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ALM

# Green Revolution

*New Local Regulations Address Global Warming*

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A great deal has been written about global warming,<sup>1</sup> international efforts to cut greenhouse gas emissions,<sup>2</sup> state<sup>3</sup> and federal<sup>4</sup> action in this area, and even growing business initiatives that seek to address the problem.<sup>5</sup> Significantly, however, these environmental concerns also have reached down to the local level throughout New York state. Indeed, local government actions are already affecting—and will have significant future implications for—individuals, businesses, property owners, contractors and suppliers. Local municipalities have adopted zoning, building, or construction codes or other land use regulations requiring consideration of greenhouse gases or related environmental issues before permits will be issued. The new provisions are becoming so prevalent, in fact, that one might rightly declare that the state is at the beginning of a “Green Revolution” on the local level.

One reason local governments are acting is that they are primarily responsible for property development and are recognizing the great impact that construction, renovation, and property use have on individuals’ health and on the environment. It has been estimated, for example, that 40 percent of raw materials consumed globally are used for buildings, and that, in the United States, commercial and residential buildings are responsible for about 65 percent of electricity consumption, 30 percent of greenhouse gas emissions, 12 percent of potable water use, and 136 million tons of construction and demolition waste annually.<sup>6</sup> By taking action regulating

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construction in support of “green building,”<sup>7</sup> local governments and governmental bodies are seeking to effect change.

### New York City

Consider recent developments in New York City, where a number of local governmental bodies support green building concepts. The Battery Park City Authority has begun utilizing green building guidelines modeled on a green building rating system known as LEED (Leadership in Energy and Environmental Design), developed by the U.S. Green Building Council to promote green buildings,<sup>8</sup> for all commercial and residential building construction in Battery Park City. In addition, the city’s Department of Design and Construction has developed High Performance Building Guidelines and has begun applying the guidelines for libraries and other facilities; the New York City Transit Authority has adopted green building guidelines for all new transit facilities, including the Second Avenue Subway; and the Lower Manhattan Development Corporation and the Port Authority of New York and New Jersey have developed sustainable design guidelines and have designated “environmental planning” as one of five general requirements for the

redevelopment of the World Trade Center site and the surrounding area.<sup>9</sup>

Moreover, the New York City Council recently amended the city charter in relation to green building standards for certain capital projects, effective earlier this year. New Section 224.1 of the charter establishes different rules for different capital projects paid for in whole or in part from the city treasury depending on their estimated construction cost. For example, generally speaking, such a capital project with an estimated cost of \$2 million or more involving the construction of a new building, an addition to an existing building, or the substantial reconstruction of an existing building must be designed and constructed to comply with green building standards not less stringent than the standards prescribed for buildings designed in accordance with the LEED green building rating system to achieve a LEED silver or higher rating, or, with respect to certain buildings, to achieve a LEED certified or higher rating.<sup>10</sup>

Section 224.1 also contains provisions mandating the reduction of energy costs. For example, generally speaking, if the estimated construction cost of a project required to comply with the new green building standards is \$12 million or more but less than \$30 million, it must be designed and constructed to reduce energy costs by a minimum of 20 percent; more expensive projects generally must reduce energy costs by a minimum of 25 percent. Other provisions of Section 224.1 establish “green” rules relating to the installation or replacement of certain boilers, lighting systems, and plumbing systems.

Of course, the significant changes proposed by Mayor Michael Bloomberg in May to the city’s building code,<sup>11</sup> adopted by the city council at the end of June<sup>12</sup> and signed into law earlier this month by the mayor, to a large extent also have a “green” basis. Among other things, they require that public projects and

certain sized buildings meet LEED standards and they seek to facilitate sustainable building by providing fee rebates for green design, providing incentives for plumbing systems that conserve water, and requiring more efficient heating and cooling systems and white roofs (to cut down on air conditioning expenses).

## The Babylon Example

One of the most ambitious local code changes was enacted recently by the Town of Babylon, on Long Island's south shore, which now requires a LEED certification or the local variant for certain types of new construction.<sup>13</sup> That new legislation, entitled "Green Building Certification," states that the town "is committed to minimizing the short-term and long-term negative impacts construction has on the environment." It then explains the town's intent "to provide owners and occupants of commercial buildings, offices, industrial buildings, multiple residences and senior citizen multiple residences with the economic benefits of energy and water savings, good indoor air quality and healthy, pleasant and productive surroundings" and to benefit the community "by having buildings constructed that are resource-efficient and conserve energy."

Applicable to all new construction of a commercial building, office building, industrial building, multiple residence or senior citizen multiple residence equal to or greater than 4,000 square feet, Babylon's new statutory provisions require that every applicant who files a building permit application for such construction must provide a completed LEED for New Construction ("LEED-NC") checklist (or the local variant of a green building project checklist acceptable to the town's commissioner of planning and development). It must be emphasized that this filing is mandatory. The town code provides that no building permit shall be issued unless the LEED-NC review documentation or the local variant of green building project documentation demonstrates that the proposed building will attain LEED certification or the local variant acceptable to the building inspector. Additionally, the building inspector is specifically empowered to determine whether the requirements under the pre-permitting documentation are implemented at each stage of construction, including at the foundation inspection, framing inspection, and prior to issuance of a final certificate of occupancy. The building inspector also may conduct other inspections, as needed, to ensure compliance with the green building certification provisions of the town code.

