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5 Key Considerations as 1-Year Countdown Begins for Climate Mobilization Act

By [Raymond “Rusty” Pomeroy](#) and [Brian Diamond](#)

Here’s what building owners should know right now.

The COVID-19 pandemic has created myriad operational and financial issues for building owners, including increased costs due to safe reopening requirements, reduced income due to tenant defaults, reduced tenant demand for space, government restrictions on eviction proceedings and increased scrutiny from lenders. Building owners in New York City, though, have the added task of preparing for the coming implementation of the 2019 Climate Mobilization Act (the “CMA” or the “act”).

July 1 marked the one year away for the first deadline under the act—the deadline to submit applications for adjustments to a building’s statutory emissions limitations. As you prepare for this deadline and compliance with the Act, here are five things that building owners should be considering right now.

1. Applications for adjustment are due July 1, 2021.

Under the Act, building owners have an opportunity to apply to the Department of Buildings (DOB) for adjustments to statutory building emissions limits. As you may be aware, the Act provides for potential adjustments if there are legal or physical barriers to compliance, if installing the necessary energy efficiency retrofits would result in a financial hardship, if special circumstances regarding the building’s use or occupancy results in unusually high building energy use and for not-for-profit hospitals and health care facilities.

These applications for adjustment, with the required supporting documentation, must be submitted to DOB by July 1, 2021. While DOB has not yet released its application form, building owners should be carefully assessing whether they may qualify for any of the available adjustments and should already be assembling the supporting documentation for their applications.

For example, the adjustments for legal or physical constraints and financial hardship both require, among other things, that the building owner establish that it has (1) complied with the Act to the maximum extent practicable; (2) made a good-faith effort to purchase renewable energy or carbon offset credits; and (3) availed itself of all available city, state, federal, private and utility incentive programs for which it reasonably could participate. Similarly, the adjustment for high energy use buildings requires, among other things, that the building owner establish that the building is in compliance with the NYC energy conservation code in effect Jan. 1, 2015, and submit a detailed compliance plan including changes to building operations, management and potential alterations that will ensure compliance with the emissions limitations starting in 2030.

To make the required showing for these adjustment applications, building owners will need to have a keen understanding of their building's current energy use and what types, if any, of operational changes and/or building retrofits will be necessary for the building to comply with its emissions limitation. Building owners should already be asking their operational personnel and consultants key questions, including: How long will it take to implement such changes? How much will the changes cost? What is the availability and costs for the acquisition of renewable energy credits or carbon offsets and how do those costs compare to the costs of retrofits? What potential funding sources might be available, and how do I determine if I'm eligible?

2. Qualifying for an adjustment requires pursuing loan and grant opportunities.

To qualify for an adjustment to the buildings' statutory emissions limitation, the Act generally requires that building owners take advantage of available loan and grant opportunities for energy efficiency retrofits.

There are several opportunities available to building owners. For example, the primary, but not only, financing program available for building owners is the city's newly created Commercial Property Assessed Clean Energy (C-PACE) loan program. C-PACE, which was created as part of the CMA, is sponsored by the Mayor's Office of Sustainability and administered by the New York City Energy Efficiency Corporation (NYCEEC). Unfortunately, with just one year to go before applications for adjustments are due, NYCEEC has still not released eligibility guidelines or application materials.

Building owners should also note that there are additional funding sources to explore that may be available through the New York State Energy Research and Development Authority (NYSERDA), the U.S. Small Business Administration's Environmental Grants and Loans Program, the U.S. Department of Energy, utility providers and other programs.

Under the Act, it is up to the building owner to identify "all available city, state, federal, private and utility incentive programs related to energy reduction or renewable energy for which it reasonably could participate." Building owners should be investigating these programs and developing an understanding of the various requirements and application processes. It is important to note that building owners with current loans must also take care to ensure that their existing loan documents permit additional financing and understand the extent to which lender consent may be required.

3. The climate advisory board studies an emissions trading scheme.

The Act created a climate advisory board and tasked the board with, among other things, providing advice, guidance and recommendations to the Mayor's Office of Sustainability with regard to a potential citywide trading scheme for greenhouse gas emissions. The feasibility study for the trading scheme must be submitted to the Mayor and Speaker of the City Council no later than Jan. 1, 2021. If adopted, this trading scheme could create an efficient, market-based means of compliance with the Act's emissions limitations by allowing buildings below the emissions limitation to sell emissions credits to buildings that exceed the emissions limits.

The members of the advisory board were appointed by the mayor and City Council Speaker Corey Johnson in December 2019, and it is believed that the board has been meeting remotely during the pandemic to continue its work. These meetings, however, are not publicly noticed nor open to public participation, and this lack of transparency makes it difficult for the regulated community to understand what progress, if any, is being made on this important initiative.

4. The Department of Buildings expands with new office.

A new Office of Building Energy Emissions Performance within the DOB was created to oversee implementation of and administer the act. Pursuant to the act, the new office will have its own director, who must be a registered design professional, appointed by and reporting to the commissioner of DOB. With one year to go before the first CMA deadlines, it is uncertain if the DOB has appointed a director for the new office, nor has DOB issued any formal guidance to the regulated community regarding the application process.

Notwithstanding, DOB Commissioner Melanie La Rocca did recently announce the creation of eight new climate working groups to help develop best practices for building owners to comply with the act. The members of the new climate working groups represent energy efficiency and engineering expertise from government, utilities, the private sector and not-for-profits. Working groups were created in the following areas:

- **Building Technologies and Pathways (Multifamily Buildings)**

Focus: Improving building scale energy usage for multifamily buildings through retrofits, enforcement improvements and studying tenant energy use.

- **Building Technologies and Pathways (Commercial Buildings)**

Focus: Examine the impacts of tenant/owner structure, building typology and building electrification on energy usage and greenhouse gas emission reduction opportunities.

- **Carbon Accounting**

Focus: Recommend methodologies to calculate buildings' greenhouse gas emissions and identify the metrics to prove reliable and effective results.

- **Energy Grid**

Focus: Understand potential impact of a changing energy infrastructure on buildings and provide advice on how to navigate it.

- **Economic Impact**

Focus: Analyze the economic impact that achieving reduced energy and emissions may have on citywide financial growth, leasing agreements and operating costs.

- **Hospitals**

Focus: Address the unique energy demands of health care facilities and recommend solutions for compliance.

- **Communications**

Focus: Provide input on necessary outreach to educate building owners, designers and operators about requirements for compliance and create a transparent environment on new rules and regulations.

- **Implementation**

Focus: Provide input on practical realities of demonstrating compliance and achieving long-term goals of the mandate.

Recommendations from this advisory process are due by January 2023.

5. CMA deadlines have not been extended.

With one year to go before applications for adjustments are due to be submitted, there is no adjustment application form, no director for the office that will oversee implementation of the act, no eligibility criteria or application for the C-PACE loan program of which owners must avail themselves, and no agency guidance regarding the adjustment process, and the city continues to grapple with the historic impacts of the COVID-19 virus.

All of this uncertainty might lead one to believe that an extension of the application deadlines, and perhaps even of the building emissions limitations are warranted. While many building owners and organizations continue to push for extensions of the act's mandates, there doesn't appear to be any significant movement within the city to delay the act's implementation. As such, building owners should be prepared to submit applications for adjustment by the prescribed July 1, 2021, deadline, and to comply with the Act's building emissions limitations beginning in 2024.

Rusty Pomeroy is special counsel and ***Brian Diamond*** is co-chair of the real estate practice at Stroock

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