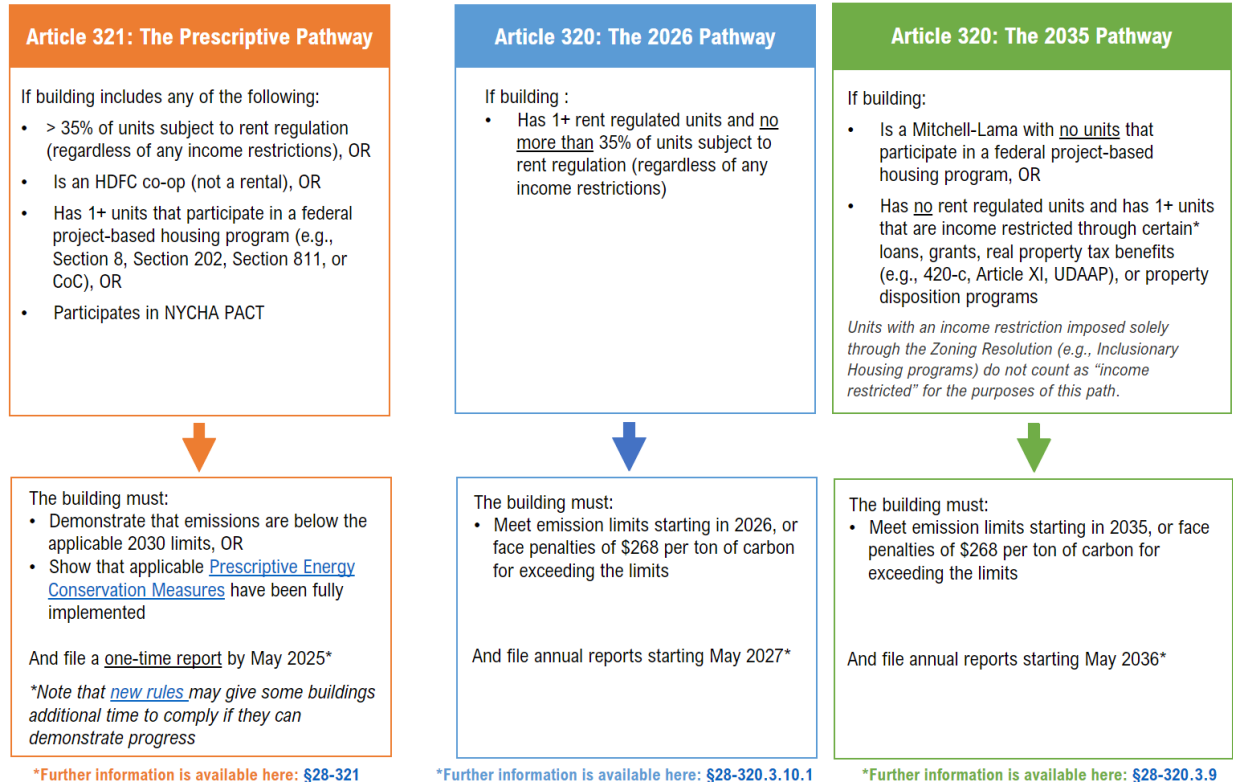


FAQs: LOCAL LAW 97 GUIDANCE FOR AFFORDABLE HOUSING

The following guidance represents frequently asked questions building owners have regarding LL97 implementation. The information in this document is provided for reference purposes only and is not a substitute for the definitions, provisions, or interpretations contained in applicable laws, rules, and administrative or court decisions. Building owners may wish to consult with a legal representative or registered design professional for specific questions about their building's compliance with Local Law 97.

Note that in September 2023, DOB released [a new package of proposed rules](#) for LL97 that promote compliance rather than penalties and may allow owners of buildings subject to Article 321 additional time to comply. While the rules are not yet final, the DOB will be issuing further guidance in the near future.

LL97 covered buildings[†] with rent regulated and/or affordable units must follow one of the pathways below:



[†]LL97 generally covers, with some exceptions: buildings that exceeds 25,000 gross square feet; two or more buildings on the same tax lot that together exceed 50,000 square feet; two or more condominium buildings governed by the same board of managers and that together exceed 50,000 square feet.

How can I document my building's compliance status?

