

**LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 2016**

No. 133

Introduced by Council Members Garodnick, Richards, Johnson, Constantinides, Chin, Rosenthal, Kallos and Barron (in conjunction with the Mayor).

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to expanding the list of buildings required to be benchmarked for energy and water efficiency

Be it enacted by the Council as follows:

Section 1. The definitions of “city building” and “covered building” set forth in section 28-309.2 of the administrative code of the city of New York, as added by local law number 84 for the year 2009, are amended to read as follows:

CITY BUILDING. A building that is more than 10,000 gross square feet, as it appears in the records of the department of finance, that is owned by the city or for which the city regularly directly pays all [or part] of the annual energy bills, provided that two or more buildings on the same tax lot shall be deemed to be one building.

Exception: The term “city building” shall not include:

1. [Any building not owned by the city in which the city is a tenant and for which the city does not pay all the energy bills;]

[2.] Any building owned by the city that participates in the tenant interim lease apartment purchase program; or

[3.] 2. Any building owned by the city that (i) is [50,000] 25,000 gross square feet or less, as it appears in the records of the department of finance, and (ii) participates in a program administered by the department of housing preservation and development.

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, (ii) two or more buildings on the same tax lot that together exceed 100,000 gross square feet, [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 gross square feet, *or (iv) a city building.*

[Exception:] Exceptions: The term “covered building” shall not include:

1. [Any building that is a city building.
2. Any building that is owned by the city.] *Any building owned by the city that participates in the tenant interim lease apartment purchase program.*
- [3.] 2. Real property classified as class one pursuant to subdivision one of section 1802 of the real property tax law.
3. *Real property, not more than three stories, consisting of a series of attached, detached or semi-detached dwellings, for which ownership and the responsibility for maintenance of the HVAC systems and hot water heating systems is held by each individual dwelling unit owner, and with no HVAC system or hot water heating system in the series serving more than two dwelling units, as certified by a registered design professional to the department.*

§ 2. Section 28-309.4 of the administrative code of the city of New York, as added by local law number 84 for the year 2009, is amended to read as follows:

§ 28-309.4 Benchmarking required for covered buildings *other than city buildings*. The owner of a covered building, *other than a city building*, shall annually benchmark such covered building no later than May 1, 2011, and no later than every May [first] 1 thereafter. Benchmarking of water use shall not be required unless the building was equipped with automatic meter reading equipment by the department of environmental protection for the entirety of the previous calendar year. The owner or the owner's representative performing the benchmarking shall consult with the operating staff of the building, as appropriate. *Information submitted to the benchmarking tool must be accurate and complete.*

Exception: *The first mandatory benchmarking for a covered building, other than a city building, that (i) does not exceed 50,000 gross square feet, (ii) is not one of two or more buildings on the same tax lot that together exceed 100,000 gross square feet and (iii) is not one of 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 gross square feet, shall be completed on or before May 1 of the first year that commences after the department determines and sets forth in a rule that the utility company providing energy to such buildings will, upon request of an owner, directly upload information necessary to benchmark such buildings.*

§ 28-309.4.1 Obligation to [request and to report information] report energy use for all utility accounts and addresses connected to the building. [Where a unit or other space in a covered building, other than a dwelling unit, is occupied by a tenant and such unit or space is separately metered by a utility company, the owner of such building shall request from such tenant information relating to such tenant's separately metered energy use for the previous calendar year and such tenant shall report such information to such owner.] *The owner shall submit information to the benchmarking tool for all utility accounts and addresses connected to the building, including those for separately metered tenant spaces. The owner shall obtain information for separately metered tenant spaces from the utility. If the utility does not have a program to provide such information, the owner shall make reasonable efforts to obtain such information from the tenant. Tenants shall have the obligation to provide such information.*

[§ 28-309.4.1.1 Owner solicitation of tenant information. Such owner shall request information relating to such tenant's separately metered energy use for the previous calendar year no earlier than January first and no later than January thirty-first of any year in which the owner is required to benchmark such building. The office of long-term planning and sustainability may require that such owner provide such tenant with a form

designated by the office of long-term planning and sustainability to report such information.]

[§ 28–309.4.1.2 Tenant reporting of information. Such tenant shall report information relating to such tenant's separately metered energy use for the previous calendar year no later than February fifteenth of any year in which the owner is required to benchmark such building. Such information shall be reported in a form and manner determined by the office of long-term planning and sustainability.]

[§ 28–309.4.1.3 Provision of information prior to vacating a unit or other space. Where such owner receives notice that such tenant intends to vacate such unit or other space before reporting information in accordance with sections 28–309.4.1 and 28–309.4.1.2, such owner shall request information relating to such tenant's energy use for any period of occupancy relevant to such owner's obligation to benchmark. Any such tenant shall report such information to the owner of such building prior to vacating such unit or other space or, if such information is not available prior to vacating such unit or other space, as soon as practicable thereafter, regardless of whether such owner has requested information pursuant to this section. Such information shall be reported in a form and manner determined by the office of long-term planning and sustainability.]

[§28–309.4.1.4 Continuing obligation to benchmark. The failure of any or all tenants to report the information required by sections 28–309.4.1, 28–309.4.1.2, and 28–309.4.1.3 to the owner shall not relieve such owner of the obligation to benchmark pursuant to this article, provided that such owner shall not be required to benchmark such information not reported by a tenant unless otherwise available to such owner.]

