

## **New York City Department of Finance**

### **Notice of Adoption**

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN the Commissioner of Finance by sections 1043 and 1054 of the New York City Charter; Local Law number 96 for the year 2019; and Local Law number 24 for the year 2021, that the New York City Department of Finance (“DOF” or “Department”) promulgates and adopts Amendments to Rules of the City of New York, regarding the Sustainable Energy Loan Program (“Program”) within the City of New York (“City”).

This rule amendment was proposed and published on June 6, 2023. A public hearing was held on July 10, 2023. After reviewing comments received, these amendments are being adopted.

### **Statement of Basis and Purpose**

In 2009, the New York State Legislature enacted General Municipal Law Article 5-L, which authorizes municipalities within New York State to create and administer Property Assessed Clean Energy (“PACE”) financing programs. Such programs offer financing to property owners to fund energy efficiency and renewable energy projects on existing commercial properties, based upon a property owner’s agreement to have a separate charge placed on the annual tax bill for the subject property.

In April 2019, the New York City Council enacted Local Law number 96 for the year 2019 (“LL 96/2019”), codified at Chapter 30 of Title 11 of the Administrative Code of the City of New York (the “Administrative Code”), which established the Sustainable Energy Loan Program (“Program”) for the financing of energy efficiency improvements and renewable energy systems for existing commercial properties in New York City. The Office of Long-Term Planning and Sustainability coordinates the Program, and, in consultation with the New York City Department of Finance (“DOF”), a third-party administrator under contract with the City administers the Program. The Program is intended to help property owners reduce energy consumption and operating costs, create a healthier occupancy environment, increase the value of their buildings, and comply with City legislation establishing greenhouse gas emissions limits for buildings within the City.

In April 2021, the New York City Council enacted Local Law number 42 for the year 2021 (“LL 42/2021”), amending Chapter 30 of Title 11 of the Administrative Code. LL 42/2021 authorized PACE financing for new construction, as well as for owners of leasehold interests.

These amendments will implement LL 42/2021, setting forth additional criteria for Program financing for new construction projects, as well as additional criteria for owners of leasehold interests to receive Program financing. Specifically, these rules would extend the following Program financing criteria to new construction and major renovation projects and owners of leasehold interests:

- Eligibility criteria for PACE loans;
- The terms and conditions for the collection and remittance of loan payments;
- Reporting and filing requirements related to such loans; and
- Certification criteria for persons conducting energy audits and renewable energy system feasibility studies as required by Chapter 30 of Title 11 of the Administrative Code.

In addition, these rules will add new definitions of “low carbon building,” “major renovation,” and “new construction.”

DOF’s authority for these rules is found in sections 1503 and 1043(a) of the New York City Charter and Chapter 30 of Title 11 of the Administrative Code.

New material is underlined. Material to be removed is [bracketed].

“Shall” and “must” denote mandatory requirements and may be used interchangeably in these rules, unless otherwise specified or unless the context clearly indicates otherwise.

### **Rule Amendment**

Section 1. Section 58-02 of title 19 of the Rules of the City of New York is amended by adding new definitions of “low carbon building,” “major renovation,” and “new construction” in alphabetical order to read as follows:

**Low Carbon Building.** “Low Carbon Building” means a building that is designed, engineered, developed, constructed, operated and maintained such that any device, machinery, equipment, component, system or element installed or used in such building that causes or otherwise results in the combustion within or upon such building of any substance emits no more than 25 kilograms of carbon dioxide per million British thermal units of energy, as determined by the United States energy information administration, provided that such limitation shall not apply to any of the following:

a. Any device installed or used in such building that (1) has no connection to the gas supply line or fuel oil piping system of such building; (2) is used on an intermittent basis; and (3) is not used to supply such building, or any portion of such building, with heat or hot water; or

b. Any building in which the combustion within or upon such building of a substance that results in the emission of 25 kilograms or more of carbon dioxide per million British thermal units of energy, as determined by the United States energy information administration, is necessary: (1) for a manufacturing use or purpose; (2) for the operation of a laboratory, laundromat, hospital, crematorium, or commercial kitchen as defined in section 202 of the New York City fire code; (3) to provide emergency or standby power; or (4) for any use allowed pursuant to a rule promulgated by the Department of Buildings in accordance with exception 9 of section 28-506.1 of the Administrative Code, provided that any such emission in excess of 25 kilograms of carbon dioxide per million British thermal units of energy allowed pursuant to this definition be limited to the emission necessary for the use or purpose described in subparagraphs 1 through 4 of this paragraph.

