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**Attachments:** 1. Summary of Int. No. 1253, 2. Int. No. 1253, 3. November 28, 2018 - Stated Meeting Agenda with Links to Files, 4. Committee Report 12/4/18, 5. Hearing Testimony 12/4/18, 6. Hearing Transcript 12/4/18

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Int. No. 1253

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, Maisel, Rose, Brannan, Williams, Espinal, Rodriguez, Lancman, Dromm, Koslowitz, Gibson, Treyger, Cornegy, Van Bramer, Cabrera, Moya, Holden, Cohen and Eugene

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

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 performance. a. There shall be in the department an office of building

energy performance. The office shall be headed by a director who shall report to the commissioner. The duties of the office shall include, but not be limited to:

1. Overseeing development, implementation and coordination of building energy performance legislation 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 energy assessments to illustrate compliance with energy limits established by the office pursuant to section 28-320.3 of the administrative code;
3. Creating an online portal for submission of annual building energy assessments;
4. Receiving and validating annual building energy assessment submissions;
5. Determining penalties for buildings that are noncompliant with applicable energy limits;
6. Overseeing the review and revision of any building energy performance assessment methodology, building energy limits, goals and timeframes to meet any limits or goals;
7. Establishing alternative methods of compliance for building energy limits, including any requests for hardship waivers, purchasing power from green energy sources, trading efficiencies, credit for beneficial electrification, and alternative compliance for buildings with rent regulated housing accommodations; and
8. Working in close coordination with the mayor's office of long-term planning and sustainability and the advisory board established pursuant to section 28-320.2 of the administrative code to:
  - (a) Establish building emissions intensity limits for individual buildings, which may include limits on the use of fossil fuels in individual buildings where applicable. Such limits shall include technical, financial and implementation tools and standards of building energy performance, and deadlines to achieve building sector energy savings; or
  - (b) Establish and implement an alternative methodology to reduce greenhouse gas emission 80% by 2050. .
- b. City agencies, including but not limited to the mayor's office of long-term planning and

sustainability, 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.

9. The Office of Building Energy Performance shall be adequately staffed with registered design professionals to ensure responsibilities will be delivered within the timeframes set out in 28-320.3.

§ 2. Section 28-308.1 of the administrative code of the city of New York, as amended by local law number 106 for the year 2018, is amended to read as follows:

§ 28-308.1. **Definitions.** As used in this article, the following terms shall have the following meanings:

**BASE BUILDING SYSTEMS.** The systems or subsystems of a building that use energy and/or impact energy consumption including:

1. The building envelope.
2. The HVAC (heating ventilating and air conditioning) systems.
3. Conveying systems.
4. Domestic hot water systems.
5. Electrical and lighting systems.

Exception: The term “base building systems” shall not include:

1. Systems or subsystems owned by tenants (other than a net lessee for a term of 49 years or more, inclusive of renewal options), condominium unit owners or cooperative unit shareholders, or a system or subsystems for which a tenant bears full maintenance responsibility and that is within the tenant's leased space and/or exclusively serves such leased space.
2. Industrial processes that occur within a covered building.

**BUILDING MANAGEMENT SYSTEM.** A computer-based system that monitors and controls a building's mechanical and electrical equipment, such as HVAC, lighting, power, fire, and security systems, including, at a minimum, control of the heating equipment using interior temperature sensors.

**CITY BUILDING.** A covered building that is owned by the city and for which the city regularly pays all or part of the annual energy bills.

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 building managed by the New York city health and hospitals corporation.
4. Any senior college in the City University of New York system.
5. Any cultural institution that is in the Cultural Institutions Group as determined by the department of cultural affairs.

**COOPERATIVE CORPORATION.** A corporation governed by the requirements of the state cooperative corporation law or general business law that, among other things, grants persons the right to reside in a cooperative apartment, that right existing by such person's ownership of certificates of stock, proprietary lease, or other evidence of ownership of an interest in such entity.

**COVERED BUILDING.** As it appears in the records of the department of finance: (i) a building that exceeds [50,000] 25,000 gross square feet (4645 m<sup>2</sup>), (ii) two or more buildings on the same tax lot that together exceed [100,000] 50,000 gross square feet (9290 m<sup>2</sup>), 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 [100,000] 50,000 gross square feet (9290 m<sup>2</sup>).

