

# StayCurrent

A Client Alert from Paul Hastings

## New York City Enacts Green Building Legislation

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On October 3, 2005, New York City Mayor Michael Bloomberg signed into law legislation establishing green building standards for certain New York City capital projects and private projects receiving public financing. New York City joins a number of other major municipalities throughout the country, including Atlanta, Boston, Chicago, Dallas, Los Angeles, San Francisco and Seattle, that have adopted green building legislation. Though green building legislation primarily impacts the public sector, the adoption of such legislation reflects a growing awareness in both the public and private sectors of the benefits of green building design and construction practices, particularly with respect to energy conservation and efficiency at a time when energy costs have escalated.

### Green Building Defined

Green or high performance building is the practice of improving the efficiency with which a building consumes energy, water and materials, and reducing building impacts on human health and the environment through better siting, design, construction, operation, maintenance and removal. According to the United States Green Building Council (USGBC), a national coalition of real estate and environmental organizations, a "green building" is a building that integrates "design and construction practices that significantly reduce or eliminate the negative impact of buildings on the environment and occupants" in five broad areas:

- (1) *sustainable site planning*: encourages urban redevelopment, alternative transportation to the site, reduction in site disturbance, storm water management.
- (2) *water efficiency*: encourages reduction in potable water consumption and water conservation.
- (3) *energy and atmosphere*: encourages energy efficiency, optimizing energy performance, and the use of renewable energy sources.
- (4) *material and resource conservation*: encourages the use of recycled and environmentally responsible manufactured materials, and the implementation of a waste management plan.
- (5) *indoor air quality*: encourages optimal lighting, thermal comfort, increased ventilation, use of low emitting ma-

terials, and healthy indoor air quality for building occupants.

Under the USGBC's green building rating system, known as LEED (Leadership in Energy and Environmental Design), a building receives a LEED certification if its design achieves a certain number of "points" in these five general design areas. Based on the total number of points obtained, a building can earn a Certified, Silver, Gold or Platinum certification. Currently, the USGBC has developed or is in the process of developing a green building rating system for new construction and major renovations (LEED-NC), existing building operations (LEED-EB), commercial interiors (LEED-CI), core and shell development (LEED-CS), homes (LEED-H), and neighborhood development (LEED-ND). To date, more than 215 buildings in the United States are LEED certified, including a number of buildings in New York City.

### Benefits and Costs of Green Building

Studies analyzing the benefits of integrating green building technologies into building design and construction have demonstrated significant tangible and intangible benefits, including reduced impact on natural resources, financial savings, improved occupant comfort and health, and reduced strain on local infrastructure. One study cited by the New York City Council Committee on Housing and Buildings estimates that the financial savings over a 20-year period from energy, emissions, water waste, building commissioning and productivity total nearly \$50 per square foot. Additionally, in certain jurisdictions, including New York State, tax credits are available for certain green building projects. See Paul Hastings client alert, "New York State Green Building Tax Credit", June 2001 (copy available upon request).

Though the benefits of green buildings are widely acknowledged and appreciated in the private and public sectors, the primary impediment to the use of green building design and construction practices is the concern that the increase in upfront construction costs outweighs the long-term benefits associated with green building. However, green building experts point to numerous studies conducted over the past several years by private and public entities that have concluded that constructing a green building in accordance with LEED standards results in minimal, if any, escalation in upfront capital costs in comparison to traditional design and construction

practices, whereas the return on investment in green building design and construction is substantial. For example, one State of California study of 33 LEED-certified buildings determined that constructing a building to LEED Certified and LEED Silver would increase construction costs by 0.66 percent and 2.11 percent, respectively. Similarly, a study published by the United States General Services Administration determined that modernizing an office building to LEED Certified and LEED Silver would add between 1.4 and 2.1 percent and 3.1 and 4.2 percent to construction costs, respectively. In the California study, it was estimated that a green building design resulted in a return of more than 10 times the initial “green” investment.

### Recent New York City Legislation

The Green Building Law, which will be codified as Section 224.1 of the New York City Charter, incorporates the green building standards and rating system developed by the USGBC. According to the New York City Council Committee on Housing and Buildings’ Report on the green building legislation, New York City owns or leases approximately 4,000 buildings, and annually spends over \$7 billion on capital construction. The new law is expected to affect approximately \$12 billion in construction over the New York City’s ten-year capital plan. A number of municipal agencies already have embraced green building design and construction practices. For example, the Battery Park City Authority uses LEED-based green building guidelines for commercial and residential building construction in Battery Park City in downtown Manhattan; the New York City Transit Authority has adopted green building guidelines for all new transit facilities; and the New York City Department of Design and Construction recently began applying high performance building guidelines to schools, libraries and other facilities.

### Projects To Which The New Law Applies

The law applies to city-owned buildings in specific occupancy groups, including business, mercantile, museums, restaurants, theaters, education and hospitals. The law also applies to non-city owned capital projects if at least \$10 million or at least 50 percent of the project’s estimated cost “is to be paid for out of the city treasury”. For all capital projects subject to the law, the mayor is authorized to exempt 20 percent of the eligible

capital projects in each fiscal year if an exemption is “in the public interest.”

Under the law, a capital project must be designed and constructed in such a manner that the building earns a LEED Silver or higher rating if the estimated construction costs exceed \$2 million and the capital project involves: (1) the construction of a new building, (2) an addition to an existing building, or (3) the substantial reconstruction of an existing building - i.e., the restoration, replacement or repair of at least two of the three major building systems – electrical, HVAC (heating, ventilating and air conditioning) and plumbing, and where the work affects at least 50 percent of the building’s floor area. However, buildings that are classified in occupancy groups G (education) or H-2 (incapacitated institutional/hospital) are required to achieve only a LEED Certified or higher rating.

Furthermore, the Green Building Law imposes additional minimum energy reduction requirements for capital projects of \$12 million or more. For example, capital projects with estimated construction costs of between \$12 and \$30 million must be designed and constructed in a manner that reduces energy costs by at least 20 percent. This reduction in energy costs increases to 25 percent for capital projects (other than buildings classified in occupancy group G) of more than \$30 million.

The legislation takes effect on January 1, 2007 and expires on January 1, 2017.

*If you have any questions or would like additional information on the matters discussed in this Stay Current alert, please do not hesitate to call any of the following attorneys in our Environmental Practice Group:*

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