law that added this section, the administering agency may waive or vary a requirement of subdivision b or c for such building, provided that such waiver or variance is based upon a specific finding that (i) strict compliance with such requirement and payment of applicable penalties pursuant to this section would create an undue economic burden on such owner and (ii) such owner is complying with such requirement to the fullest extent practicable. Such application shall be made in a form and manner determined by the administering agency.

2. After receiving such an application, the department, in consultation with the administering agency, shall render a determination in writing, which shall set forth in detail the administering agency's findings and conclusions. A copy of such written determination shall be forwarded to the applicant. Such written determination shall be filed with the department and shall be available for public inspection.

e. By April 30, 2023, the owner of a covered building in existence on January 1, 2022, shall file a report, certified by a registered design professional, for such building with the department. Such report shall be filed in

a form and manner established by the department and shall include such information as the department shall require to measure the progress of such building toward the applicable fossil fuel use and energy use limits established pursuant to subdivision b. Where such report indicates that such building exceeds either such applicable limit by more than ten percent, such report shall include an implementation plan detailing a schedule and means of complying with such limit together with such other information as the department may require.

f. 1. The owner of a covered building that does not meet the requirements of paragraph 1 of subdivision b shall be subject to a civil penalty for each year until such building meets such requirements. The civil penalty for each such year shall be calculated as follows:

(a) If such owner is in compliance with subdivision c for such building, the civil penalty shall be equal the amount obtained by (i) subtracting the adjusted fossil fuel use of such building as set forth on the most recent annual report for such building filed pursuant to subdivision c from the applicable fossil fuel use limit for such building pursuant to subdivision b and (ii) multiplying the result by three times the fossil fuel dollar equivalent.

(b) If such owner is not in compliance with subdivision c for such building, the amount obtained by multiplying such building's gross floor area by ten times the fossil fuel dollar equivalent.

2. Such civil penalties may be recovered by the department or the administering agency in an action before a court of competent jurisdiction or the office of administrative trials and hearings, acting pursuant to section 1049-a of the New York city charter.

g. The administering agency shall establish and maintain a program for assisting owners of covered buildings in complying with this section.

§ 2. This local law takes effect immediately.