Exception: The term “covered building” shall not include real property classified as class one pursuant to subdivision one of section 1802 of the real property tax law of the state of New York.

**CURRENT FACILITY REQUIREMENTS.** The owner's current operational needs and requirements for a building, including temperature and humidity set points, operating hours, filtration, and any integrated requirements such as controls, warranty review, and service contract review.

**ENERGY AUDIT OR AUDIT.** A systematic process of identifying and developing modifications and improvements of the base building systems, including but not limited to alterations of such systems and the installation of new equipment, insulation or other generally recognized energy efficiency technologies to optimize energy performance of the building and achieve energy savings, provided that such process shall not be less stringent than the Level II Energy Survey and Engineering Analysis of the 2004 edition of Procedures for Commercial Building Energy Audits published by the American Society of Heating, Refrigerating and Air-conditioning Engineers Inc. (ASHRAE).

**ENERGY AUDITOR.** An approved agency authorized by the department to perform energy audits and to certify audit reports required by this article. Until such time as there is a national standard establishing qualifications for persons performing energy audits and such standard has been adopted by the department, an energy auditor shall be a registered design professional with such other certification or qualification as the department deems to be appropriate. After the establishment of such a national standard, the department may adopt the qualifications of the national standard with such modifications as the department deems to be appropriate.

**ENERGY MANAGEMENT SYSTEM.** A system incorporating interior temperature sensors and a central processing unit and controls, which are used to monitor and control gas, steam and oil usage, as is

applicable, based on the need for heating.

**ENERGY EFFICIENCY REPORT.** The report required to be filed pursuant to section 28-308.4.

**FINANCIAL HARDSHIP (OF A BUILDING).** A building shall be considered to be subject to financial hardship if the building:

1. Had arrears of property taxes or water or wastewater charges that resulted in the property's inclusion, within two years prior to the due date of an energy efficiency report, on the department of finance's annual New York city tax lien sale list;
2. Is exempt from real property taxes pursuant to sections 420-a, 420-b, 446 or 462 of the real property tax law and applicable local law and the owner had negative revenue less expenses during the two tax years prior to the due date of an energy efficiency report as certified to the department by a certified public accountant;
3. Had outstanding balances under the department of housing preservation and development's emergency repair program that resulted in the property's inclusion, within two years prior to the due date of an energy efficiency report, on the department of finance's annual New York city tax lien sale list; or
4. Has an active or effective commitment letter from a governmental agency that provides for the financing of the rehabilitation, within a period of 5 years or less, of such building by such government agency for the purposes of affordable housing for low or moderate income families.

**OWNER.** The owner of record of a covered building, except that in the case of a net lease of an entire building for a term of 49 years or more, inclusive of renewal options, the term owner shall refer to the net lessee and in the case of a covered building held in cooperative or condominium form of ownership, the term owner shall refer to the board of managers in the case of a condominium and the board of directors in the case of a cooperative apartment corporation.

**RETRO-COMMISSIONING.** A systematic process for optimizing the energy efficiency of existing base building systems through the identification and correction of deficiencies in such systems, including but not limited to repairs of defects, cleaning, adjustments of valves, sensors, controls or programmed settings, and/or changes in operational practices.

**RETRO-COMMISSIONING AGENT.** An individual, who shall not be a certified refrigerating system operating engineer or a licensed high pressure boiler operating engineer on the staff of the building being retro-commissioned, authorized by the department to certify retro-commissioning reports required by this article. Until such time as there is a national standard establishing qualifications for persons who perform retro-commissioning and such standard has been adopted by the department, a retro-commissioning agent shall be a registered design professional, a certified refrigerating system operating engineer, or a licensed high pressure boiler operating engineer, with such other qualification or certification as determined by the department. After the establishment of such a national standard, the department may adopt the qualifications of the national standard with such modifications as the department deems to be appropriate.

**SIMPLE BUILDING.** A covered building with neither a central chilled water system nor a central cooling system that covers more than 10% of the building's gross area.

**SIMPLE PAYBACK.** The number of years for the projected annual energy savings to equal the amount invested in the energy conservation measure, as determined by dividing the investment by the annual energy savings.

**SPACE.** An area within a building enclosed by floor to ceiling walls, partitions, windows and doors.

**SYSTEM OR SUBSYSTEM.** Shall have the same as set forth in section 202 of the New York city energy conservation code.

§ 3. 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:

**§ 28-320 Building Energy Efficiency**

**§ 28-320.1 Definitions.** As used in this article, the following terms shall have the following meanings:

**ADMINISTERING AGENCY.** The term “administering agency” means the office of building energy performance established by section 651 of the New York city charter.