- Under the Additional Resources section of [HPD's Local Law 97 Guidance for Affordable Housing](#), link to the document called: [Documentation of Affordable Housing Status](#)

What are some of the key items in the proposed rules?

- Rule clarifies that reporting may be submitted by a "qualified" RCx Agent, a registered design professional; a certified refrigerating system operating engineer; OR a licensed high-pressure boiler operating engineer
- PECMs documentation requirements
 - 9 PECMs require attestations
 - 4 PECMs require detailed inspection reports
- DOB will be issuing a guide for Article 321 with sampling requirements and additional clarification along with reporting templates for the 4 detailed PECMs

What are the proposed penalties for Article 321?

- Per the proposed rules, the penalties are: Failure to report: \$10,000 plus an additional penalty of \$10,000 for failure to comply.

What if an owner of an Article 321 building can't meet the deadline?

- The proposed rules give certain opportunities for buildings to mitigate Article 321 penalties:
 - **Unexpected or Unforeseeable Event:** For buildings damaged as a result of a disaster, including but not limited to a hurricane, severe flooding or fire.
 - **Eligible Energy Conservation Project:** Certain buildings may be eligible for a mitigated penalty if the building received funding from a Housing Agency as of November 15, 2019, to complete an "eligible Energy Conservation Project"
 - **Mediated Resolution:** The Department may offer a mediated resolution if the owner submits, by May 2025, (1) an attestation that the building is not in compliance, (2) the previous year's benchmarking AND (3) a "Compliance Plan" that either details how a building will meet **2030 carbon limits by 2030** or demonstrates that work is underway to **implement the applicable Prescriptive Measures** and a date by which the remaining work will be complete

If a building has at least one rent regulated unit and no more than 35% of rent regulated units, the legislation says they must comply with GHG emissions limits. What does this mean?

- Under LL97, buildings are assigned emissions limits that get progressively more stringent over time, based on energy consumption patterns. Buildings must make energy efficiency improvements and other retrofits to ensure they stay under their emissions limits or face penalties. Buildings with at least one and no more than 35% of rent regulated units are subject to Article 320.3.10.1 (2026 Pathway), which means they must not exceed emissions limits starting in 2026. The first annual compliance report for these buildings is due on May 1, 2027.

What is the Prescriptive Pathway Compliance for LL97 and how does it affect affordable housing?

- Buildings with more than 35% of rent regulated units and some other types of affordable housing can comply with LL97 by 1) not exceeding their assigned emissions limits or by 2) following Article 321 (Prescriptive Pathway).
- The Prescriptive Pathway requires buildings owners to make certain energy conservation measures by December 31, 2024. These measures can be found [here](#), and include upgrading lighting, weatherization, and air sealing.
- Note that the new rules may give certain buildings additional time to comply

If a building is owned by an HDFC and also has a project-based Section 8 contract, which pathway should the building comply with?

- If the project is an HDFC co-op, it is subject to Article 321 (Prescriptive Pathway). If it is an HDFC rental, it is also subject to Article 321 (Prescriptive Pathway) because it has a project-based Section 8 contract.

My building is an HDFC. Does it fall under Article 321 or Article 320.3.9?

- HDFC co-ops are always covered by Article 321.
- HDFC rentals could be subject to Article 321 (Prescriptive Pathway) or Sections 320.3.10.1 (2026 Pathway) or 320.3.9 (2035 Pathway), depending on whether they include units that are rent regulated, how many units are rent regulated, or if they participate in a federal project-based housing program (e.g., project-based Section 8).
- See [flowchart for specific cases](#).

How will buildings that solely have a 421-a exemption be treated?

- LL97 does not specifically address buildings that only have 421-a tax exemptions. Owners need to use other building and unit characteristics, like number/percentage of units that are rent stabilized, to determine the building's compliance pathway. See the flowchart above for more information.
- If more than 35% of the building's units are rent stabilized, or if any number of units in the building participates in a federal project-based housing program (like project-based Section 8), then the building should follow the Prescriptive Pathway.
- If the building has at least one rent stabilized unit and no more than 35% of units are rent stabilized, then the building should follow the 2026 Pathway.
- If the building has no rent stabilized units, but certain government loans, grants, disposition programs, or tax benefits that impose an income restriction on at least one unit (in accordance with Section 320.3.9), then the building should follow the 2035 Pathway.
- In general, rental buildings receiving solely "old 421-a" (421-a(1-15)) will follow the Prescriptive Pathway because old 421-a requires all rental units to be rent stabilized (i.e., both market and affordable units); rental buildings receiving solely "new 421-a" (421-a(16)) will generally follow the 2026 Pathway because new 421-a only requires the affordable units and market units below the vacancy decontrol threshold to be rent stabilized; homeownership buildings with either old or new 421-a as well as HPD/HDC loan(s) and a regulatory agreement with occupant income restrictions will follow the

