New York City to Grade Buildings on Energy Efficiency Beginning 2020

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On January 8, 2018, New York City Mayor Bill de Blasio approved Local Law 33 of 2018, the latest initiative to reduce greenhouse gas emissions and increase the energy efficiency of large and mid-sized buildings. Beginning in 2020, city-owned buildings larger than 10,000 square feet and all other buildings exceeding 25,000 square feet will be required to display their energy efficiency grade near each public entrance.[1] Although other cities and states have adopted similar regulations requiring certain property owners to disclose energy usage information to prospective purchasers and tenants,[2] New York City will be the first to require buildings to publicly post this information on-site.

Local Law 33 of 2018 expands upon Local Law 84 of 2009, which presently requires that city buildings exceeding 10,000 square feet and other buildings exceeding 25,000 square feet must submit annual energy and water consumption benchmark data.[3] Based upon the data provided by owners, buildings are placed into one of 21 different groups according to a property's primary use[4] and subsequently assigned a score by the Energy Star program corresponding to the building's energy usage as compared to its nationwide peers.[5] Specifically, the Energy Star score is calculated by first examining the actual energy usage of a building compared to its expected usage. The expected energy usage is calculated through an algorithm intended to account for many variables, including building use(s), size, business activity hours, number of workers or residents, and the climate in which it is located.[6] This ratio of actual versus expected usage, known as the efficiency ratio, is then plotted on a nationwide basis for all buildings within a particular use group.[7] A median score is established, and each building is then given an Energy Star score ranging from 1 – 100, where the score corresponds to the building's efficiency ratio percentile performance relative to its peers (i.e. a building with an Energy Star score of 65 means it is performing better than 65% of its use group peers nationwide).[8] Although these benchmarked buildings' Energy Star scores are now available online, Local Law 33 will assign letter grades for each building based on specific ranges of the Energy Star percentile scores and then require that the owner post the Energy Star score and associated grade at the building entrances.

Local Law 33 provides that energy efficiency grades are to be assigned as follows:

1. If the Energy Star score of a building is equal to or greater than 90, the energy efficiency grade shall be "A";
2. If such score is equal to or greater than 50 but less than 90, the energy efficiency grade shall be "B";
3. If such score is equal to or greater than 20 but less than 50, the energy efficiency grade shall be "C"; and
4. If such score is less than 20, the energy efficiency grade shall be "D".

Notably, a building can only receive a grade of "F" if it fails to submit the benchmarking data. Certain types of buildings are exempt from the grading requirement if they contain data centers, television studios, and/or trading floor area that comprise more than 10% of the floor space. For those exempt buildings, a grade of N is assigned and the building is not required to post the grade. [9]

By providing the public with a building's energy usage information in the form of a grade intended to be easily understood, the market is expected to reward buildings that achieve superior grades with higher sale prices and rents and thereby incentivize owners to further increase their property's efficiency.[10] Indeed, evidence suggests that today's purchasers and tenants significantly value energy efficiency when evaluating prospective locations. Studies regarding a European Union initiative that similarly requires owners to disclose energy efficiency to prospective purchasers and renters found that homes which were more energy efficient sold at price premiums of up 10%.[11] Domestically, California homes were found to sell for an average price premium of 9% over comparable but less efficient homes.[12] In New York, the Empire State Building experienced significantly increased commercial interest after a $550 million retrofit to upgrade efficiency.[13] Given the comparatively high energy costs in New York City, this prioritization of energy efficiency is particularly relevant.

While many support the intent of the law, there are some legitimate concerns regarding the grading system. Given the broad range of scores assigned a "B" grade under the new law, many buildings will find themselves with little opportunity to increase their letter grade.[14] This is particularly noteworthy because the City's most recent benchmarking analysis found that the median Energy Star score for large multifamily buildings in New York City subject to Local Law 84 benchmarking was 60 in 2015, and the median score for large office buildings was 75 in 2015.[15] Accordingly, this means that more than half the large multifamily and office buildings will have grades of at least "B". Similarly, some have noted that the scoring system has not been adequately tested in New York City.[16] Still others have complained that the grading does not reflect the fact that each building's energy usage is largely dependent upon its tenants' usage, and scoring properties based on how they compare to "peers" in broad, generic groupings is meaningless.[17] Finally, the system may also need to provide exemptions for those buildings with historical designations that may be prohibited from completing certain upgrades.[18]

Regardless of the potential apprehensions regarding the new grading system, property owners would be wise to closely monitor their building's Energy Star scores under the Local Law 84 benchmarking. For those buildings looking to raise their score before grading begins, increase public perception, or simply lower operating costs, now is the time to consider upgrades to increase efficiency before the volume of other property owners seeking to do the same drives up contractor pricing. For many energy upgrades, owners may qualify for financing or other incentives through the local, state, or federal government. Given the ever growing appetite for energy efficient properties, improvements now are likely to be rewarded once the grading initiative goes into effect in 2020.

