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Comments submitted by
Green Building Subcommittee of the Citizens Housing and Planning
Council
To the New York City Council
Environmental Protection Committee
Council Member James F. Gennaro, Chair
June 26, 2009 1:00 AM; Council Chambers City Hall

Proposed Int 476-A - By Council Members Mark-Viverito, Recchia Jr., Avella, Brewer, Fidler, Gentile, James, Liu, Martinez, Nelson, Seabrook, Weprin, White Jr., Garodnick, Lappin and Yassky - A Local Law to amend the administrative code of the city of New York, in relation to benchmarking the energy and water efficiency of buildings. Proposed Int 564-A - By Council Members Garodnick, Brewer, Fidler, Gonzalez, James, Koppell, Martinez, Sanders Jr., Seabrook, Weprin, White Jr., Gerson, Lappin. and Yassky - A Local Law to amend the administrative code of the city of New York, in relation to establishing a New York city energy code. Int 967 - By Council Members Gennaro, Brewer, Comrie, Dickens, Fidler, Garodnick, Gioia, James, Koppell, Lappin, Martinez, Mitchell, Palma, Recchia Jr., Reyna, Rivera, Stewart Weprin, Nelson, Liu and Yassky - A Local Law to amend the administrative code of the city of New York, in relation to requiring energy audits, retro-commissioning and retrofits of building systems. Int 973 - By Council Members Recchia, Jr., Comrie, Dickens, Fidler, Garodnick, Gioia, James, Lappin, Martinez, Mitchell, Nelson, Reyna, Rivera, Stewart, Liu and Yassky - A Local Law to amend the administrative code of the city of New York, in relation to upgrading lighting systems in existing buildings greater than 50,000 gross square feet.

The Citizens Housing and Planning Council (CHPC) strongly supports the goals of the City's Greener, Greater Buildings Plan and applauds this legislative initiative. CHPC has long been an advocate for green building technology, particularly in residential buildings, both to improve energy performance and promote a healthy environment. With its dense pattern of development and excellent public transit system, NYC is already energy efficient. However, much more can be done. The transformation of the built environment is essential if New York City is to achieve a higher level of energy efficiency, reduce carbon dioxide emissions and improve the environment for residents.

For all of these reasons, CHPC supports regulatory and legislative initiatives which remove barriers to green development and technology, encourage their widespread use and application, and create incentives to adapt NYC's older built environment to meet the needs of the 21st century.

While CHPC supports the goals of the proposed legislation, we are concerned about the many of the details of implementing them.

Our concerns include:

- The potential financial burden and lack of access to financing, especially for owners of medium sized residential buildings.
- The potential administrative burdens the regulations place on both owners and on government agencies, such as the Department of Buildings.
- The need to develop simple, consistent rules and procedures to ensure successful implementation of any new laws.

The legislation would govern the universe of buildings almost identically, regardless of their size and occupancy status. However, building operations vary widely, and energy uses are sometimes unique to specific uses, such as residential vs. institutional buildings, or the great variety of the use of interior space such as car parking, mechanical areas, and bike storage. The rules implementing the legislation should clearly delineate specific achievable energy savings goals based on *similar* buildings with similar uses and operations in NYC, while maintaining simplicity and consistency. Any subsequent rules and regulations should clearly define *similar* buildings to ensure ease of compliance.

The proposed Audits, Retro-Commissioning and Retrofits of Building Systems bill requires the owner to engage an energy professional to perform an audit, identify improvements, perform a cost analysis and certify that the building is in compliance after installation of the energy saving improvements. There are two concerns regarding this requirement.

First, since a qualified energy professional will be required to perform the audits, the bill, or certainly any subsequent rules, should specify the qualifications for these professionals. In addition there is a concern that sufficient numbers of such trained and qualified professionals may not be available in the time frame set out in the legislation. While this is most likely not an issue for larger property owners, smaller owners of individual buildings which are subject to the law may have a difficult time finding a qualified professional at a reasonable price.

Second, the projected cost savings, determined by dividing the cost of the investment by the annual energy savings, may not be enough of an incentive to encourage all building owners to comply with energy upgrades. CHPC recommends additional financial incentives in the form of real estate tax exemptions and low interest improvement loans from the City to encourage building owners to participate.

The Benchmarking Energy and Water Use bill requires building owners to annually collect and report energy and water usage at their expense. Requiring building owners to research and input the energy and water usage into an electronic database imposes an administrative burden. The need to collect this information directly from non-residential tenants complicates the task.

The direct upload provision referenced in the bill offers a practical way to collect the data directly from the utility companies. Since this system would provide accurate and timely reporting of this information which could then be better maintained and analyzed over time, we encourage the City to work closely with the utility companies to use such benchmarking tools, rather than asking individual building owners and their tenants to collect and input the information.

The proposed Energy Code will require the Department of Buildings to expand their overview of building renovations. Although there have been operational improvements in the Department of Buildings, this legislation will impose new and more complex technical requirements, expand the universe of buildings undergoing rehabilitation that will be subject to the new regulations, and increase administrative tasks required of the Department and the real estate community. CHPC is concerned that adequate resources and training are provided to the DOB to ensure that their staff can adequately enforce the new regulations.

