

Implications for New Construction as New York State Budget Bill Bans Natural Gas Equipment

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On May 3, 2023, Governor Kathy Hochul signed the New York State Budget for fiscal year 2023-2024. The Budget includes important legislation aimed at ending the State's dependence on fossil fuels.

In 2019, New York's Climate Leadership and Community Protection Act (CLCPA) created aggressive goals for emissions reductions. The CLCPA established a Climate Action Council tasked with putting together a scoping plan to act as the framework for how New York will reduce greenhouse gas emissions and achieve net-zero emissions, increase renewable energy use, and ensure all communities equitably benefit in the clean energy transition. The Scoping Plan discusses the measures needed to remove barriers to decarbonizing the building sector. New York's natural gas ban is one of many steps on the path to achieving the CLCPA's goals of creating zero-emissions buildings and reducing greenhouse gas emissions by 40% by 2030 and 85% by 2050 from 1990 levels.

The natural gas ban is effectuated through amendments to the State Energy Conservation Construction Code and the State Uniform Fire Prevention and Building Code ("Codes"). Specifically, the natural gas ban legislation amends the Codes to prohibit the installation of fossil-fuel equipment and building systems, including plumbing, heating, electrical, lighting, insulation, ventilation, air conditioning and refrigeration that uses fossil fuels, in:

- New one-family residential buildings of any height beginning December 31, 2025
- New multi-family residential buildings not more than three stories in height beginning December 31, 2025
- New multi-family residential buildings more than three stories in height beginning December 31, 2028
- New commercial buildings beginning December 31, 2028

The ban does not prohibit the continued use and maintenance of fossil-fueled equipment installed in existing or new buildings prior to the respective effective dates.

A primary concern among opponents of the ban is that such a measure would further increase energy costs for homeowners. Residential construction will seemingly be most affected by the ban, but how much homeowners and building owners will pay for electrified alternatives will depend in part on the availability of alternative technologies—such as heat pumps to replace fossil-fueled heating and cooling—and whether the State can remove the existing cost and permitting barriers to promote development of alternative energy sources.

However, the bill does authorize the State Fire Prevention and Building Code Council to adopt additional exemptions from the ban. Such exemptions are limited to those circumstances where the State Fire Prevention and Building Code Council deems it appropriate to allow fossil-fuel powered appliances and heating necessary for the installation and generation of emergency backup power in manufactured homes and in buildings, or parts of buildings, used for manufacturing, commercial food establishments, laboratories, laundromats, hospitals and other medical facilities, and critical infrastructure such as backup power for wastewater treatment facilities.



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Wherever an exemption is provided in the Codes, the continued use of fossil-fueled appliances and heating must be limited to the fullest extent possible to the systems and areas of the building where it is infeasible to apply

the ban. If an otherwise exempt new building installs fossil-fuel equipment, such equipment must be installed to be electrification-ready and must minimize emissions from such equipment to avoid adverse health, safety, security and fire risks. Thus, the exemptions to the natural gas ban are limited and will likely not reduce the burden on real estate owners and developers.

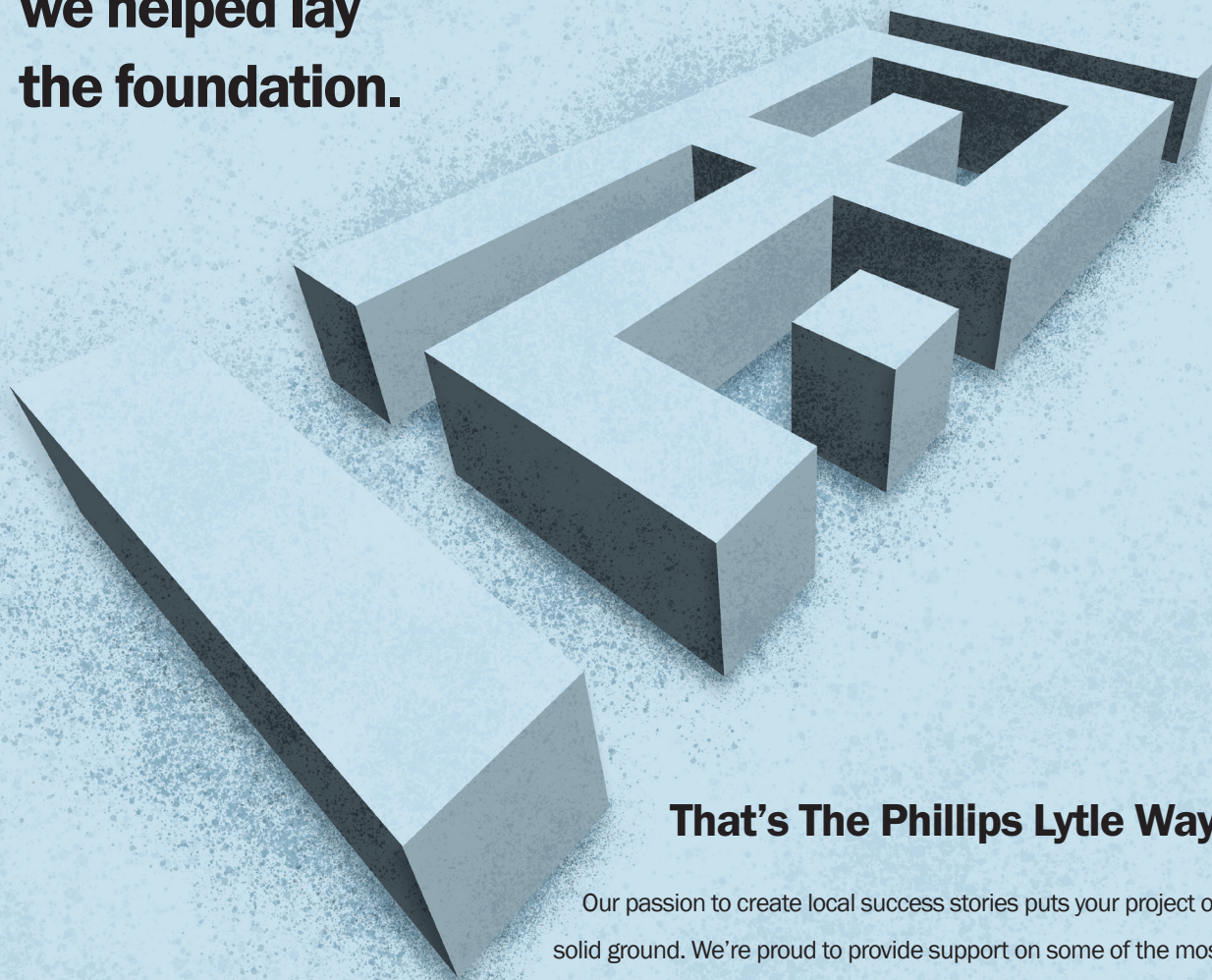
In light of the aggressive goals set in the CLCPA and the stark measures already taken by the State Legislature to achieve them, it is likely that further legislative and regulatory actions will be taken to reduce emissions and confront climate change. Developers of both residential and commercial real estate should keep a close eye on such legislative proposals, as well as the

development of alternative energy sources and the costs associated with them.

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