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[1] N.Y.C. ADMIN. CODE §28-309.12 (2018).

[2] *See, e.g.*, CAL. CODE REGS. tit. 20, § 1680-84 (2018); KAN. STAT. ANN. § 66-1228 (2017); WASH. REV. CODE § 19.27A.170 (2017); AUSTIN, TEX., CODE OF ORDINANCES §§ 6-7-12, 6-7-32 (2017); BERKELEY, CAL., MUNICIPAL CODE § 19.81.040(C) (2018).

[3] N.Y.C. ADMIN. CODE §28-309.1-11 (2018). The benchmarking requirement originally applied only to city property and other buildings exceeding 50,000 square feet, but the threshold was since lowered and now requires buildings exceeding 25,000 square feet to submit annual benchmarks beginning in 2018. *Id.* at §§28-309.2 (as amended by N.Y.C. Local Law 133 of 2016).

[4] *See ENERGY STAR Score*, ENERGY STAR, https://portfoliomanager.energystar.gov/pdf/reference/ENERGY%20STAR%20Score.pdf (last visited February 12, 2018); *Property Types Eligible to Receive a 1-100 ENERGY STAR Score*, ENERGY STAR, https://www.energystar.gov/buildings/facility-owners-and-managers/existing-buildings/use-portfolio-manager/identify-your-property-type-0 (last visited February 12, 2018).
[5] *See ENERGY STAR Score, supra* note 4. Buildings with mixed uses across two or more categories have their actual and expected usage data adjusted proportionally to account for such uses. *Id.*
[6] *Id*.
[7] *Id*.
[8] *Id*.
[9] N.Y.C. ADMIN. CODE §28-309.12.1 (2018).
[10] *Hearing on Intro 54-A, Intro 717-A, Intro 880-A, Intro 978-A, Intro 1629-A, Intro 1632-A and Intro 1653-B Before the Comm. on Env't Protection*, N.Y.C. City Council (Dec. 18, 2017) (statement of Council Member Garodnick).
[11] *See* Sigurd Næss-Schmidt et al., *Do Homes with Better Energy Efficiency Ratings Have Higher House Prices?*, COPENHAGEN ECONOMICS (Nov. 18, 2015), https://ens.dk/sites/ens.dk/files/Energibesparelser/bilag_-_do_homes_with_better_energy_efficiency_ratings_have_higher_house_prices_oekonometrisk_tilgang.pdf. *See also* Shailendra Mudgal et al., *Energy Performance Certificates in Buildings and Their Impact on Transaction Prices and Rents in Selected EU Countries*, BIO INTELLIGENCE SERVICE and INSTITUTE FOR EUROPEAN ENVIRONMENTAL POLICY (April 19, 2013), https://ec.europa.eu/energy/sites/ener/files/documents/20130619-energy_performance_certificates_in_buildings.pdf.
[12] Nils Kok & Matthew E. Kahn, *The Value of Green Labels in the California Housing Market: An Economic Analysis of the Impact of Green Labeling on the Sales Price of a Home,* (July 2012), http://immobilierdurable.eu/images/2128_uploads/Kok_green_logements_en_calif.pdf.
[13] *See* Julie Strickland, *Empire State Building Retrofit Slashes $2.3M in Costs*, THE REAL DEAL (June 24, 2013), https://therealdeal.com/2013/06/24/empire-state-building-slashes-2-3m-in-costs/.
[14] *A Failing Grade for the City's New Energy Efficiency Scoring System*, CRAIN'S NEW YORK BUSINESS (Jan 16, 2018 12:01 AM), http://www.crainsnewyork.com/article/20180116/OPINION/180119939/editorial-a-failing-grade-for-the-citys-new-energy-efficiency-scoring-system.
[15] *New York City's Energy and Water Use 2014 and 2015* Report, URBAN GREEN COUNCIL (Oct. 2017), http://www.nyc.gov/html/gbee/downloads/pdf/UGC-Benchmarking-Report-101617-FINAL.pdf.
[16] *Hearing on Intro 1630, Intro 1639, Intro 1632, Intro 1644, and Intro 1651 Before the Comm. on Env't Protection*, N.Y.C. City Council (June 27, 2017) (statement of Adriana Espinoza, Manager, New York City Program, New York League of Conservation Voters).
[17] *Hearing on Intro 1630, Intro 1639, Intro 1632, Intro 1644, and Intro 1651 Before the Comm. on Env't Protection*, N.Y.C. City Council (June 27, 2017) (statement of Building Owners and Managers Association of Greater New York).
[18] *Id*.