

## Legal Updates & News

### Bulletins

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#### Building a Greener San Francisco

August 2008

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##### LUEL Briefing, August 6, 2008

Seeking to solidify its position as a leader in sustainability efforts, the City of San Francisco has followed on the heels of Los Angeles and other California municipalities by enacting new green building measures for construction and renovation of private sector development. San Francisco's measures are now the most ambitious of any major city in the country.

The San Francisco green building ordinance incorporates standards from both the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) rating system and Build It Green's GreenPoint Rated system. According to the City, its measures will save 220,000 megawatt hours of electricity and 100 million gallons of drinking water through the year 2012 alone.

##### Key Program Features

In general, the ordinance applies to commercial development over 5,000 square feet, residential buildings 75 feet in height or taller, and renovations over 25,000 square feet. The requirements will be phased in through 2012, becoming more stringent during that time. For example, while new large commercial buildings will need to demonstrate compliance with a LEED Silver rating starting in 2009, the requisite rating level will become Gold in 2012. (Smaller residential developments will be required to demonstrate compliance with certain GreenPoint Rated levels, but will not be subject to the more stringent requirements described below.)

Beyond conformity with existing rating systems, the ordinance will impose additional unique requirements on developers in the City. Notably, where a project involves demolition of an existing historical resource and construction of a new building in its place, the various requirements for the new construction become more stringent than they would be if no building were demolished. Additionally, developers will be required to demonstrate compliance with particular "performance standards" for all covered projects: commercial development and high-rise residential projects must meet specified reductions in potable water used for landscaping and overall water use, and construction debris diversion; mid-size and large commercial buildings, beginning in 2012, must submit documentation to verify on-site renewable energy generation or purchase of green energy credits.

Although its scope is broader, the new ordinance is not San Francisco's first effort to promote green building. Since 2004, all new construction or major remodels (over 5,000 square feet) by the City must achieve a LEED Silver rating, and since 2006, expedited permitting incentives have been available for private projects meeting LEED Gold rating criteria.

##### Impact on the Bottom Line?

The City has long maintained that a strong green building ordinance will promote not only environmental sustainability, but also economic development. However, the City's own Office of Economic Analysis predicted in May that, primarily by increasing building costs, the ordinance could result in an adverse economic impact within the City of between \$30 million and \$700 million each year (although the long-term energy and water savings would likely create a net economic benefit). The assumptions behind this analysis have been vigorously debated, and still the ordinance received support from some high-profile players such as the Building Owners and Managers Association of San Francisco.

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## Implementation and Enforcement

Once the ordinance becomes operative, a project applicant will have to demonstrate compliance with the above requirements before a building permit is issued. The failure to build in accordance with approved plans will result in the project being subject to City procedures concerning abatement of unsafe structures, and the Director of Building Inspection will be authorized to require other reasonable measures to mitigate the failure to fully comply with the requirements. However, exemptions could be granted by the Director for hardship or infeasibility.

## A Good Year for Green Building

2008 has seen a great deal of new green building legislation in California. In April, the City of Los Angeles became the largest U.S. city to enact mandatory green building standards for private development. Although that program is also ambitious, it applies to a smaller portion of projects than San Francisco's, and has less stringent requirements. By comparison, L.A.'s program applies generally to new development and remodels of non-residential development over 50,000 square feet, or 50 residential units, and requires compliance with the criteria for a LEED Certified rating. Additionally, in July, the California Building Standards Commission approved voluntary statewide green building regulations, many of which are expected to become mandatory by 2010. (See <http://www.mofo.com/news/updates/files/14199.html> for Morrison & Foerster's recent update on these standards).

As the San Francisco program ramps up, it will be critical for developers to proactively incorporate the new requirements to avoid increased costs and delays for new projects. If you are interested in learning more about green building regulation in San Francisco or elsewhere, contact one of our attorneys with expertise in the field of green building regulation: Zane Gresham ( **415-268-7145** ), David Gold ( **925-295-3310** ), Mitch Randall ( **925-295-3377** ), Tom Ruby ( **650-813-5857** ), or Miles Imwalle ( **415-268-6523** ).

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