

Outside Counsel

Expert Analysis

New York City's Greener, Greater Buildings Plan Becomes Law

Last week, on Dec. 28, 2009, Mayor Michael R. Bloomberg signed the Greener, Greater Buildings Plan, a group of four bills designed to reduce the city's carbon footprint by 5 percent. The legislation provides for the creation of a New York City Energy Conservation Code, the benchmarking of water and energy use performance, the upgrading of lighting during major renovations, and the conducting of energy audits and retro-commissioning. The New York City Council passed the legislation on Dec. 9, 2009. This article offers a summary of the legislation.¹

Energy Conservation Code

Intro 564A creates the first New York City Energy Conservation Code (NYCECC) to ensure compliance with the New York State Energy Code in New York City ("Code"). It also requires, with some exceptions, all renovation projects to meet the Code's energy efficiency requirements by closing a loophole in the Code that, essentially, exempted renovations in existing buildings where less than 50 percent of the building's systems or subsystems were replaced.² The practical effect of the NYCECC is that now all plans for new construction and renovation projects requiring building permits must be analyzed for energy efficiency and certified as in compliance with the NYCECC by the applicants.

Applicability. The NYCECC applies to new construction and renovations of residential, mixed-use and commercial buildings, with the exception of the installation of minor energy



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efficient measures such as storm windows and minor construction that does not expose the building envelope.³ Some notable exemptions to the NYCECC are buildings that use small amounts of energy or contain no conditioned space, buildings whose energy usage is entirely supplied from renewable energy sources,

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historic buildings, and non-residential farm buildings.⁴

Demonstration of Compliance. In order to demonstrate compliance, the NYCECC requires a professional statement, an energy analysis, and supporting documents to be submitted with all building permit applications or permit applications related to a renovation project.⁵

1. **Professional Statement.** When submitting a permit application for new construction or a renovation project, the registered design professional or lead energy professional filing such application must provide, sign and seal the following statement: "To the best of my knowledge, belief and professional judgment, these plans and specifications are

in compliance with the New York City Energy Conservation Code."⁶ If the project is exempt from the NYCECC's requirements, the design professional must indicate on the drawings that the project is exempt and cite the code section allowing exemption.

2. **Energy Analysis.** The registered design professional or lead energy professional must submit an energy analysis within the drawing set included with the initial application, which analysis demonstrates how the project complies with the NYCECC.⁷ The energy analysis must include the envelope, mechanical, service water heating, and lighting and power systems, regardless of how the project is divided into separate jobs for filing or other purposes. The energy analysis should be updated throughout the construction when substitutions are made or plans are revised, and NYCECC compliance must consistently be demonstrated throughout the project. An energy analysis is not required for any work not required to have a permit pursuant to the New York City Building Code.

3. **Supporting Documentation.** The approved construction documents for any project must demonstrate conformance of such approved drawings with the energy analysis for every element of the energy analysis.⁸ In addition, the documents must also demonstrate conformance with any mandatory requirements of the NYCECC. Supporting documentation is not required for any work not required to have a permit pursuant to the New York City Building Code.

Benchmarking

The Benchmarking Law requires owners of all buildings exceeding 50,000 gross square feet to input and submit information to the U.S. Environmental Protection Agency Energy Star benchmarking tool and any complementary interface designated by the New York City's

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