

ENVIRONMENTAL LAW

Expert Analysis

Deluge of New York City Laws Guards Against Flooding, Protects Environment

The last year of Michael Bloomberg's 12-year term as mayor of New York City saw a remarkable and little-noticed deluge of new environmental laws. The City Council passed and the mayor signed more than 50 environmental bills. Over half of these laws were passed in the aftermath of Superstorm Sandy and focused on making infrastructure more resilient, improving emergency preparedness and response, and easing recovery for homeowners and businesses. In addition, laws were enacted concerning clean energy, improving energy and fuel efficiency, reducing emissions from vehicles, and strengthening the city's recycling laws.

Post-Sandy Legislation

Thirty-one of the environmental laws enacted in 2013 relate to the post-Sandy recovery process. In early 2013, the council and the mayor convened the Building Resiliency Task Force, a group comprised of over 200 industry experts who spent six months developing recommendations on how to better protect the city's buildings from the threats

By
Michael B.
Gerrard



of future severe weather events. The task force, led by Urban Green, a local chapter of the U.S. Green Building Council, made a series of recommendations that resulted in the enactment of 17 laws that were designed to make buildings and infrastructure more resilient. In addition, the council held a dozen oversight hearings on the city's emergency preparedness and response to Superstorm Sandy. Based on testimony received at these hearings, recommendations were developed that resulted in the enactment of nine laws that focused on improving emergency preparedness and response, as well as five laws that focused on making recovery easier for homeowners and businesses.

Improving Resiliency

The majority of the 17 laws that focus on improving resiliency concern flooding. Local Law 82 requires the Department of Buildings to create a manual detailing the city's various flood construction requirements. Local Law 83 aims to prevent the backflow of sewage when

the public sewer system overflows by requiring that new buildings in flood-prone areas be equipped with backwater valves.

Local Law 95 requires that, in new and substantially improved health care facilities, patient care areas and sleeping areas must be located above expected flood levels. Local Law 96 adopts the Federal Emergency Management Agency's preliminary flood maps, an important step given that the city's current flood maps are almost 30 years old. (However, the FEMA maps still do not reflect anticipated future sea level rise.)

Local Law 98 requires the Office of Emergency Management (OEM), working in conjunction with other city agencies, to compile recommendations for residential and commercial property owners on how to protect their buildings against flood damage, provide information to tenants, and restore services after a weather event or utility outage.

Local Law 99 allows certain kinds of fiber optic and communication cables in flood-prone areas to have a longer length so they can reach a building connection point that is above expected flood levels. Local Law 100 requires that certain building systems be placed above expected flood levels in new or substantially improved buildings in flood-prone areas. Local Law 109 makes it easier to install tem-

MICHAEL B. GERRARD is Andrew Sabin Professor of Professional Practice and director of the Center for Climate Change Law at Columbia Law School, and senior counsel to Arnold & Porter. JEFFREY BAKER and CULLEN HOWE, attorneys for the New York City Council, assisted in the preparation of this article.

porary flood shields, stairs and ramps in flood-prone areas.

Several resiliency laws concern loss of electricity and backup power. Local Law 13 requires the Mayor's Office of Long-term Planning and Sustainability (LTPS) to conduct a study to determine the neighborhoods in the city where it would be most advantageous to relocate power lines underground. Local Law 79 requires that, in buildings where electric faucets and toilets are provided, at least one of each of these be operable for at least two weeks without an external source of power.

Local Law 108 requires that health care facilities in flood-prone areas have adequate backup electrical power for certain systems, as well as backup heating and cooling systems. Local Law 110 requires residential buildings that rely on electric pumps to install additional fixtures that can provide drinking water in a common area should the pumps fail. Local Law 111 allows for the use of natural gas as a fuel source for backup power systems.

Two resiliency laws concern wind damage to buildings. Local Law 81 requires LTPS and the Buildings Department to prepare a report on the effects of wind on existing buildings. Local Law 101 requires certain buildings in high-wind areas to use certain impact-resistant materials.

The remaining resiliency laws concern a study on the use of permeable materials for streets and sidewalks to absorb stormwater and reduce runoff (Local Law 80) and the creation of a resiliency position within LTPS (Local Law 84).

Emergency Preparedness

Most of the laws addressing emergency preparedness and response concern OEM. Local Law 58 requires OEM to develop and implement a plan for tracking the location and medical needs of all individuals admitted to

special medical needs shelters and to develop a process whereby individuals admitted to shelters can be easily located. Local Law 59 requires OEM to develop and implement a "community recovery plan" that provides a basic structure for relief operations. Local Law 60 requires OEM to develop and implement an outreach and recovery plan to assist vulnerable and homebound individuals before, during, and after emergencies.

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Local Law 61 requires OEM to develop and implement a plan to ensure that the public has sufficient access to food and water during emergencies. Local Law 62 requires OEM to anticipate the operation of emergency shelters for short-, medium-, and long-term stays, to develop and implement a plan to ensure that the facilities used for emergency shelters are adequate for long-term stays, and that the facilities are sufficiently stocked with proper food and supplies. Local Law 63 requires OEM, in consultation with the Department of Small Business Services, to create a recovery plan for small businesses.

The city has developed a Coastal Storm Plan that sets forth how it will respond to emergencies such as coastal storms, hurricanes, and other natural disasters. Local Law 64 requires OEM to regularly review the plan and make appropriate changes. Local Law 65 requires OEM to develop and implement a plan to ensure that the city's transportation network continues to function to the greatest extent possible following an emergency.

