RSA

RENT STABILIZATION ASSOCIATION • 123 William Street • New York, NY 10038

RENT STABILIZATION ASSOCIATION COMMENTS
ARTCILE 320 RULES

October 24, 2023

The Rent Stabilization Association of New York City represents 25,000 diverse owners and managers who collectively manage more than one million apartments in every neighborhood and community throughout the city. We thank the Department for giving us the opportunity to submit these comments on amendments to section 103-14 that establish penalties for noncompliance with Article 320 of Chapter 3 of Title 28 of the New York City Administrative Code requiring annual greenhouse gas emissions limits for buildings as established by Local Law 97, the New York City Climate Mobilization Act.

First, we would like to commend the agency for providing owners with an ability to demonstrate an intent to comply with the law while also recognizing that financial and logistical complications that may make meeting the initial 2024 targets unfeasible. By acknowledging good faith efforts for the 2024-2029 compliance period and mitigating penalties for those owners who are working towards meeting 2024 levels but falling short on achieving the 2024 goals, whether due to finances or timing, the agency has offered a rational pathway to ensure that limited financial resources will not be redirected to penalties and diverted from efforts to meet environmental targets.

Demonstrated by complying with Benchmarking (Local Law 84), Audits and Retrocommissioning (Local Law 87), and meeting lighting upgrades and submetering requirements (Local Law 88), good faith efforts to achieve penalty mitigation also require owners to create a plan and meet at least one additional criterion including, but not limited to, approved permits, contracts with Con Ed, plans for net zero carbon emissions by 2050 or application for financial hardship adjustment. This measure is significant and, while providing some relief, still will require extensive investment in short order.

But more action is needed by the city to help owners meet threshold requirements, particularly by establishing programs to provide financing to meet the targets. A limited J-51 program passed the Legislature and currently awaiting action by the Governor might assist some owners, but due to its limited applicability related to restrictive assessment and affordability levels this is not a viable program for most buildings to achieve Local Law 97 compliance. Further expansion of J-51 is needed to provide financing resources to undertake energy efficiency upgrades to meet 2024 and 2030 targets. It is important to understand that many rent regulated buildings will not be able to take on any additional debt because they already have a negative cash flow.

In addition, the city should consider other financing options beyond what is currently offered through the Accelerator such as tax credits and low-cost loans because demonstrating good faith will be difficult if there is no meaningful assistance to help buildings meet targets. While it is recognized that most buildings comply with the 2024 standards, it needs to be said that those buildings not yet meeting the standards are those most likely unable to financially do so. Given the current banking climate in which heightened lender standards and rising interest rates make it increasingly more difficult for the real estate sector to access capital, expanded Accelerator opportunities and innovative programs may become a primary means for buildings to obtain the resources to achieve compliance.

While these proposed rules begin to acknowledge the enormous financial burdens that compliance demands and recognize that there may be unexpected or unforeseen circumstances that warrant penalty mitigation, those exceptions are quite limited and may need to be revisited at some future date. It is also significant that limits for future compliance periods, calculation clarifications and certain exemptions and allowances were included in these rules, and we urge the agency to continue to provide compliance guidance and devise additional incentives, like the credit for early electrification work, for owners to meet future year limits.

Accordingly, the RSA supports these proposed rules as an initial undertaking and urges the agency to continue evaluating the economic impact of the law and exploring ways to assist owners in meeting emission targets.