2035 Pathway; and homeownership buildings with solely 421-a (i.e., standalone 421-a) must comply with Article 320 starting in 2024 (2024 Pathway).

What are the LL97 compliance requirements for a Mitchell-Lama cooperative regulated by HPD and financed by HDC? Are Mitchell-Lamas exempt from LL97 penalties until 2035?

- Mitchell-Lama co-ops and rentals generally fall into Article 320.3.9 (2035 Pathway), which requires them to comply in 2035. However, if a Mitchell-Lama building has any units that participate in a federal project-based housing program, it would be subject to Article 321 (Prescriptive Pathway) in 2024 instead of the 2035 Pathway.

If Mitchell-Lamas have rent-regulated units, will they need to comply with Article 321 and the 'less/greater than 35% rent-regulated units' requirement?

- Pre-1974 Mitchell-Lama buildings are exempt from rent regulation and a Mitchell-Lama housing company cannot be incorporated as an HDFC, so Mitchell-Lamas would be subject to Article 321 (Prescriptive Pathway) only if they have federal project-based assistance. Otherwise, they must follow Section 320.3.9 (2035 Pathway).

How do LL97 requirements work for HDFCs with 420-c, Article XI, or UDAAP?

- HDFC co-ops are always subject to Article 321 (Prescriptive Pathway). HDFC rentals could be subject to Article 321 or Sections 320.3.10.1 (2026 Pathway) or 320.3.9 (2035 Pathway) depending on whether they include units that are rent regulated, how many units are rent regulated, or if they if they participate in a federal project-based housing program (e.g., project-based Section 8). 420-c, Article XI, or UDAAP tax exemptions qualify HDFC rentals for the 2035 Pathway only if the building has no units that are rent regulated or that participate in a federal project-based housing program. See the flowchart above for more information.

The law notes that buildings with federal project-based assistance (e.g., project-based Section 8) are subject to Article 321 and can either meet the 2030 emissions limits or implement the prescriptive energy conservation measures by December 31, 2024. Is there a certain percentage of units that must have federal assistance in order to fall within this category, similar to the 35% rent stabilized requirement for rent regulated accommodations?

- Any number of units with federal project-based assistance will qualify a building for Article 321 (Prescriptive Pathway). Note that tenant-based Section 8 vouchers do not count as federal project-based assistance.

Regarding Article 321 (Prescriptive Pathway), how early can affordable housing implement all measures for LL97 compliance? Should they hire a design professional to verify compliance from the start of implementation or after completion of all measures?

- Buildings are encouraged to begin energy conservation measures as soon as possible and keep records from the start of implementation. Rules and guidance documentation materials from the Department of Buildings (DOB) are forthcoming.

Buildings should visit the DOB website in "Resources" to watch for updates in the coming year.

- Note that for buildings implementing Article 321 prescriptive energy conservation measures, the compliance report must be filed by a Retro-commissioning Agent. Buildings reporting compliance with emissions limits under Article 321 are required to have their annual report certified by a registered design professional.

If a building completes electrification projects that reduce its usage of fossil fuels, would that count for compliance with LL97?

- Electrification would not count as a prescriptive energy conservation measure, but electrification projects may help a building to meet emissions limits under Article 321.2.1 and Article 320.

How are renewable technology measures, like solar, calculated for LL97? How might I show that a building installed a solar array and count that as part of the Prescriptive Pathway under Article 321?

- Solar is not one of the prescriptive energy conservation measures, but onsite solar could help reduce emissions and enable some buildings to meet emissions limits. This would be true for an Article 321 building seeking to meet the 2030 emissions limits by 2024 or a building subject to any compliance pathway in Article 320. For buildings pursuing compliance via 321.2.1(2024 Pathway), a report by a design professional demonstrating that the building's emissions limits (with solar) are below the 2030 limits must be submitted to DOB by May 1, 2025.
- DOB will issue a Rule with information regarding how renewable technology measures like solar should be calculated for the purpose of determining energy usage.