**Major Renovation.** “Major Renovation” means any renovation, retrofit or other capital improvement project involving construction in an existing building that: (a) increases the floor surface area of such building by more than 110% and (b) is consistent with criteria set forth in the Program Guidelines.

**New Construction.** “New Construction” means any project for which a new building permit is required pursuant to item 1 of section 28-105.2 of the Administrative Code. Any work subject to section 28-101.4.5 of the Administrative Code shall not be considered “New Construction”.

§ 2. Subdivision b of section 58-03 of title 19 of the Rules of the City of New York is amended to read as follows:

b. To be eligible for a Loan, an Applicant must:

1. Be the owner of [the real property, provided that such owner does not owe any civil penalties, taxes or other debt to the City, and provided further that if the Applicant is an owner of a leasehold interest in such real property, the owner of the freehold interest in such real property shall agree to the Applicant's participation in the Program;

2.]:

i. A freehold interest in the subject real property; or

ii. A leasehold interest in the subject real property, where the following conditions are met:

(a) The owner of the freehold interest in such real property has agreed in writing to the Applicant's participation in the Program, and has no outstanding civil penalties, taxes or other debt owed to the City or to the New York City Water Board at the time the PACE loan is made;

(b) The leased premises constitutes one or more Borough Block and Lots (BBLs) in their entirety and does not include a portion of any BBL;

(c) The remaining term of the agreement providing the Applicant with the leasehold interest in the subject real property is no less than the term of the PACE loan; and

(d) The leasehold interest has been recorded or is eligible to be recorded in the real property records for the subject property with the city register or the Richmond county clerk;

2. Enter into a Program Financing Agreement with a Lender; [and]

3. Comply with all project approval requirements and application requirements contained in the Program Guidelines and these rules;

4. Not be directly or indirectly affiliated with or owned or controlled by the Lender; and

5. Have no outstanding civil penalties, taxes or other debt owed to the City or to the New York City Water Board at the time the PACE loan is made.

§ 3. Subdivision c of section 58-03 of title 19 of the Rules of the City of New York is amended to read as follows:

c. A Loan may be provided to finance any of the following:

1. The installation of an Energy Efficiency Improvement that is:

i.. Likely to result in savings in energy consumption, or are otherwise appropriate, as determined by an Energy Audit; and

ii. Demonstrated to be cost-effective according to the criteria set forth in the Program Guidelines;

2. The installation of Renewable Energy Systems that are practicable, or otherwise feasible, as determined by a Renewable Energy System Feasibility Study;

3. An Energy Audit;

4. A Renewable Energy System Feasibility Study; [or]

5. The verification of the installation of such Energy Efficiency Improvement and Renewable Energy System; or

6. A New Construction or a Major Renovation when:

i. Such New Construction or Major Renovation constitutes the design, development or construction of a Low Carbon Building;

ii. Any Energy Efficiency Improvement installed in such Low Carbon Building is demonstrated to be cost-effective according to criteria set forth in the Program Guidelines; and

iii. Any Renewable Energy System installed in such Low Carbon Building is determined to be feasible according to criteria set forth in the Program Guidelines.

§ 4. Section 58-06 of title 19 of the Rules of the City of New York is amended by adding new subdivisions j, k and l to read as follows:

j. The proceeds of the Loan shall be:

1. Disbursed on the closing date; or

2. Held in escrow or pursuant to a similar arrangement and disbursed in installments to the Borrower periodically as construction progresses.

k. Notwithstanding subdivision j of this section or any other rule to the contrary, the entirety of the Loan amount shall be deemed to have been disbursed as of the closing date for purposes of establishing a schedule for repayment of the Loan, including any interest or fees.

l. The Program Guidelines may require the payment of fees for the administration of the Program.

§ 5. Section 58-07 of title 19 of the Rules of the City of New York is amended by adding a new subdivision g to read as follows:

g. Notwithstanding any rule to the contrary, a Loan may not be accelerated, including upon the occurrence of an event of default or any other event. Upon transfer of the Borrower's freehold interest or leasehold interest in the subject real property, the transferee of such interest is obligated to continue making payments in accordance with the Program Financing Agreement until the Loan is repaid in full.