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As Local Law 97 Requirements Ramp Up, Consider These Key Leasing Considerations

By Joseph P. Heins and Allen Major
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In 2019, New York City enacted Local Law 97 (LL97) as part of the broader Climate Mobilization Act, which has been touted as one of the most ambitious urban climate initiatives in the United States.

The law targets greenhouse gas emissions from buildings, which are responsible for nearly 70% of the city's carbon footprint, by mandating significant emissions reductions over the coming decades in order to drive decarbonization across the city's built environment.

LL97 was passed by the NYC Council in April 2019 and signed into law by then-Mayor Bill de Blasio.

Unlike many climate laws that focus on new construction, LL97 uniquely targets existing buildings (which are by far the city's largest source of emissions), compelling owners of certain covered buildings to retrofit and upgrade systems to meet stringent energy standards.

LL97 is designed to help NYC meet its broader climate goals, including a 40% reduction in citywide emissions by 2030 and an 80% reduction by 2050, compared to 2005 levels.

In determining whether their building is subject to LL97 compliance requirements, building owners should look at the square footage of their building as it appears in the records of the NYC Department of Finance. More specifically, the law covers:

- Single buildings that exceed 25,000 gross square feet.

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- Two or more buildings on the same tax lot that together exceed 50,000 gross square feet.
- Two or more condominium buildings governed by the same board of managers and that together exceed 50,000 gross square feet.

With respect to the second category, tax lots are identified by a borough-block-and-lot (BBL) number, and there may be multiple buildings on a BBL.

When the buildings on a BBL together meet the 50,000 square foot threshold, all the buildings on the BBL are subject to LL97 as it applies to that type of building.

An individual building may qualify for an exception, but its square footage still contributes to the combined square footage of the buildings on the BBL.

LL97 does allow for exemptions or modified requirements for certain buildings. These include buildings

with a certain percentage of rent-controlled units, places of religious worship, buildings owned by the city or NYC Housing Authority, nonprofit hospitals and health care facilities, and historic buildings.

However, the foregoing are not all completely exempt from the law's requirements—each situation is unique, and the law may provide accommodations, such as simplified or delayed compliance or flexibility with respect to specific retrofits.

The law also allows for alternative compliance methods, such as purchasing renewable energy credits or investing in carbon offsets, though these are limited.

LL97 established three main compliance periods, the first of which began on Jan. 1, 2024. During this first period (2024-2029), buildings are subject to somewhat lenient initial emissions limits based on property type (e.g., Multifamily Housing, Office Buildings, Hospitals, Retail Stores, Supermarkets).

During the second compliance period, which runs from 2030 to 2034, stricter emissions limits take effect, and by the end of the final phase (2035-2050), all covered buildings must meet net zero emissions.

Starting May 1, 2025, and by May 1 of each subsequent year, owners of covered buildings must file with the NYC Department of Buildings a report certified by a registered design professional documenting the building's annual greenhouse gas emissions for the previous year and showing whether compliance was achieved.

The Buildings Department created an online reporting portal at nyc.beam-portal.org for the filing of this report. For this year, a 60-day grace period was granted for the filing of this report through June 30, 2025.

Owners also have until Aug. 29, 2025, to request an extension, which would extend the reporting deadline to Dec. 31, 2025.

Building owners can be fined for failing to report or filing false reports. Failing to file a report can lead to a $0.50 per square foot per month fine. Filing a false report can result in a fine of up to $500,000 and other civil penalties.

If the building does not comply with its annual emissions limits, the building owner must pay an annual penalty of $268 for each metric ton of carbon dioxide equivalent over the limit based on 2024 energy usage and emissions.

The penalty amount is understood to be an estimate of the cost that the owner would have incurred had the building complied with the applicable emissions limits. Thus, the penalty is intended to encourage compliance with emissions limits.

The various legal obligations created by LL97 are imposed on owners of covered buildings—not tenants.

