

**LOCAL LAWS  
OF  
THE CITY OF NEW YORK  
FOR THE YEAR 2009**

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**No. 84**

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Introduced by Council Members Mark-Viverito, the Speaker (Council Member Quinn), Recchia Jr., Avella, Brewer, Fidler, Gentile, James, Liu, Nelson, Seabrook, Weprin, White Jr., Garodnick, Lappin, Yassky, Sears, Mendez, de Blasio, Katz, Mitchell, Vann, Gioia, Vacca, Vallone Jr., Jackson, Ferreras, Koppell, Comrie, Barron, Arroyo, Crowley, Gennaro, Mealy and Reyna.

**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.**

*Be it enacted by the Council as follows:*

Section 1. Chapter 3 of title 28 of the administrative code of the city of New York is amended by adding a new article 309 to read as follows:

***ARTICLE 309***

***BENCHMARKING ENERGY AND WATER USE***

***§ 28-309.1 General.*** *The energy and water use of city buildings and covered buildings shall be benchmarked in accordance with this article.*

***§ 28-309.2 Definitions.*** *As used in this article, the following terms shall have the following meanings:*

***BENCHMARK.*** *To input and submit to the benchmarking tool the total use of energy and water for a building for the previous calendar year and other descriptive information for such building as required by the benchmarking tool.*

***BENCHMARKING TOOL.*** *The internet-based database system developed by the*

*United States environmental protection agency, and any complementary interface designated by the office of long-term planning and sustainability, to track and assess the energy and water use of certain buildings relative to similar buildings.*

**CITY BUILDING.** *A building that is more than 10,000 gross square feet, as it appears in the records of the department of finance, that is owned by the city or for which the city regularly pays all or part of the annual energy bills, provided that two or more buildings on the same tax lot shall be deemed to be one building.*

*Exception: The term “city building” shall not include:*

- 1. Any building not owned by the city in which the city is a tenant and for which the city does not pay all the energy bills;*
- 2. Any building owned by the city that participates in the tenant interim lease apartment purchase program; or*
- 3. Any building owned by the city that (i) is 50,000 gross square feet or less, as it appears in the records of the department of finance, and (ii) participates in a program administered by the department of housing preservation and development.*

**COVERED BUILDING.** *As it appears in the records of the department of finance: (i) a building that exceeds 50,000 gross square feet, (ii) two or more buildings on the same tax lot that together exceed 100,000 gross square feet, or (iii) two or more buildings held in the condominium form of ownership that are governed by the same board of managers and that together exceed 100,000 gross square feet.*

*Exception: The term “covered building” shall not include:*

- 1. Any building that is a city building.*

2. *Any building that is owned by the city.*
3. *Real property classified as class one pursuant to subdivision one of section 1802 of the real property tax law.*

**DATA CENTER.** *A room or rooms used primarily to house high density computing equipment, such as server racks, used for data storage and processing.*

**DWELLING UNIT.** *A single unit consisting of one or more habitable rooms, occupied or arranged to be occupied as a unit separate from all other units within a building, and used primarily for residential purposes and not primarily for professional or commercial purposes.*

**ENERGY.** *Electricity, natural gas, fuel oil and steam.*

**OWNER.** *The owner of record, provided that “owner” shall be deemed to include: (i) the net lessee in the case of a building subject to a net lease with a term of at least forty-nine years, inclusive of all renewal options, (ii) the board of managers in the case of a condominium, and (iii) the board of directors in the case of a cooperative apartment corporation.*

**TENANT.** *Any tenant, tenant-stockholder of a cooperative apartment corporation, condominium unit owner or other occupant.*

**§ 28-309.3 Benchmarking required for city buildings.** *No later than May 1, 2010, and no later than every May first thereafter, any city building shall be benchmarked by the agency or entity primarily responsible for the management of such building, in coordination with the department of citywide administrative services with respect to energy use, and with the department of environmental protection with respect to water use. Benchmarking of water use shall not be required unless the building was equipped*

*with automatic meter reading equipment by the department of environmental protection for the entirety of the previous calendar year. The city shall maintain such documents as the department determines are necessary for the purpose of carrying out the provisions of this article.*