## Greenburg's Approach

Yet another local community that has acted to require environmentally sensitive construction is the upstate Town of Greenburgh in Westchester County, which amended its Building, Fire and Plumbing Code<sup>14</sup> to require homes to attain a certain level of energy efficiency. Under its statutory scheme, no building permit may be issued for any new one- or two-family dwelling or multifamily dwelling of three stories or less in the town unless the applicant certifies that the dwelling will meet the requirements for a New York Energy Star(r)-labeled home.<sup>15</sup> Under the code, such a home is one that achieves a home energy rating of 86 or higher on the scale created under the home energy rating system established pursuant to the National Home Energy Rating

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Technical Guidelines issued by the National Association of State Energy Officials, dated Sept. 19, 1999, and that also includes (i) a total of 300 kilowatt hours per dwelling unit of estimated annual savings from Energy Star(r)-labeled lighting and appliances and (ii) the capability to deliver automatically controlled mechanical ventilation of at least 15 cubic feet per minute per dwelling unit plus an additional 15 cubic feet per minute per bedroom.<sup>16</sup>

## Conclusion

As more local governments throughout New York consider and then adopt these kinds of statutory changes, it makes it more likely that even more will do so and that developers and contractors will become more familiar with the concepts. Already, hundreds of contractors throughout New York are Energy Star(r)-certified home builders.<sup>17</sup> Costs will come down as more become familiar with the issues and suppliers and consumers recognize

the benefits—and are required to follow these kinds of rules. Of course, one significant purpose is to improve the environment, and it seems that these rules will help reach that goal: Babylon estimated that its green building code could reduce greenhouse gas emissions by 1.37 million tons—the equivalent of removing 300,000 passenger cars from the road per year. That is, undoubtedly, a significant beginning.

1. A Google search for "global warming" yields more than 80 million results.

2. See, e.g., <http://www.pewclimate.org/global-warming-in-depth/international>.

3. For example, the State of New York provides tax credits for buildings that meet defined green building criteria, see discussion at <http://www.dec.ny.gov/regs/4475.html>, and, under Executive Order 111, state agencies are directed to reduce energy use and carbon dioxide emissions and to utilize green building principles. See <http://www.nyserda.org/Programs/exorder111.asp>.

4. See, e.g., *Massachusetts v. EPA*, No. 05-1120 (Apr. 1, 2007) (ordering Environmental Protection Agency to review its decision to not regulate greenhouse gas emissions from new motor vehicles).

5. See, e.g., Thomas L. Friedman, "The Green Road Less Traveled," N.Y. Times, Week in Review, at 12, July 15, 2007.

6. See, Local Law 86 of the City of New York for the Year 2005, also known as the Green City Buildings Act, available at [http://www.nyc.gov/html/dob/downloads/pdf/ll\\_86of2005.pdf](http://www.nyc.gov/html/dob/downloads/pdf/ll_86of2005.pdf) (hereinafter, "Local Law 86").

7. The New York State Energy Research and Development Authority defines "green building" as "the design and construction of buildings giving careful consideration to three main elements: healthy indoor environment, maximum energy efficiency and conservative, thoughtful use of natural resources." See [http://www.nyserda.org/programs/Green\\_Buildings/default.asp](http://www.nyserda.org/programs/Green_Buildings/default.asp).

8. The LEED system establishes several levels of environmental achievement from a "Certified" rating to a "Platinum" rating. The ratings are attained by earning LEED points in the categories of Sustainable Sites, Water Efficiency, Energy & Atmosphere, Materials & Resources, Indoor Environmental Quality, and Innovation & Design Process. For more information on LEED and the USGBC, visit <http://www.usgbc.org>.

9. See, Local Law 86.

10. Id.

11. For an interesting discussion and comparison with Chicago's rules, see Sarah Ryley, "Mayor's Green Building Code Still Lags Behind Other Cities," at [http://www.brooklyneagle.com/categories/category.php?category\\_id=27&id=12763](http://www.brooklyneagle.com/categories/category.php?category_id=27&id=12763).

12. See, [http://www.nycouncil.info/issues/bill\\_details.cfm?ID=Int%200578-2007&TYPE>All&YEAR=2007&SPONSORS=YES&REPORTS=YES&HISTORY=YES](http://www.nycouncil.info/issues/bill_details.cfm?ID=Int%200578-2007&TYPE>All&YEAR=2007&SPONSORS=YES&REPORTS=YES&HISTORY=YES).

13. See, Code of the Town of Babylon, New York ("Babylon Town Code"), Art. VIII, §§ 89-83, et seq.

14. See, Code of the Town of Greenburgh, New York ("Greenburgh Town Code"), Chapter 100, §§ 100-1 et seq.

15. For more information about Energy Star Homes, visit the U.S. Environmental Protection Agency's Energy Star Web site, [http://www.energystar.gov/index.cfm?c=new\\_homes.hm\\_index](http://www.energystar.gov/index.cfm?c=new_homes.hm_index), or the New York Energy Star Web site, <http://www.getenergysmart.org/WhereYouLive/ENERGYSTARNewHomes/overview.asp>.

16. See, Greenburgh Town Code, § 100-15.

17. See, [http://www.energystar.gov/index.cfm?fuseaction=new\\_homes\\_partners.showHomesResults&partner\\_type\\_id=SHB&s\\_code=NY](http://www.energystar.gov/index.cfm?fuseaction=new_homes_partners.showHomesResults&partner_type_id=SHB&s_code=NY)