Does the Prescriptive Pathway require only a single compliance report in 2025, or will building owners need to take further action after 2025?

- According to Article 321 as currently written, no further action is required once a building has implemented the required energy conservation measures and submitted a report in 2025 to demonstrate compliance. However, this is contingent on the buildings' maintaining its affordability status (e.g., units subject to rent regulation or income restriction).

If a building has tenant-based rental assistance (vouchers), is it subject to compliance under Article 321 (Prescriptive Pathway)?

- Tenant-based vouchers are not "attached" to a particular building and will not qualify a building for Article 321 (Prescriptive Pathway).

What if my project has Low Income Housing Tax Credits?

- LL97 does not specifically address buildings that have been awarded Low Income Housing Tax Credits. Projects should refer to the guidance above to determine compliance requirements.

What if my project has Inclusionary Housing (IH) or Mandatory Inclusionary Housing (MIH)?

- LL97 does not specifically address buildings that include units subject to Inclusionary Housing. Inclusionary Housing on its own does not qualify a building to meet the Article 320 limits starting in 2035, under §28-320.3.9. Projects should refer to the guidance above to determine compliance requirements.

Can buildings subject to Article 321 (Prescriptive Pathway) apply for exemption from implementing the required Prescriptive Energy Conservation Measures?

- Buildings subject to Article 321 (Prescriptive Pathway) must implement the required prescriptive energy conservation measures and cannot apply for an exemption. However, these buildings do have the option of meeting 2030 carbon emissions limits (320.3.2) instead of pursuing the Prescriptive Energy Conservation Measures.

The emission limits are specific to different occupancy groups. My building is primarily housing (i.e., a class A multiple dwelling) but has ground floor retail stores. Which emissions limit is my building subject to?

- The emissions limit calculations will be based on the sum of the area quantification for each of the property types.

What do we do if the current building occupancy varies from what is on our Certificate of Occupancy?

- The owner of a covered building is required to submit an annual report, certified by a Registered Design Professional (RDP) regarding their compliance with applicable building emissions limits pursuant to LL97. The building's Registered Design Professional is responsible for determining the applicable Occupancy Groups for a covered building based on the rules of the department which have not yet been developed.
- Chapter 3 of the 2014 NYC Building Code (NYC Building Code Chapter 3: Use and Occupancy Classification) provides details regarding each of the Occupancy Groups.
- The building's Certificate of Occupancy (as applicable) is a reference regarding the Occupancy Groups that have been approved for a building.
- The Annual Building Emission Limit is calculated per Section 320.3 and is based on the ACTUAL Occupancy Groups in the building. If the actual occupancy in the building differs from the Certificate of Occupancy, the ACTUAL occupancy should be indicated.

Will there be specific information on which equipment would be more energy efficient for a building's needs and/or support to complete the compliance report?

- NYC Accelerator and other State and City programs can help owners identify energy efficiency and carbon reduction measures they can take to achieve compliance with LL97.

Clarifications to the Prescriptive Energy Conservation Measures: [Note that the new rules clarify the PECMs. Building should refer to the new language.](#)

- Regarding pipe insulation, do I need to insulate pipes that are not visible or accessible?
 - Only pipes that are accessible are required to be insulated. See 2020 NYCECC Section C503.1, C403.11.3 and C404.4.
- Regarding “timers on exhaust fans” can you clarify which types of exhaust fans you are referring to?
 - This measure refers to intermittent-type exhaust fans that are not designed to be part of a code-compliant continuously running ventilation system.
- Are radiant barriers required behind all radiators (e.g., fin-tube baseboard heaters) or just freestanding cast-iron type radiators?
 - Radiant barriers should be installed behind equipment that heats a space primarily by radiation (> 50%) rather than convection. This would include, but not be limited to, steel, aluminum and cast-iron panels (single and double), flat pipe (single and double), tubular type, and sectional radiators. Such equipment would not include fin-tube baseboard heaters and convectors. The intent is not to require destructive work to install a radiant barrier.