**§ 28-309.4 Benchmarking required for covered buildings.** *The owner of a covered building shall annually benchmark such covered building no later than May 1, 2011, and no later than every May first thereafter. Benchmarking of water use shall not be required unless the building was equipped with automatic meter reading equipment by the department of environmental protection for the entirety of the previous calendar year. The owner or the owner's representative performing the benchmarking shall consult with the operating staff of the building, as appropriate.*

**§ 28-309.4.1 Obligation to request and to report information.** *Where a unit or other space in a covered building, other than a dwelling unit, is occupied by a tenant and such unit or space is separately metered by a utility company, the owner of such building shall request from such tenant information relating to such tenant's separately metered energy use for the previous calendar year and such tenant shall report such information to such owner.*

**§ 28-309.4.1.1 Owner solicitation of tenant information.** *Such owner shall request information relating to such tenant's separately metered energy use for the previous calendar year no earlier than January first and no later than January thirty-first of any year in which the owner is required to benchmark such building. The office of long-term planning and sustainability may require that such owner provide such tenant with a form designated by the office of long-term*

*planning and sustainability to report such information.*

**§ 28-309.4.1.2 Tenant reporting of information.** *Such tenant shall report information relating to such tenant's separately metered energy use for the previous calendar year no later than February fifteenth of any year in which the owner is required to benchmark such building. Such information shall be reported in a form and manner determined by the office of long-term planning and sustainability.*

**§ 28-309.4.1.3 Provision of information prior to vacating a unit or other space.** *Where such owner receives notice that such tenant intends to vacate such unit or other space before reporting information in accordance with sections 28-309.4.1 and 28-309.4.1.2, such owner shall request information relating to such tenant's energy use for any period of occupancy relevant to such owner's obligation to benchmark. Any such tenant shall report such information to the owner of such building prior to vacating such unit or other space or, if such information is not available prior to vacating such unit or other space, as soon as practicable thereafter, regardless of whether such owner has requested information pursuant to this section. Such information shall be reported in a form and manner determined by the office of long-term planning and sustainability.*

**§ 28-309.4.1.4 Continuing obligation to benchmark.** *The failure of any or all tenants to report the information required by sections 28-309.4.1, 28-309.4.1.2, and 28-309.4.1.3 to the owner shall not relieve such owner of the obligation to benchmark pursuant to this article, provided that such owner shall not be required to benchmark such information not reported by a tenant unless*

*otherwise available to such owner.*

**§ 28-309.4.2 Preservation of documents, inspection, and audit.** *Owners of covered buildings shall maintain such records as the department determines are necessary for carrying out the purposes of this article, including but not limited to energy and water bills and reports or forms received from tenants. Such records shall be preserved for a period of three years, provided that the commissioner may consent to their destruction within that period or may require that such records be preserved longer than such period. At the request of the department, such records shall be made available for inspection and audit by the department at the place of business of the owner or at the offices of the department during normal business hours.*

**§ 28-309.4.3 Violations.** *It shall be unlawful for the owner of a covered building to fail to benchmark pursuant to section 28-309.4. The commissioner shall classify such violation as a lesser violation.*

**§ 28-309.5 Direct upload.** *Information shall be directly uploaded to the benchmarking tool in accordance with the following:*

**§ 28-309.5.1 Direct upload by a utility company or other source.** *The office of long-term planning and sustainability shall encourage and facilitate any utility company or any other source authorized by the office of long-term planning and sustainability to upload directly to the benchmarking tool, as soon as practicable, information necessary to benchmark a building. Where information is uploaded directly to the benchmarking tool by a utility company or other authorized source, owners and tenants shall not be obligated to request and report such information pursuant to section 28-309.4.1.*

**§ 28-309.5.2 Direct upload by the department of environmental protection.** *The department of environmental protection shall upload directly to the benchmarking tool information on water use at all buildings that were equipped with automatic meter reading equipment by the department of environmental protection for the entirety of the previous calendar year and that are subject to the benchmarking requirements of this article.*

**§ 28-309.6 Suspension.** *The director of the office of long-term planning and sustainability may suspend all or part of the requirement to benchmark pursuant to this article upon a written finding that a technological deficiency in the benchmarking tool precludes compliance with this article. The director of the office of long-term planning and sustainability may lift all or part of any such suspension upon a written finding that such deficiency has been corrected. The office of long-term planning and sustainability shall notify the speaker of the city council, the department, the department of citywide administrative services, the department of environmental protection and the department of finance promptly upon issuing a suspension or lifting a suspension pursuant to this section.*

