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## **MHH Condo/Co-op Digest**

**Vol. X, August 2024**

*This newsletter explores the emerging legal topics and issues affecting the condominium and cooperative services industry. Thought-leading attorneys from Moritt Hock & Hamroff's Condominium and Cooperative Services Practice Group share their legal insight, experience and best practices on this rapidly evolving area of law.*

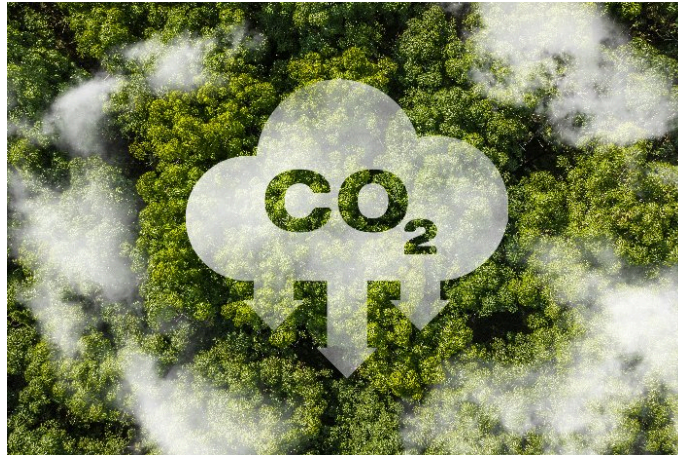
*As always, if you have any questions regarding the matters raised in this Digest, please feel free to contact Bill McCracken of our New York City office at [wmccracken@moritthock.com](mailto:wmccracken@moritthock.com), or your regular contact at the firm.*

## About The Group

Moritt Hock & Hamroff's Condominium and Cooperative Services Practice Group represents clients in all aspects of condominium and cooperative law.

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### **New York City Releases "Article 320 Info Guide" for Buildings Subject To Local Law 97**

As the May 1, 2025 deadline for the first Local Law 97 filing approaches, New York City continues to release more guidance and rulemaking to assist building owners to understand how to comply with the law.

On July 24, 2024, the NYC Department of Buildings released a comprehensive 98-page "[Article 320 Info Guide](#)" explaining the compliance pathways for Article 320 buildings. As explained in our [May 2024 Digest](#), "Article 320" buildings (defined in Article 320 of Title 28 of the NYC Administrative Code) mostly consist of all of the large market-rate buildings with no more than 35% of units that are rent regulated, and must meet the prescribed emissions limits and file reports **annually** beginning on May 1, 2025.

Most co-ops and condos that must comply with Local Law 97 are classified as Article 320 buildings, so the newly-released Info Guide will be particularly helpful for them.

The Info Guide is divided into sections on (I) background, (II) Article 320 compliance pathways, (III) reporting and extension request, (IV) emissions calculations, (V) deductions, and (VI) mediated resolutions. There is significant useful information provided on each topic – some of which is brand new, but much of which is consolidated and synthesized from multiple prior releases.

For example, some buildings may wish to challenge their status as a covered building subject to Local Law 97. In Section II, the Article 320 compliance pathways section, there is information provided as to how to challenge a designation of a building as subject to Article 320. There is also information regarding certain statutory exceptions and special cases for otherwise Article 320 buildings.

Section III reveals that DOB will accept deadline extension requests beginning April 1, ahead of the May 1 deadline. There is also a 30-day grace period for filings before any penalties are incurred, so the May 1 annual deadline is effectively a June 30 annual deadline. After that date, however, buildings will incur a \$0.50/sf penalty for each month that has passed since May 1. Given that all covered buildings are over 25,000 square feet, this means that **the penalty for late filings is a minimum of \$12,500 per month**. Get those filings or extension requests in on time!

Section III also discusses special reporting procedures for complex building and reporting types such as condominiums, multiple buildings on one lot, and buildings that share energy service.

Section IV, covering emissions calculations, summarizes how to calculate a building's emissions limits, and includes a link to a [recent webinar](#) hosted by DOB explaining the calculation process. The Info Guide makes passing reference to two significant policy changes regarding emissions coefficients being implemented through regulation. First, when Local Law 97 was originally enacted, the stated policy goal for the law was "80x50" (i.e., reducing NYC emissions by 80% by 2050). That policy goal has since been revised to "net zero" by 2050, so now Article 320 buildings must target eliminating **all** carbon emissions by 2050. Second, the Info Guide notes that regulations reflect that the emissions coefficients for electricity and district steam decrease beginning in 2030. This reflects a bet by City policymakers that the State of New York and Con Ed, respectively, will be successful in their ongoing efforts to bring more renewable energy sources online and effectively "green the grid." Suffice it to say, it remains to be seen whether, and how soon, those efforts will be. In any event, buildings will be increasingly rewarded with more forgiving emissions standards if they are using electricity and district steam as opposed to natural gas or fuel oil.

Section IV also contains specific and concrete guidance needed for buildings to prepare and file the actual annual emissions reports, such as how to select a building's typology and how to calculate a building's "gross floor area."

Section V discusses potential deductions from reported emissions. These are the oft-discussed RECs and offsets, but the Info Guide notes that we await future rulemaking to understand the full scope of these potential compliance tools.

Section V also discusses “beneficial electrification,” which is a concept included in the original statute and previous rulemaking. Beneficial electrification incentivizes buildings to electrify their buildings on more aggressive timelines than strictly required by Article 320, by providing that any building that replaces existing fossil fuel (or district steam) equipment with electricity-using equipment receive a credit which can be applied in future years to deduct from stricter emissions limits. This is done by multiplying the electrified component’s energy use by a negative emissions coefficient and deducting that energy use from the building’s total emissions.

This deduction is only available during the 2024-2029 reporting period. On top of that, the negative coefficient is **doubled** prior to 2027, meaning the sooner a building introduces (wholly or partially) electrifies their building, the more future savings they can generate. The Info Guide contains new and helpful analysis as to how the beneficial electrification program may work in practice.

Section VI covers mediated resolutions. We discussed mediated resolutions, good faith efforts, and decarbonization plans in the [November 2023 edition of the Digest](#). Much of what is provided in the Info Guide repeats and repackages information shared in the 2023 rulemaking, but the Info Guide does make more apparent that a Departmental goal is to steer buildings away from formal adjudications at City OATH hearings (which are relatively resource intensive), and into mediated resolution programs administered by DOB.

The Info Guide notes that preparing a “good faith effort” application will likely take “at least 6-8 months” to prepare, since the rules require buildings to apply for permits, request utility letters, and generate LL84 and LL88 reports. In other words, if a building intends to seek a reduction of its fines by demonstrating “good faith efforts” to comply, they cannot expect to do so in a week or even a month.

The Info Guide also acknowledges that we are still awaiting guidance from DOB on “hardship” applications to reduce penalties. That forthcoming rule will likely be a significant resource for buildings struggling to comply with Local Law 97, especially for owner-occupied co-ops and condos. It is unclear when the rule will be available, but it should be released well in advance of next year’s May 1, 2025 deadline.

The foregoing summary only scratches the surface of the topics addressed in the Article 320 Info Guide. Even though, as noted above, much of the information has previously been available in different sources, by synthesizing all of the available guidance into a single comprehensive package, we suspect that this Info Guide will become the go-to, one-stop resource for Article 320 buildings seeking answers to Local Law 97 compliance questions.

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