

# CLIENT ADVISORY

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OCTOBER 2021

## **NEW “PACE” PROGRAM WILL OFFER FINANCING FOR BUILDINGS TO MEET MANDATED EMISSIONS REDUCTIONS**

New York City enacted the Climate Mobilization Act (CMA) in 2019 with the goal of reducing carbon emissions in the city by 40 percent by 2030 and 80 percent by 2050. Many larger buildings throughout the city, including many cooperatives and condominiums, thus must reduce their carbon emissions. In many cases, this will require capital improvement projects to make buildings more energy-efficient. Large fines will be imposed against owners, including co-ops and condos, that fail to cut emissions as required by the deadlines.

To help buildings pay for these improvements, the CMA authorized a financing program, known as Property Assessed Clean Energy (“PACE”). This type of program has been successful in other parts of the country, but is new to New York City. After long delays due to COVID-19, the PACE program is close to being ready to provide financing to building owners.

On October 5, 2021, the New York State Bar Association’s Climate Change Committee and Cooperatives and Condominium Committee of the Real Property Section will be hosting a webinar entitled “*Keeping Up With The PACE: Financing Energy Efficient Improvements*,” which will act as a beginner’s guide to PACE loans for property owners. Our partner William McCracken (who is also the Co-Chair of the Climate Change Committee) will be a panelist for this program. If you are interested in attending, or would like to learn more about the PACE program, please contact us.

## **BOARDS WITH LOCAL 32BJ EMPLOYEES MAY IMPLEMENT VACCINE MANDATES**

In recent months, all employers, including cooperative and condominium boards and landlords, have had to face the question of whether they can and should require their employees to be vaccinated against COVID-19. In unionized buildings, this issue is complicated by collective bargaining obligations.

On September 30, 2021, the Realty Advisory Board on Labor Relations, which handles labor relations for many buildings, entered into a Memorandum of Agreement (“MOA”) on this subject with Local 32BJ, the largest union representing building workers. The MOA permits employers to require employees to be vaccinated, subject to notice requirements and other procedures and conditions set forth in the MOA. Employees are entitled to paid time off to be vaccinated (including booster shots, if applicable) or to recover from any side-effects of vaccination. Employees who are not yet vaccinated by a building’s deadline or who refuse to be vaccinated may take an unpaid leave of absence for up to four months. The MOA does not affect any legal requirements for medical or religious exemptions. Employers wishing to impose a vaccine mandate should consult with their labor relations counsel concerning the steps required to do so.

## **NEW YORK PARTNERSHIPS, INCLUDING LLPs and LLCs, AND S-CORPS MAY BE ELIGIBLE FOR A TAX BENEFIT, BUT MUST ACT PROMPTLY**

In 2017, Congress amended the Internal Revenue Code by limiting the deductibility of taxpayers’ state and local income taxes (“SALT”) on their federal tax returns to \$10,000 per year. This change had its most

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substantial impact in states, like New York, where state income taxes are relatively high. Effective this year, New York State has created a workaround for many taxpayers who receive income from partnerships (including LLPs or LLCs) and S-corporations. These entities may elect to pay a new New York State “Pass-Through Entity Tax,” which will reduce their members’ taxable income for federal tax purposes and hence their federal taxes.

To opt into the Pass-Through Entity Tax, the entity must file an irrevocable election to do so each tax year. The election must be filed by October 15, 2021 for the current tax year and annually by March 15 for subsequent tax years. Giving the impending deadline, all taxpayers who might be benefitted by this change in the tax laws should consult with their tax advisors immediately.

### **BUILDINGS MUST NOW PAY “PREVAILING WAGES” TO STAFF IN ORDER TO QUALIFY FOR REAL PROPERTY TAX ABATEMENTS**

Effective April 1, 2022, most cooperatives and condominiums in New York City will be required to pay their service employees the “prevailing wages” and benefits for their jobs, as determined by the City Controller, in order to retain their eligibility for property tax abatements under Real Property Law § 467-a. Buildings whose staff are members of a labor union, such as Local 32BJ, will generally not be affected by this change, because the union contracts already provide for wages and benefits in excess of the minimums. Buildings whose units have an average assessed value of less than \$60,000, or less than \$100,000 if the building contains fewer than 30 units, are excluded. All other cooperatives and condominiums that enjoy tax abatements should check with their professionals as to whether their salary schedules and benefit policies comply with the minimums or whether they need to increase any of the employees’ wages or benefits in order to preserve their tax abatements.

### **PROPOSED LOCAL LAW WOULD PRECLUDE CRIMINAL BACKGROUND CHECKS ON COOPERATIVE PURCHASERS AND PROSPECTIVE TENANTS**

A proposal pending before the New York City Council would prohibit cooperative boards from running criminal background checks on prospective purchasers of units or prospective tenants. The bill would make it an “unlawful discriminatory practice” under the City Human Rights Law for a landlord (including a cooperative) or a broker to make a criminal-history inquiry concerning an applicant, or take adverse action against an applicant for having been arrested or convicted of one or more criminal offenses. Board members and others with opinions on whether the proposed legislation should be passed may wish to share them with their Council Member at this time.

### **NEW YORK CITY COUNCIL AGAIN CONSIDERING COMMERCIAL RENT CONTROL**

Many bills have been proposed in the New York City Council over the years that would create some form of rent control for certain commercial properties in the city. Like the residential rent regulations that have existed for many years, the proposals would limit the amount of rent increases that landlords could impose on commercial lease renewals, at least for smaller commercial spaces. To date, none of these proposals have passed the City Council since a prior set of commercial rent regulations expired in 1963. However, the current composition of the City Council makes it more likely that this type of proposal may receive serious consideration. The proposed restrictions would affect many cooperatives and condominiums that include commercial space, in addition to other landlords. People with opinions regarding the proposed legislations may wish to communicate them to their Council Members.