**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 administering agency.

**BUILDING EMISSION INTENSITY.** The term “building emissions intensity” means, for a covered building, the number obtained by dividing the building emissions by such building’s gross floor area, expressed in metric tons of carbon dioxide equivalent per square foot per year.

**COVERED BUILDING.** The term “covered building” means (i) a building that exceeds 25,000 gross square feet or (ii) a city-owned building. Covered building shall not include rent regulated accommodations.

**DEPARTMENT.** The term “department” means the department of buildings.

**FOSSIL FUEL.** The term “fossil fuel” means a fuel such as coal or gas, formed in the geological past from the remains of living organisms, consumed through a combustion process that is associated with the creation of a heating and/or cooling byproduct that includes, but is not limited to steam, hot water, or chilled water, that is consumed on the premises of a covered building.

**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; and
2. A source that is determined to be renewable by the head of the administering agency.

**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 tCO<sub>2</sub>e.

**OCCUPANCY GROUP.** The term “occupancy group” means the classification assigned to a building or a space within a building in accordance with the New York city building code or the 1968 building code, as applicable.

**REGISTERED DESIGN PROFESSIONAL.** The term “registered design professional” has the same meaning as in section 28-101.5.

**RENT REGULATED ACCOMODATION.** The term “rent regulated accommodation” means a 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.

**§ 28-320.2 Advisory board.** There shall be an advisory board convened by the administering agency upon the effective date of this section, in January of 2029, and in January of 2039 to provide advice and recommendations to the administering agency pursuant to meet the goals of section 28-320.3. The director of the administering agency, or the designee of such director, shall serve as chairperson of such advisory board.

**§ 28-320.2.1 Advisory board composition.** Such advisory board shall be composed of a minimum of 27 members including the chairperson, 13 of the members of such advisory board shall be appointed by the mayor or the mayor’s designee, and 13 of the members of such advisory board shall be appointed by the speaker of the council. To the extent practicable, the advisory board shall include representatives of (i) engineers; (ii) architects; (iii) building owners and managers; (iv) the construction trades; (v) the energy industry; (vi) the public utilities industry; (vii) the green energy industry; (viii) residential and commercial tenants; (ix) the business sector; (x) environmental advocacy organizations; (xi) environmental justice organizations; (xii) academic research institutions; (xiii) non-profit institutions; and (xiv) other persons with experience or expertise deemed relevant by the administering agency.

**§ 28-320.2.2 Working groups.** The advisory board shall convene smaller working groups, as necessary, to issue recommendations to the administering agency. Such working groups shall meet at least quarterly until the completion of each report. If there is a vacancy on the working group, the vacancy shall be replaced by an appointment in the same manner the position was originally filled. Adequate resources for the advisory board will be allocated to allow the procurement of technical assistance, staff support, report preparation, and other tasks reasonable to the scale and impact of the legislation and the complexity of the charge of the advisory board. Such recommendations shall include, but not be limited to:

1. A report and recommendations for an approach to assessing building energy performance. Such report shall include, but not be limited to, an approach for buildings to submit energy use and other information for the purpose of assessing energy performance of covered buildings. Such report shall include a methodology that includes the metric of measure, adjustments to the metric, the approach to comparing the output to a benchmark, alternative compliance paths, and an approach for a trading mechanism as described in section 28-320.11. Such report shall be developed in collaboration with the office of long-term planning and sustainability and shall be delivered to the Mayor no later than December 31, 2020.
2. A report and recommendation for energy performance limits for covered buildings beginning in 2024. Such report may also include requirements for improvements to fossil fuel energy performance or incentives for reduction of peak energy demand. Such report shall include recommendations to ensure staggered compliance of the energy performance improvements, a calculation method for penalties for non-compliance, estimated emissions reductions associated

with the recommended limits, and an economic impact study, including benefits, of achieving the limits. Such report shall be developed in collaboration with the office of long-term planning and sustainability and shall be delivered to the Mayor no later than December 31, 2021.

**§ 28-320.3 Building emissions limits.** On and after January 1, 2022 a covered building shall not have 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.