**§ 28-309.7 Notification and transmission of information.** *The department of finance shall:*

- 1. Annually notify owners of covered buildings of their obligation to benchmark pursuant to section 28-309.4, provided that the failure of the department of finance to notify any such owner shall not affect the obligation of such owner to benchmark pursuant to such section.*
- 2. Notify owners of covered buildings of any suspension or lifting of a suspension*

*pursuant to section 28-309.6.*

3. *Make available to the department information regarding owners of covered buildings for which no benchmarking information was generated by the benchmarking tool.*

**§ 28-309.8 Disclosure.** *The department of finance shall make information generated by the benchmarking tool available to the public on the internet no later than September 1, 2011, and no later than every September first thereafter for city buildings, no later than September 1, 2012, and no later than every September first thereafter for covered buildings whose primary use is not residential, as determined by the department of finance, and no later than September 1, 2013, and no later than every September first thereafter for covered buildings whose primary use is residential, as determined by the department of finance. Such information shall include, but need not be limited to: (i) the energy utilization index, (ii) the water use per gross square foot, (iii) where available, a rating that compares the energy and water use of the building to that of similar buildings, and (iv) a comparison of data across calendar years for any years such building was benchmarked. Information generated by the benchmarking tool for the 2009 calendar year for city buildings, for the 2010 calendar year for covered buildings, and for the 2011 calendar year for covered buildings whose primary use is residential, as determined by the department of finance, shall not be disclosed.*

*Exception: Ratings generated by the benchmarking tool for a covered building that contains a data center, television studio, and/or trading floor that together exceed ten percent of the gross square footage of any such building shall not be disclosed until the office of long-term planning and sustainability determines that the benchmarking*



*tool can make adequate adjustments for such facilities. When the office of long-term planning and sustainability determines that the benchmarking tool can make such adjustments, it shall report such determination to the mayor and the speaker of the city council. Until such determination is made, the office of long-term planning and sustainability shall report biennially to the mayor and the speaker of the city council that the benchmarking tool is unable to make such adjustments.*

**§ 28-309.9 Report.** *No later than December 31 of 2011, 2012 and 2013, respectively, the office of long-term planning and sustainability shall prepare, submit to the mayor and the speaker of the city council, and post on the internet a report reviewing and evaluating the administration and enforcement of this article and analyzing data obtained from the benchmarking tool. Such report shall contain information regarding: (i) the energy and water efficiency of buildings in the city, (ii) the accuracy of benchmarked data and whether there is a need to train and/or certify individuals who benchmark, (iii) compliance with the requirements of this article, (iv) any administrative and legislative recommendations for strengthening the administration and enforcement of this article, (v) the effectiveness of the benchmarking tool in accounting for New York city conditions, including, but not limited to, high density occupancies, use of steam, large building size, and specific high-energy uses such as data centers, television studios, and trading floors, and (vi) such other information and analyses as the office of long-term planning and sustainability deems appropriate.*

**§ 28-309.10 Rules.** *The department, the department of finance and the office of long-term planning and sustainability may promulgate such rules as deemed necessary to carry out the provisions of this article.*

§ 2. This local law shall take effect immediately.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s:

I hereby certify that the foregoing is a true copy of a local law of The City of New York,  
passed by the Council on .....December 9, 2009..... and approved by the Mayor  
on .....December 28, 2009.....

MICHAEL M. McSWEENEY, City Clerk Clerk of the Council.

CERTIFICATION PURSUANT TO MUNICIPAL HOME RULE §27

Pursuant to the provisions of Municipal Home Rule Law §27, I hereby certify that the enclosed  
Local Law (Local Law 84 of 2009, Council Int. No. 476-A) contains the correct text and:

Received the following vote at the meeting of the New York City Council on December 9, 2009:  
50 for, 0 against, 0 not voting.  
Was signed by the Mayor on December 28, 2009  
Was returned to the City Clerk on December 28, 2009

JEFFREY D. FRIEDLANDER, Acting Corporation Counsel.