§ 28-309.4.2 Preservation of documents, inspection, and audit. [Owners] *An owner of a covered [buildings] building shall maintain such records as the department determines are necessary for carrying out the purposes of this article, including but not limited to energy and water bills and reports or forms received from utilities and tenants. Where energy use within separately metered tenant spaces is omitted, records shall be maintained documenting the owner's efforts to obtain such information.* [Such] *All records shall be preserved for a period of three years, provided that the commissioner may consent to their destruction within that period or may require that such records be preserved longer than such period. At the request of the department, such records shall be made available for inspection and audit by the department at the place of business of the owner or at the offices of the department during normal business hours.*

§ 28–309.4.3 Violations. It shall be unlawful for the owner of a covered building to fail to benchmark pursuant to section 28–309.4. The commissioner shall classify such violation as a lesser violation. *If, upon audit of a benchmarking report, the department finds that information submitted*

to the benchmarking tool was substantially inaccurate or incomplete, the department may reject the purported benchmarking and the owner shall be liable for a violation of section 28-309.4 as if no benchmarking had been performed.

Exception: *Notwithstanding section 28-204.2, no civil penalty shall be imposed on the owner of a covered building for a violation of this section for such covered building if:*

- 1. Such covered building (i) does not exceed 50,000 gross square feet, (ii) is not two or more buildings on the same tax lot that together exceed 100,000 gross square feet, (iii) is not 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 gross square feet, and (iv) is not a city building;*

- 2. Such owner requested, from the department or another agency designated pursuant to section 28-309.11, benchmarking assistance in connection with such building, and such request was made at least 60 days before the due date of the benchmarking report for which such violation was issued; and*

- 3. Such owner corrects such violation within 60 days after the date of the notice of such violation.*

§ 3. Section 28-309.5.1 of the administrative code of the city of New York, as added by local law number 84 for the year 2009, is amended to read as follows:

§ 28-309.5.1 Direct upload by a utility company or other source. The office of long-term planning and sustainability shall encourage and facilitate any utility company or any other source authorized by the office of long-term planning and sustainability to upload directly to the benchmarking tool, as soon as practicable, information necessary to benchmark a building. [Where information is uploaded directly to the benchmarking tool by a utility company or other authorized source, owners and tenants shall not be obligated to request and report such information pursuant to section 28-309.4.1.]

§ 4. Section 28-309.8 of the administrative code of the city of New York, as added by local law number 84 for the year 2009, is amended to read as follows:

§ 28–309.8 Disclosure. The department of finance shall make information generated by the benchmarking tool available to the public on the internet no later than September 1[, 2011, and no later than every September first thereafter for city buildings, no later than September 1, 2012, and no later than every September first thereafter for covered buildings whose primary use is not residential, as determined by the department of finance, and no later than September 1, 2013, and no later than every September first thereafter for covered buildings whose primary use is residential, as determined by the department of finance] *of the year in which the covered buildings are benchmarked*. Such information shall include, but need not be limited to: (i) the energy [utilization index] *use intensity*, (ii) the water use per gross square foot, (iii) where available, a rating *or score* that compares the energy and water use of the building to that of similar buildings, and (iv) a comparison of data across calendar years for any years such building was benchmarked. Information generated by the benchmarking tool for the 2009 calendar year for city buildings, for the 2010 calendar year for covered buildings, and for the 2011 calendar year for covered buildings whose primary use is residential, as determined by the department of finance, shall not be disclosed.

Exception: Ratings *or scores* generated by the benchmarking tool for a covered building that contains a data center, television studio, and/or trading floor that together exceed ten percent of the gross square footage of any such building shall not be disclosed until the office of long-term planning and sustainability determines that the benchmarking tool can make adequate adjustments for such facilities. When the office of long-term planning and sustainability determines that the benchmarking tool can make such adjustments, it shall report such determination to the mayor and the speaker of the city council. Until such determination is made, the office of long-term planning and sustainability shall report biennially to the mayor and the speaker of the city council that the benchmarking tool is unable to make such adjustments.

§ 5. Section 28-309.9 of the administrative code of the city of New York, as added by local law number 84 for the year 2009, is amended to read as follows:

§ 28-309.9 Report. No later than December 31 of [2011, 2012 and 2013, respectively] *each year*, the office of long-term planning and sustainability shall prepare, submit to the mayor and the speaker of the city council, and post on the internet a report reviewing and evaluating the administration and enforcement of this article and analyzing data obtained from the benchmarking tool. Such report shall contain information regarding: (i) the energy and water efficiency of buildings in the city, (ii) the accuracy of benchmarked data and whether there is a need to train and/or certify individuals who benchmark, (iii) compliance with the requirements of this article, (iv) any administrative and legislative recommendations for strengthening the administration and enforcement of this article, (v) the effectiveness of the benchmarking tool in accounting for New York city conditions, including, but not limited to, high density occupancies, use of steam, large building size, and specific high-energy uses such as data centers, television studios, and trading floors, and (vi) such other information and analyses as the office of long-term planning and sustainability deems appropriate.

§ 6. Article 309 of the administrative code of the city of New York is amended by adding a new section 28-309.11 to read as follows:

§ 28-309.11 Benchmarking assistance. *The department or another agency designated by the mayor shall establish a system to receive and respond to requests from owners for assistance with respect to fulfilling the benchmarking requirements of this section. Such assistance may include, but need not be limited to, trainings, the provision of reference guides, and a publicized telephone number and email address to receive direct questions. The annual notice required by section 28-309.7 shall notify covered building owners that such assistance is available and shall describe how such assistance can be obtained.*

§ 7. This local law takes effect immediately.

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 October 13, 2016 and approved by the Mayor on October 31, 2016.

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. 133 of 2016, Council Int. No. 1163-A of 2016) to be filed with the Secretary of State contains the correct text of the local law passed by the New York City Council and approved by the Mayor.

STEPHEN LOUIS, Acting Corporation Counsel