

# Public Comment for Sustainability Rules

November 21, 2024

Submitted on November 20, 2024 to the DOB online via [rules.cityofnewyork.us](https://rules.cityofnewyork.us) and by email to [dobrates@buildings.nyc.gov](mailto:dobrates@buildings.nyc.gov).



The **Alternative Building Industry (ABI) Collective** is a coalition of building industry professionals dedicated to advancing a just climate and labor transition within New York City's building sector, for a thriving, green future. We believe that the effective implementation and strengthening of Local Law 97 are crucial for New York to lead the charge toward a sustainable and equitable future. Professionals, policymakers, and citizens around the world look to our city as a model for success.

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Our comments on the third major proposed rules package aim to increase transparency and close potential loopholes to ensure the adjustments under Local Law 97(LL97) are reserved for buildings genuinely in need. Public transparency, enhanced verification, and stricter and representative qualifying standards for adjustments are key to ensuring LL97's objectives are met effectively.

## [PROPOSED CALCULATION OF EMISSIONS LIMITS FOR BUILDINGS](#)

Proposed amendments to Section 103-14 of Subchapter C of Chapter 100 of Title 1 of the Rules of the City of New York.

### **§ 7(3) Offsets and LL97 Affordable Housing Reinvestment Fund (AHRF)**

We propose revisions in the following areas:

- **Transparency:** Clarify that the fund administrator shall maintain a "public, web accessible" registry of offsets. Specify that applications for offset-generating projects shall be publicly accessible and that offset purchases shall be searchable by fields that include building owner and address.
- **Creation of a buffer pool:** Specify that the AHRF shall maintain a buffer pool of offsets to act as a safeguard against over-crediting. In cases of over-crediting (e.g. the verified emissions reduction associated with a retired offset is less than the credited amount), a quantity of offsets in the buffer pool equivalent to the over-credited amount shall be retired.
- **Price:** Specify that the price for offsets shall not be lower than the cost of the work associated with the offset projects, and that the price for an offset representing 1 tCO<sub>2</sub>e shall be reviewed each year.
- **Vintage:** Specify that building owners shall only apply offsets to their emissions limits that were purchased in the same calendar year.

## PROPOSED FILING REQUIREMENTS FOR APPLICATION TO ADJUST EMISSION LIMITS

Proposed amendments to Section 103-12 of Subchapter C of Chapter 100 of Title 1 of the Rules of the City of New York to establish the filing requirements for applications for an adjustment to annual building emission limits in accordance with section 28-320.7 of the Administrative Code.

### § 103-12 Adjustments

To maintain the integrity and effectiveness of LL97 in achieving the city and state's greenhouse gas emissions reduction targets, we propose the following refinements to the adjustments:

- **Limit the Number of Adjustments Allowed:** Similar to the one-time limit on filing report extensions under LL97, the number of adjustments a building owner can request should also be capped. For example, adjustments could be limited to one per compliance period (e.g., every five years) or a total cap on adjustments through 2050, ensuring adjustments remain a tool of last resort rather than a routine strategy.
- **Public Disclosure of Approved Adjustments:** Transparency is essential to upholding public trust, facilitating oversight, and generating accountability. We recommend that the DOB publish on a website all approved adjustments, including the applicant, building, type of adjustment, and justification for the adjustment.

#### (b) External Constraints

We commend the focus on ensuring compliance with the annual building emissions limits "to the maximum extent possible" in Section 103-12(b)(4). If implemented effectively, this approach appropriately avoids granting a full pass to buildings unable to fully meet the limits. The level of commitment to and prioritization of LL97 compliance in a building's technical explanation of previous and future efforts should be weighted heavily in the granting of their adjustment.