**§ 28-320.3.1 Building emissions limits 2022-2023.** For calendar years 2022 and 2023 the annual building emissions limits shall be calculated as follows:

1. For occupancy groups A, E, H, U: multiply the building emissions intensity limit of 0.008886 ton CO<sub>2</sub>e/sf by the corresponding gross floor area (sf);
2. For occupancy groups B, I, M: multiply the building emissions intensity limit of 0.008552 ton CO<sub>2</sub>e/sf by the corresponding gross floor area (sf);
3. For occupancy groups F, S: multiply the building emissions intensity limit of 0.005170 ton CO<sub>2</sub>e/sf by the corresponding gross floor area (sf);
4. For occupancy group R: multiply the building emissions intensity limit of 0.007010 ton CO<sub>2</sub>e/sf by the corresponding gross floor area (sf); and
5. For buildings with spaces classified in more than one occupancy group the sum of the calculated values from subparagraphs (a) through (d) of this paragraph, as applicable for each space.

**§ 28-320.3.2 Building emissions limits 2024-2029.** For calendar years 2024 through 2029 the annual building emissions limits shall be calculated as follows, or determined in consultation with the advisory board and the office of long term planning and sustainability and set by rule by the department, provided that such limits shall not be less restrictive than the limits for the calendar year preceding the establishment of such limits pursuant to this paragraph:

1. For occupancy groups A, E, H, U: multiply the building emissions intensity limit of 0.004439 ton CO<sub>2</sub>e/sf by the corresponding gross floor area (sf);
2. For occupancy groups B, I, M: multiply the building emissions intensity limit of 0.004850 ton CO<sub>2</sub>e/sf by the corresponding gross floor area (sf);
3. For occupancy groups F, S: multiply the building emissions intensity limit of 0.001374 ton CO<sub>2</sub>e/sf by the corresponding gross floor area (sf);
4. For occupancy group R: multiply the building emissions intensity limit of 0.004339 ton CO<sub>2</sub>e/sf by the corresponding gross floor area (sf); and
5. For buildings with spaces classified in more than one occupancy group the sum of the calculated values from sub-paragraphs (a) through (d) of this paragraph as applicable for each space.

**§ 28-320.3.3 Building emissions limits 2030-2049.** No later than January 1, 2021 the department, in



consultation with the advisory board, shall establish annual building emissions limits and building emission intensity limits applicable for calendar years 2030 through 2039 and building emission limits and building emission intensity limits applicable for calendar years 2040 through 2049. Such limits established shall not be less restrictive than the limit for the calendar year preceding the establishment of such limits pursuant to this paragraph. Such limits shall be set to achieve an average building emission intensity for all covered buildings of no more than 0.0014 tCO<sub>2</sub>e/sf/yr by 2050.

**§ 28-320.3.4 Building emissions limits 2050.** No later than January 1, 2025 the department, in consultation with the advisory board, shall establish building emission limits and building emissions intensity limits applicable for calendar years commencing on and after January 1, 2050. Such limits shall not be less restrictive than the limits established for the calendar year commencing January 1, 2049 and shall achieve an average building emissions intensity for all covered buildings of no more than 0.0014 tCO<sub>2</sub>e/sf/yr.

**§ 28-320.3.5 Reports.** By May 1, 2023, 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, that for the previous calendar year such building is either:

1. In compliance with the applicable building emissions limits established pursuant to section 28-320.3; or
2. Not in compliance with such applicable building emissions limits and the amount by which such building exceeds such limits.

**§ 28-320.3.6 Continuing requirements.** In 2055, the administering agency shall prepare and submit to the mayor and the speaker of the council recommendations whether to continue any of the requirements of this section.

**§ 28-320.4 Rules.** The department may amend, adopt or promulgate any such rules, regulations, fees, penalties or procedures as may be necessary to effectuate compliance with any reporting requirements of this chapter.

**§ 28-320.5 Assistance.** The administering agency shall establish and maintain a program for assisting owners of covered buildings in complying with this section, as well as expand existing programs established to assist owners in making energy efficiency improvements and purchasing energy derived from green energy sources. These programs shall be made available to assist building owners without adequate financial resources or technical expertise.

**§ 28-320.6 Outreach and education.** The administering agency 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 chapter. The materials developed for such outreach and education shall be made available on the department's website.