The proposed legislation does not address existing regulatory impediments to green design. In addition to new legislation, an effort should be made to reform existing regulations to accommodate green development and technology. For example, photovoltaic panels are not considered a permitted height obstruction in current zoning regulations. Attached is list of regulatory impediments which we believe, if changed, will facilitate adoption of green technologies in New York City, with little or no additional cost to the City of New York.

Finally, the legislation does not address buildings less than 50,000 sq. ft., which constitutes much of the City's housing stock. While defining residential buildings by square footage rather than the number of units, makes estimating the scope of the legislations application difficult, we expect that it could cover buildings with 50 units or more. Based on that assumption, the 2008 NYC Housing and Vacancy Survey estimates that approximately 1.06 million or 32% of NYC's housing units are in buildings with 50 units or more. This means that 68% of the City's residential housing units or approximately 2.26 million are not covered by the legislation.

CHPC supports practical, financeable initiatives to improve energy performance in smaller buildings as well.

We encourage the Council to consider ways that financing the green rehabilitation of buildings in NYC can be made more attractive and accessible for a wider range of developers and owners; how the greatest amount of private investment can be leveraged for the smallest amount of public funding; and how we can achieve the maximum positive improvements to NYC's built environment.

Well established tools such as the J-51 tax exemption program and low interest rehabilitation loans should be adapted as much as possible to achieve the goals of transforming NYC's older housing stock to meet the objectives of the proposed legislation.

Thank you for the opportunity to submit our comments for your consideration. If you or your staff have any questions or require additional information please feel free to contact Jerilyn Perine, Executive Director of CHPC at jperine@chpcny.org

The Citizens Housing and Planning Council, founded in 1937 is a not for profit policy and research organization dedicated to improving housing and neighborhood conditions through the cooperative efforts of the public and private sector.

Green Housing Ideas Discouraged in NYC

'CONSERVE ENERGY BY OCCUPYING SMALLER SPACES'

a) It is actually illegal under the Multiple Dwelling Law for more than 3 unrelated people to share a housing unit

b) Multiple Dwelling Law, the Zoning Resolution and real estate tax exempt programs set out minimum Floor Area Ratios, which make it extremely difficult to design and build compact, flexible units for single people

'USE SUSTAINABLE ENERGY TECHNOLOGIES'

ConEd does not allow excess energy created by sustainable energy technologies to be fed back into the grid. This discourages the creation of onsite power generation from fuel cells, micro-turbines or co-generation - which uses exhaust heat from electricity for space heating or cooling.

'ALLOW A BUILDING TO BE COOLED NATURALLY IN THE SUMMER'

The Building Code only permits shading devices on a residential window to project 9 inches. To be energy efficient, shading devices need to project at least 2ft 6 inches, and more if the window is larger. The only way to permit shades of this size is to follow a complex process to apply to obtain revocable consent from DOT.

'INCREASE THE ENERGY EFFICIENCY OF HEATING SYSTEMS'

If a boiler room is placed on the roof of a building it allows for easy ventilation and combustion air supply which is extremely important for the boiler to be energy efficient (and safe). If it is placed in the cellar a boiler system will require electrically-powered ventilation. However, boiler rooms are not classed as 'permitted obstructions' on roofs according to The Zoning Resolution, therefore must be included in the building's Floor Area Ratio. This does not encourage this feature in NYC new construction.

'DISCOURAGE CAR USE WHERE DEVELOPMENTS ARE NEAR TO MASS TRANSIT'

Current parking requirements are governed by zoning districts therefore new residential developments are often required to create unnecessary parking even if they are situated right next to subway or rail stations. Providing shared parking areas also does not satisfy parking requirements in these zoning districts.



'REDUCE HEATING AND COOLING REQUIREMENTS BY BUILDING GREEN ROOFS'

Green roofs have been shown to reduce heat loss and energy consumption in the winter and keep a building cool in the summer and can naturally reduce storm-water run off and filter pollutants from rainwater. However, green roofs do not count towards open space requirements in the Zoning Resolution therefore making it more costly to include in development projects.

'MAKE IT EASY FOR PEOPLE TO BIKE TO WORK'

In order for a developer to provide a bicycle room in a commercial building - which would then grant it a certification point within the LEED (Leadership in Energy and Environmental Design) Green Building Rating System - a shower would also need to be provided, for the logical reason that people often want to change and shower after riding their bike to work. The Department of Buildings do not permit showers in commercial or manufacturing buildings.

"REDUCE THE VOLUME OF STORM-WATER BURDENING OUR SEWERS WITH THE INSTALLATION OF DRY-WELLS"

Drywells are not generally permitted by the Department of Environmental Protection, even when the soil would be ideal. The alternative is to detain the water and pump it to the city storm-water sewer. The tank and pumping system required is very large and also requires an emergency generator.

"USE PHOTO-VOLTAIC PANELS ON ROOFS TO GENERATE ELECTRICITY"

Photo voltaic panels are not a 'permitted obstruction' as defined in the Zoning Resolution. This makes it incredibly difficult to fit PV on any roof, given FAR limits. It also severely limits the location of the panels.

"INSTALL ENERGY-EFFICIENT WINDOWS TO IMPROVE ENERGY INSULATION"

In a historic district designated by the Landmarks Preservation Committee, the 'historical character' of the building and/or the historic district is the most important assessment of a new window type. It is extremely difficult to find a compromise between the most energy efficient windows, the requirements of the Landmarks Commission and the cost of the windows.

If you have any comments or some further suggestions for this feature, please email swatson@chpcny.org