#### (c) Financial Constraints

- **Include Similar Accountability Measures:** We recommend that the filing requirements for Financial Constraints Adjustments include a similar technical explanation of previous and future efforts towards LL97 compliance as in the External Constraints Adjustments in Section 103-12(b)(4).
- **Strengthen Qualifying Standards:** The current qualifying standards for financial adjustments, which rely on a single metric per building type, are overly simplistic and prone to exploitation by owners seeking to delay necessary upgrades. We recommend implementing multiple qualifications per building type to more accurately assess an owner's ability to fund LL97 compliance. Strengthening these standards will enable the Department of Buildings (DOB) to better distinguish genuine financial hardship from cases where revenue may be underreported or expenses inflated.
- **Include Occupancy in Emissions Reports:** Similar to §103-12(a)(1)(iii) for not-for-profit healthcare facilities, we recommend requiring occupancy data (unit vacancy rates and duration of vacancies) in §103-12(c)(2) for financial

adjustment applications. Occupancy significantly impacts income-expense ratios and Debt-Service Coverage Ratio (DSCR), and accurate reporting would prevent manipulation through strategic vacancies to lower reported income. This data would enhance benchmarking and should inform qualifying standards in §3(iii)(c) and (d). We suggest applying the same verification and accuracy standards as those used for Building Area Measurements (BAM).

- **Publish Relevant Supporting Information:** During [the recent webinar](#) hosted by the Urban Green Council featuring the NYC Department of Buildings (DOB), DOB representatives emphasized collaborating with a working group to develop financial adjustments that are deemed "appropriate" and consistent with "industry best practices." We request for supporting documentation, including a list of the working group members and relevant technical studies, to be made available on the DOB's website and as an appendix to future rule proposals.

### § 3(iii)(a) Condominiums and Co-Ops

- **Qualify the Condos are Residential:** The text needs to differentiate between commercial condo agreements and residential for legal clarity.
- **Complete Evaluation of Building and Resident Finances:** The proposed metric does not take into account the full financial picture of the co-ops and condominiums, or residents, in question, and will not fully reflect the ability of those parties to pay for improvements. There should be multiple metrics that acknowledge the larger financial situation of the building and its residents. This will ensure that well-resourced buildings and residents do not use this metric as a loophole to avoid the reasonable improvements required by LL97. One possible loophole could be buildings intentionally holding open units rather than accepting new residents, thereby raising carrying costs without making improvements.
- **Do not encourage debt sheltering:** Debt incurred for building improvements that are not focused on improving energy efficiency or decarbonization should not be able to be used as a debt shelter to qualify for this adjustment.

### § 3(iii)(c) Buildings with an affordable housing regulatory agreement and buildings with no debt

- **Clarify language:** The proposed language is not clear whether or not buildings must have both no debt and affordable units we suggest the following minor text edit for clarity: "For buildings that are party to an affordable housing regulatory agreement and [buildings with] have no debt..."
- **No separate qualifying standard for mixed-rate residential buildings with some affordable units:** Financial adjustment availability should be eliminated for buildings party to affordable housing regulatory agreements such as the 421(a) or 485(x) programs. These properties already receive

public subsidies through tax breaks, even though their ability to produce substantial amounts of truly affordable housing has been recently called into question. For example, the presence of an affordable housing regulatory agreement and no debt does not, and should not preclude a mixed-rate multifamily building's ability to pay or their responsibility for emissions reductions.

### § 3(iii)(d) All Other Buildings

- **Do not encourage debt sheltering:** Debt incurred for building improvements that are not energy-focused should not be able to be used as a debt shelter from LL97 compliance. Rule language could be adjusted to: "For all other building types: the building's debt service coverage ratio as calculated pursuant to guidance issued by the department, is less than 1.15 and the debt has been incurred by prioritizing building energy improvements within the past 5 years."

### PROPOSED FEES ASSOCIATED WITH FILING OF EMISSION REPORTS

Proposed amendments to Section 101-03 of Subchapter A of Chapter 100 of Title 1 of the Rules of the City of New York.

- Fees should be updated to account for Administrative work required by the DOB to review reports under the recommendations we have given above and include a punitive percentage.