**§ 28-320.7 Penalties.** The owner of a covered building that does not meet the requirements of section 28-320.3 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:

**§ 28-320.7.1 Penalty amount.** An owner of a covered building who has submitted (i) a report pursuant to section 28-320.3.5 which indicates that such building has exceeded its building emission limit shall be liable for a civil penalty of not more than an amount equal to the difference between the building emissions

limit and the reported building emissions, multiplied by the building's gross floor area, multiplied by \$268.

**§ 28-320.7.2 Variances.** The administering agency may vary a requirement of this section with respect to a covered building in existence on the effective date of this section, provided that the owner is complying with such requirements to the maximum extent practicable. Such a variance shall be granted only upon a specific finding that:

1. Strict compliance with such requirement within the allowed time through capital improvements is not reasonably possible 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; and
2. The owner has made a good faith effort to purchase green energy sources to meet such requirement but a sufficient quantity is not available at a reasonable cost; and
3. The owner has availed itself of all available city, state, federal and utility incentive programs related to energy reduction or renewable energy for which it reasonably could be eligible;

A variance shall also be granted upon a specific finding that:

1. The cost of financing capital improvements to strictly comply with the requirements of this section would prevent the owner of a building from earning a reasonable return on the use of such building. In making such a finding, the administering agency may consider future savings expected from any such capital improvements and whether the owner has taken advantage of 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 inability to access financing must be demonstrated by rejection from any such program funded by the city or enabled by a local law;
2. The owner has made a good faith effort to purchase green energy sources to meet such requirements but a sufficient quantity is not available at a reasonable cost; and
3. The owner has availed itself of all available city, state, federal and utility incentive programs related to energy reduction or renewable energy for which it reasonably could be eligible.

**§ 28-320.7.3 Effective Period.** A variance granted pursuant to subparagraph (a) of paragraph 1 of this section may be effective for a period of not more than 3 years. A variance granted pursuant to subparagraph (b) of paragraph 1 of this section may be effective for a period of not more than 1 year.

**§ 28-320.7.4 Application.** An application for such a variance shall be made in the form and manner determined by the administering agency.

**§ 28-320.7.5 Appeal.** The determination of the administering agency denying an application for a variance may be appealed to the board of standards and appeals.

**§ 28-320.7.6 Penalty Reduction.** The civil penalty may be reduced by up to 25% upon a showing that the

average daily temperature for the year in which the penalty is issued exceeded the high estimate for annual temperatures for New York City in the 2050s in Fahrenheit as defined by the most recent report issued by the New York City Panel on Climate Change. The civil penalty may be reduced by up to 25% upon a showing that the minimum temperature for the year in which the penalty is issued was at or below freezing on more than 72 days.

**§ 28-320.7.7 Default Penalty.** An owner of a covered building who does not submit a report required by section 28-320.3.5 shall be liable for a civil penalty of not more than an amount equal to the building emissions intensity limit of such building multiplied by 10, multiplied by such building's gross floor area, multiplied by \$268; provided, however, that no civil penalty shall accrue for a report demonstrating compliance with the requirements of this section if such report is filed within 60 days of the date such report is due.

**§ 28-320.7.8 False Statement.** It shall be unlawful to knowingly make a material false statement in a report or other submission filed with the administering agency or the department, pursuant to this section. A violation of this paragraph 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 subdivision shall also be liable for a civil penalty of not more than \$500,000.

**§ 28-320.7.9 Penalty Recovery.** Civil penalties provided for by this section may be recovered in a proceeding before the environmental control board. Administrative summonses returnable to the environmental control board for violations of this section may be issued by the department or by an agency designated by the department. Civil penalties provided for by this section may also be recovered in an action by the corporation counsel in any court of competent jurisdiction.

**§ 28-320.7.10 Fee Schedule.** The administering agency may establish by rule a schedule of fees that shall be paid upon the filing of a report or an application for a variance pursuant to this section. Such schedule may also include a fee for the late filing such report.

**§ 28-320.7.11 Carbon Trading Study.** The administering agency shall conduct a study on the feasibility of a citywide carbon trading scheme and submit a report with the findings of such study to the mayor and the speaker of the council within three years of the effective date of this section. Such study shall include methods to encourage investment in environmental justice communities and that preserve a minimum level of benefits for all covered buildings and does 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 energy performance submissions the administering agency creates.

§ 4. This local law takes effect 90 days after it becomes law, except that the department shall take such measures as are necessary for the implementation of this local law, including the promulgation of rules.

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