



New York City adopts new operational mandates for existing buildings

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The New York City Council has adopted four landmark ordinances to improve the energy efficiency of large buildings, and thereby reduce their greenhouse gas (GHG) emissions. Although the most ambitious bill was scaled back shortly before passage, the new regulations continue the U.S. trend in which cities have taken the lead regarding sustainable buildings.

Three years ago, the city of New York initiated PlaNYC 2030 to develop its sustainability goals. A central goal is to reduce citywide GHG emissions in New York by 30% from 2005 levels by the year 2030. With nearly 1 million buildings comprising over five billion s/f, the city found that buildings account for 70% to 80% of its total GHG emissions, a far higher share than in less dense, more auto-oriented cities.

In April 2009, mayor Michael Bloomberg introduced a six-point Greener, Greater Buildings Plan aimed at reducing energy consumption by existing buildings. The plan includes a revolving loan program to finance energy-saving improvements using federal stimulus funds, as well as a training program for the additional construction workers and technicians needed. The centerpiece is the four bills passed in December:

New York City Energy Conservation Code (NYCECC):

All existing residential and commercial buildings must comply fully with the Energy Conservation Construction Code of NYS (ECCCNYS) for those portions of a building or building system being added, altered, renovated or repaired.

(The ECCCNYS would otherwise only apply to existing buildings when an alteration leads to the replacement within a 12-month period of at least 50% of a building system or subsystem.) Historic buildings are generally exempt from the new NYCECC, and there are exceptions for certain window installations, and floor, ceiling and wall cavity projects, just as there are under the ECCCNYS. Whenever the latest edition of the ECCCNYS is more stringent than the NYCECC, the ECCCNYS will control.

Benchmarking Energy and Water Use Ordinance:

This requires annual benchmarking of energy and water use using U.S. EPA's Portfolio Manager tool for (i) buildings over 10,000 gross s/f that the city owns or for which it pays all energy bills (excepting certain buildings in Dept. of Housing Preservation and Development or tenant interim lease apartment purchase programs); (ii) non-city buildings that exceed 50,000 gross s/f, (iii) two or more non-city buildings on the same tax lot that together exceed 100,000 gross s/f, and (iv) two or more non-city buildings governed by the same board of managers as condominiums, and that together exceed 100,000 gross s/f. Covered non-city buildings have until May 1, 2011, to comply.

Where a non-residential, rental space is separately metered, the building owner must ask for and the tenant must provide annual energy use data for the rented space. Records must be kept for

three years, and the City may audit them. The City will begin posting benchmarking information on the internet by September 1, 2012, using 2011 data from non-residential buildings. One, two and three-family residential buildings are exempt from the ordinance regardless of size.

Audits and Retro-Commissioning Ordinance:

Nearly the same set of buildings covered by the benchmarking ordinance must conduct American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Level II energy audits of the "base building" every 10 years, and recalibrate or "retro-commission" building systems for optimal performance.

The base building excludes systems owned or maintained by individual tenants (other than very long-term lessees), condominium unit owners or cooperative unit shareholders, or a system for which a tenant bears full maintenance responsibility, and that is within and/or exclusively serves the tenant's leased space. Energy efficiency reports based on these audits and retro-commissioning are due over a period of ten years, beginning with calendar year 2013, based upon the final digit of the building's tax block number. Some deferrals are available for newer buildings, renovated buildings that meet the new NYCECC, and based on financial hardship. New reports will be due every ten years thereafter. Audits are not required for buildings that have carried the U.S. EPA's ENERGY STAR label for at least two of the previous three years, or that are certified under the LEED for Existing Buildings: Operations & Maintenance (LEED-EB:O&M) system. Likewise, retro-commissioning is not required for buildings that have been certified LEED-EB:O&M within two years prior to the filing of the building's energy efficiency report. Within one year of filing an energy efficiency report, City-owned buildings covered by the ordinance must complete the "reasonable capital improvements" that are recommended in the energy audit, including, at a minimum, all such improvements with a simple payback of seven years or fewer.

Lighting Upgrades and Sub-Metering Ordinance:

With limited exceptions, non-residential buildings subject to the benchmarking ordinance must meet the New York City Energy Conservation Code by upgrading their lighting systems at the time of renovation, and in any case by January 1, 2025.

This ordinance also requires building owners to sub-meter for electrical use all floors larger than 10,000 gross sq. ft. with at least one tenant space, and all tenant spaces (on one or more floors) larger than 10,000 gross sq. ft., both excluding dwelling units. The building owner must provide each covered tenant with a monthly statement showing the amount of electricity measured by the sub-meter, and any amount charged to the tenant.

As originally proposed, the audits and retro-commissioning bill would have required energy retrofits with a five-year payback at privately owned buildings. Strong opposition from owners fearful of capital costs in an era of uncertain financing led to the amendment of this provision to require reasonable capital improvements with a seven-year payback only at City-owned buildings. Even without it, the ordinances represent the most aggressive requirements applicable to existing buildings in the U.S. While policymakers in other jurisdictions, including Massachusetts, have studied mandatory energy and water audits, re-commissioning, and disclosure of energy performance, only New York City has done so.

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