Local Law 66 requires that procedures and criteria be put in place for

determining when there is a fuel shortage and when rationing is necessary.

Home, Small Business Owners

Five new laws were aimed at making recovery from Sandy easier for homeowners and small businesses. Local Law 4 waives the Buildings Department's fees for work on buildings that were severely damaged or destroyed by Sandy until Oct. 31, 2014, and waived electrical and plumbing fees on all other buildings that required such work until April 30, 2013. Local Law 29 addresses homeowners who choose to elevate their homes by requiring, among other things, that contractors give the Buildings Department at least 48 hours' notice before elevating a home, and that home elevation work be done under the supervision of a special inspector.

Local Law 30 creates penalties for persons who commit crimes during a local state of emergency. Local Law 31 gives the mayor the authority to waive certain city agency fees for businesses recovering from damage as a result of Sandy. Local Law 63 extended the due date for the payment of real property taxes that were ordinarily due and payable on Jan. 1, 2013, for properties that were damaged and declared unsafe as a result of Sandy.

Air Quality

Six new laws pertain to reducing emissions from vehicles. Local Law 72 requires the Fire Department to implement a pilot study of at least one year to test verified idle reduction technology for ambulances operated by or for the city. Local Law 73 requires city fleets to use a biodiesel blend of B5 (5 percent biodiesel) by 2015, and a blend of B20 (20 percent biodiesel) by 2017. It also requires city fleets to install best available retrofit technology (BART), chiefly to reduce particulate emissions. Sightseeing buses and vehicles used

pursuant to solid waste and recycling materials contracts must install BART on their entire fleets by 2017.

Local Law 74 concerns the renewal of waivers issued by the city for certain diesel-powered vehicles operating under solid waste and recycling contracts and sightseeing buses unable to adopt BART. Previously, these waivers were allowed to be renewed every three years. This law prohibits the renewal of waivers for these vehicles after Jan. 1, 2014. Local Law 75 creates a new reporting requirement related to the fuel efficiency of light-duty and medium-duty vehicles in the city's fleet. Ascertaining this information will aid the city in assessing the actual efficiency of its fleet.

Local Law 76 concerns the minimum average fuel economy of light-duty vehicles purchased by the city. Under the previous law, all such vehicles purchased after July 1, 2004, were required to be 20 percent more fuel-efficient than similar vehicles purchased by the city prior to this date. In addition, the law required certain annual fuel efficiency increases beginning in 2006 and certain increases each year thereafter. This new law continues these increases by 5 percent every two years beginning in 2016 until a 40 percent increase over the 2004 efficiency level is achieved by 2022.

Local Law 145 mandates the use of an EPA-certified 2007 or later engine, or BART, in heavy duty trade waste hauling vehicles by Jan. 1, 2020. It also provides for waivers where such retrofit would create financial hardship in the licensee or registrant.

Biodiversity

Local Law 11 requires the city to maximize the use of native plantings and drought and salt-tolerant plantings, and minimize the presence of "exotic monocultures," and limit the use of invasive species in public landscapes.

Energy

Several laws were enacted concerning the use of renewable energy. Local Law 32 requires the city to study the feasibility of developing geothermal energy to heat and cool buildings or heat water. Local Law 107 requires that all No. 2, No. 4 and No. 6 heating oil purchased for use in any building owned by the city contains at least 5 percent biodiesel (B5) by volume. Local Law 130 requires that the electrical system for new parking garages and open parking lots be capable of supporting a certain number of electric vehicle charging stations.

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Local Law 12 requires the city to establish an interactive website called the "New York city renewable energy portal," which, among other things, will have links to programs that allow the user to calculate the estimated costs and benefits of renewable energy systems; list financial incentives available at the federal, state, and local levels; and provide tools and guidelines to evaluate the feasibility of installing renewable energy technologies.

Hazardous Substances

Local Law 143 improves hazardous materials storage pursuant to the New York City Community Right-to-Know Law. The law requires that facilities that store hazardous substances notify the city if such substances are located in a special flood hazard area or a hurricane evacuation zone. Facilities are also required to certify that the storage of such hazardous substances complies with Department of

Environmental Protection storage rules, and all other federal, state and local laws, rules and regulations.

Solid Waste

Several bills were enacted that strengthen and expand the city's recycling program. Two of these laws concern the poaching and theft of recyclable materials. Local Law 56 strengthens the laws against the unlawful removal of recyclable material and bolsters the collection by the Department of Sanitation from residential and institutional buildings. Local Law 57 prohibits the collection of beverage containers using a motor vehicle on New York City streets unless licensed by the department.

Local Law 69 requires the Sanitation Department to establish a program for the removal of refrigerants from appliances discarded for pickup as residential waste.

Several laws concern the composting of organic waste. Local Law 77 establishes a pilot program to collect organics from residences and schools for two years in four different collection areas of the city and at least 300 schools. Local Law 146 requires certain restaurants, grocery stores, caterers and other food service establishments within the city that generate significant food waste to separate their organic waste beginning July 1, 2015, for composting.

Local Law 142 requires the Sanitation Department to determine the recyclability of expanded polystyrene in the city's existing recycling program. If the Sanitation Department finds it recyclable, it must issue rules requiring that it be recycled. Otherwise most use of single service polystyrene articles by food service establishments (including vending carts) is banned as of July 1, 2015. Certain hardship exemptions will be available.