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July 2008

Los Angeles Adopts Sustainable Building Ordinance

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The Los Angeles City Council recently adopted and Mayor Antonio Villaraigosa signed into law an ordinance requiring new private development to meet "green" building standards. In doing so, Los Angeles joins scores of other cities around the United States that have adopted "green" building requirements. However, Los Angeles is the largest city to mandate "green" building for new private development. The new ordinance will require all developers, architects and property owners in Los Angeles to understand these new regulations and adapt their development practices.

Background

In 2002, the Los Angeles City Council required that all new municipal buildings 7,500 square feet or larger be constructed in accordance with the Leadership in Energy and Environmental Design ("**LEED**") standards, as established by the United States Green Building Council. LEED standards are a widely accepted mechanism for certifying sustainable and energy efficient buildings in the United States.

There are four LEED categories of environmental efficiency that represent increasing levels of environmental requirements: (1) Certified, (2) Silver (3) Gold and (4) Platinum. The levels of certification correspond to the number of points assigned in five green design categories: sustainable sites, water efficiency, energy and atmosphere, materials and resources and indoor

environmental quality. Points are awarded for features such as transportation alternatives, building orientation, proximity to transit, use of low emitting or recycled materials, efficiency of water usage, and optimization of energy performance. For new construction, the Certified level requires 26 – 32 points, Silver 33 – 38 points, Gold 39 – 51 points and Platinum 52 – 69 points.

To date, over 100 cities in the United States have adopted mandatory building sustainability requirements. For example, New York City's Local Law 86 requires LEED Silver or higher, but only for City-owned buildings (or privately owned buildings which are paid for in part out of the City's capital budget). Washington D.C. requires that large commercial buildings achieve LEED Certified or higher. San Francisco is considering ambitious green building standards that would apply to all new commercial and residential development greater than 25,000 square feet. All told, 35 cities and counties in California have implemented green building requirements and this trend will accelerate in coming years as the policy response to global climate change expands, particularly in response to California's AB 32 policy initiatives.

Los Angeles' new Ordinance adds new Sections 16.10 (Green Building Program) and 16.11 (Green Building Team) to the Los Angeles Municipal Code.

Green Building Program: New Los Angeles Municipal Code Sec. 16.10

Building Thresholds

The new green building program does not apply to all private development projects. Only buildings exceeding certain size thresholds are subject to the green building requirements. The requirements are implemented through the building permit process, so that building permits will be withheld unless the owner submits a declaration signed by a LEED accredited professional stating that the project meets the "intent of criteria for certification." Los Angeles' green building requirements apply to:

- New non-residential buildings with a gross floor area of 50,000 square feet or more;
- New mixed use or residential buildings with a gross floor area of 50,000 square feet in excess of six stories;
- New mixed use or residential buildings with a gross floor area of 50,000 or more, six or fewer stories, consisting of at least 50 dwelling units in a building, and in which at least 80 percent of the building's floor area is dedicated to residential uses;
- The alteration or rehabilitation of an existing buildings with a gross floor area of 50,000 square feet or more for which construction costs exceed a valuation of 50 percent of the replacement cost of the existing building; or
- The alteration of at least 50 dwelling units in an existing building, which has at least 50,000 gross square feet of floor area, for which construction costs exceed a valuation of 50 percent of the replacement cost of the existing building.

The thresholds in Los Angeles' green building ordinance have been criticized for omitting smaller projects. City officials estimate that approximately 150 projects totaling approximately 7,500,000 square feet of development will be subject to the

green building requirements each year. City Council members have already requested that city staff report back in six months as to whether the threshold for commercial buildings should be lowered to 25,000 square feet.

Expedited Processing

Those projects which voluntarily comply with the LEED Silver level of certification will receive expedited processing for discretionary entitlements from the Planning Department. This can be a substantial incentive for builders, property owners and developers. Other than the expedited processing, no other incentives are provided in the Los Angeles ordinance.

Procedures

Applicants must provide a LEED checklist and a signed declaration from a LEED accredited professional that the proposed project meets the intent of the criteria for LEED certified or higher. However, the ordinance does not specify that the City must independently verify the information on the checklist. City officials have indicated that certifications will be spot checked to ensure compliance with the LEED standards.

Exempt Projects

The green building program exempts the following projects:

- Designated historic resources, if full LEED compliance would require alterations that would conflict with the Secretary of the Interior's Standards for the Treatment of Historic Properties. However, the developer must show that it has incorporated all other reasonable means to achieve LEED compliance while avoiding adverse impacts to historic resources;
- Projects for which applications have been accepted by the Department of Building and Safety for plan check and the appropriate fee paid prior to November 1, 2008. However, no increases can be made to the floor area by more than five percent

and construction must commence within a year of the issuance of the permit;

- Projects for which entitlement applications have been filed and deemed complete, with the exception of CEQA review, prior to November 1, 2008, provided no changes are made to the application that would increase the floor area by more than five percent;
- Residential projects of six or fewer stories, if the plans are accepted by the Department of Building and Safety for plan check and the appropriate fee is paid prior to May 1, 2009, so long as the floor area is not increased by more than five percent and construction is commenced within one year of the date of issuance of the permit; and
- Entitlement applications for residential projects of six or fewer stories, if the application is filed and deemed complete,

with the exception of CEQA review prior to May 1, 2009, so long as the floor area is not increased by more than five percent.

Green Building Team

Pursuant to new Section 16.11 of the Los Angeles Municipal Code, the City’s Green Building program will be administered by the “Green Building Team,” which will be an inter-departmental group that includes a representative from every department involved in the development process. The Green Building Team includes members from the Mayor’s Office, City Council, Planning Department, Engineering Department, Housing Department, Cultural Heritage Division, and the Community Redevelopment Agency. The Green Building Team is charges with facilitating Los Angeles’ green building objectives, proposing legislatives changed, reporting to the City Council on compliance with the Ordinance and conducting outreach contractors, or developers, architects and the public.



If you have any questions regarding these sustainable building requirements or Paul Hastings’ Sustainability and Global Climate Change practice, please contact any of the following Paul Hastings lawyers:

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