

COVID-19's Effect on Local Law 97 – or lack thereof

A Lexis Practice Advisor® Article by
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The presence of COVID-19 in New York City is expected to radically change the way real estate is managed and operated going forward. In this new post-pandemic world, owners are suddenly confronted with the need to provide newly heightened health and safety precautions to their tenants, many of which are solutions that will require costly and time-consuming building modifications to be made by the owner. Amidst determining COVID-19 related changes to a building's management and operations, owners must remain mindful of complying with laws that were drafted what feels like a lifetime ago, before the term 'coronavirus' ever entered New Yorkers' vocabulary.

Local Law 97 ("LL97") was passed into law in April 2019, a year before COVID-19 struck New York City. LL97 limits the amount of greenhouse gas emissions for large buildings starting in 2024. At the time, the New York City Council touted LL97 as the most aggressive law of its kind in the country. Nobody on the City Council could have contemplated the occurrence of a pandemic, or the upheaval that COVID-19 would cause to every facet of

New Yorkers' lives, much less the real estate world. Now, with changes to air handling systems, elevator banks, and other capital improvements inevitably occurring due to COVID-19, even buildings that were initially in compliance with LL97 might be surprised to now find themselves struggling to comply when the COVID-19 related changes take place. Thus, owners will need to evaluate how capital improvements and operation changes made in response to COVID-19 will impact the building's carbon emissions for LL97 compliance.

As it currently stands, LL97 is expected to proceed without any relaxation or postponement of its compliance requirements. This means that starting in 2024, New York City buildings that are 25,000 gross square feet or larger will have a finite number of metric tons of greenhouse gases that such building may emit before substantial financial penalties are imposed on the building's owner(s). For a detailed discussion of such limits and how they are determined, as well as the penalties that can be imposed, see [Understanding the Requirements of the Climate Mobilization Act](#). For the emissions limits to be relaxed or delayed, the City Council would have to pass an amendment to LL97. Passing an amendment is not expected to be easily achieved and thus prudent owners should not be relying on something which seems unlikely to occur. The compliance deadline is January 1, 2024 and, given that the law passed a year ago, owners have had plenty of advance notice and should still have sufficient time to take into account the new post-COVID-19 world in making preparations for LL97 compliance. Since there are no signs at the moment that LL97 requirements will be relaxed or delayed beyond its current January 1, 2024 compliance deadline, it behooves owners to keep LL97 compliance in mind as they consider undertaking COVID-19 related capital improvements, so as to ensure that they are not subjected to LL97's financial penalties.

While the January 1, 2024 compliance deadline is the deadline most commonly associated with LL97, owners should be cognizant of a much earlier deadline: July 1, 2021. This is the deadline for owners to submit an application to increase their building's statutory emissions limit. However, a prerequisite to an upwards adjustment is a showing by the owner that they have exhausted private and publicly available resources, including a showing that the owner is ineligible for Property Assessed Clean Energy (PACE) financing. The actions required to satisfy the preconditions to an upward adjustment will all take time; even more so in a COVID-19 world where everything takes longer to accomplish due to newfound physical and legal restrictions.

So although July 1, 2021 is still over a year away, it will take the owner several months to get to the July 1, 2021 finish line. First and foremost, an owner must engage a consultant to determine how much of an upward adjustment is necessary, if at all. As the July 1, 2021 deadline approaches, it is expected that such consultants will be in high demand. It is worth noting that there are only so many qualified professionals that will be able to make such determinations and therefore it would be prudent to try to have any such analysis done as soon as possible. If an owner is contemplating major changes to its building systems and operations to minimize COVID-19 spread however, the consultant will not be able to provide a proper energy assessment until such improvement decisions are made, which will require time on the owner's part to research and act upon. If the determination has been made that the contemplated COVID-19 changes will push a

building's emissions over its statutory limit (or will push it further over such limit), the owner must then take steps to satisfy other preconditions for an upward adjustment, such as showing a good faith effort to purchase greenhouse gas offsets or renewable energy credits. Actions to satisfy such preconditions already take a considerable amount of time under normal circumstances – and as discussed above, in the age of COVID-19, owners should expect much longer wait times. Indeed, LL97 requires an owner to apply for PACE financing first and only if the owner is rejected or ineligible may the owner be considered for an upward adjustment to their emissions limit. PACE financing is an attractive tool to owners for a number of reasons. PACE loan applications were originally expected to be accepted starting in the first quarter of 2020. However, due to COVID-19, the rollout of the PACE program has been delayed for an unpredictable amount of time, which effectively shortens the timeline an owner has towards the July 1, 2021 adjustment application deadline.

As it does not look like LL97 will have its requirements relaxed, or its compliance dates postponed, a smart owner should start reviewing their LL97 compliance immediately in order to provide themselves as much runway as possible for the possibility of an upwards adjustment to the emissions limit. If not, owners might miss the opportunity to adjust their building's emissions limit, forcing such owners to either undertake further capital improvements to get their building into compliance by 2024, or face potentially substantial yearly fines.

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