However, particularly in light of the potentially significant expense that owners may incur to comply with LL97 and the fact that building tenants are estimated to be responsible for between 50% and 70% percent of a building's energy use, landlords typically seek to shift the expense of LL97 compliance to their tenants.

Existing commercial lease agreements may already contain the necessary provisions allowing landlords to pass along to tenants such tenant's prorated share of the expenses incurred by the landlord to comply with LL97.

A typical lease contains an operating expense provision requiring a tenant to pay its prorated share of building operating expenses, such as utilities and the landlord's cost for building repairs and insurance.

The landlord's cost to comply with applicable laws is often one of these operating expenses which, depending on the language of the particular provision, may allow the landlord to pass on to the tenant such tenant's prorated share of expenses incurred by the landlord to comply with LL97.

A relevant drafting note: some leases contain a pro-tenant provision which provides that the cost to comply with future laws may be passed on to tenants as part of operating expenses, thus excluding costs related to existing laws.

Since LL97 was passed in 2019 and went into effect in 2024, if such a provision is included in a new lease, it would seem that LL97-related costs would be excluded from operating expenses.

In negotiating commercial lease agreements, tenants frequently attempt to exclude capitalized

building improvement expenses from those expenses which may be passed on to tenants. In fact, many building improvements made to comply with LL97 would likely be capitalized under the Internal Revenue Code.

However, leases typically provide that capital improvements may be amortized over the useful life of such item and allow the landlord in each lease year to include in operating expenses a ratio of the cost of such capital improvement, with the numerator being one (1) and the denominator being the useful life expressed in years.

For clarity, new leases with an operating expenses provision should explicitly state whether improvement costs incurred to comply with LL97 are included in operating expenses, thus eliminating any ambiguity whether tenants are responsible for their prorated share of such expenses.

Alternatively, the allocation of LL97-related expenses can be addressed outside the operating expenses provision of a lease. Landlords can simply include LL97 compliance costs in the base rent payable by the tenant, similar to how some landlords factor in real estate taxes in the base rent.

Another option is to include a stand-alone lease provision that specifies how a tenant's prorated share of LL97 compliance expenses is calculated. For example, the lease might state that the landlord will equitably allocate LL97 compliance expenses among the building tenants based on each tenant's greenhouse gas emissions level.

Such a provision should have a mechanism that measures the amount of energy consumed by each tenant and the resulting greenhouse gas emissions. In this case (and perhaps in some others), tenants may want their exposure for annual LL97 related costs to be capped.

Yet another increasingly common option is to include "green" provisions in lease agreements. These provisions typically require tenants to comply with landlords' green policy initiatives which may include sustainable building practices, energy efficiency, water conservation and lighting controls.

As these clauses tend to be broadly and imprecisely drafted, tenants will likely want to limit their compliance obligation, such as by imposing a cap on the potential costs (as discussed above) or exempting tenants if compliance would result in a material increase in costs.

The landlord consent standard in a tenant alteration provision of a lease may be modified in a "green lease."

Commercial leases typically provide that proposed tenant alterations to non-structural, interior portions of a tenant's premises are subject to the landlord's reasonable approval, while consent for alterations relating to the exterior or structural elements may be withheld in the landlord's sole and absolute discretion.

In a "green lease," consent may be withheld in the landlord's sole and absolute discretion if, in the landlord's opinion, a proposed tenant alteration would negatively impact the landlord's greenhouse gas emissions target for the building.

Considering the implications of LL97 compliance on the leasing relationship, it would be prudent for landlords and tenants to discuss, both prior to entering into the lease and throughout the term of the lease, goals and expectations for reducing greenhouse gas emissions.

Landlords should consider a prospective tenant's proposed use of the premises, which can have a significant impact on the tenant's energy use and resulting emissions. Tenants should consider whether a building it is seeking to occupy already complies with LL97 or, if not in compliance, the costs to be incurred to achieve compliance.

These factors can have a significant impact on future costs to be incurred by tenants.

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