

Piper Rudnick

Real Estate Alert

In response to the tragic events of September 11, the Chicago City Council recently adopted the High Rise Buildings - Emergency Procedures Ordinance. The Ordinance was effective November 28, 2001.

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Requirements of Ordinance

The Ordinance requires, for the first time, that owners of all high-rise buildings (buildings in excess of 80 feet in height) create an emergency evacuation plan and take certain procedural steps to implement such plan. Further, the owners of all buildings over 540 feet in height and all buildings designed or used for the assembly of persons for civic, political, educational, religious, social, recreational or other similar activities, referred to under the Chicago Municipal Code as "assemblage units," must file their emergency plans with the Chicago Office of Emergency Communications (COEC). The owners of all residential, business, mercantile or industrial buildings between 80 and 539 feet in height are encouraged, but not required, to file the emergency evacuation plan with the COEC. Building owners are required to complete an annual review of their

plans and to update such plans, when necessary, to ensure their accuracy and completeness. Amendments to any filed plan must also be filed with the COEC.

Components of Evacuation Plan

Critical components of an emergency evacuation plan include the designation and training of appropriate building employees to serve as the emergency evacuation team, the performance of monthly inspections to detect hazards to egress, the development of procedures for the full evacuation of the building, the creation of fire command stations in the building lobby or entrance, and the preparation of a list, by name and normal location, of regular occupants who have “voluntarily self-identified” that they need assistance to evacuate in the event of an emergency and the nature of the assistance each such person shall require. Although the Ordinance does not contain any guidelines regarding the preparation and maintenance of the list of occupants who have “voluntarily self-identified,” the Emergency Preparedness Certificate Study Guide (“Guide”) provides that building owners must obtain lists from their “employers” and tenants. The Guide further provides that such employers or tenants must: (i) make inquiry of all employees, after a job offer has been made, if they will need assistance in the case of an emergency, (ii) survey all current employers or tenants to determine whether they will require assistance in case of an emergency, as long as the owner makes clear that self-identification is voluntary and explains the purpose for the request, and (iii) survey employees or regular occupants on an annual basis through the distribution of a confidential questionnaire. One key question is who the owner must survey, as neither the Ordinance nor the Guide defines the term “employers.” Failure to adopt and implement an emergency evacuation plan could subject a property owner to fines of \$500 to \$10,000 per day.

Key Issues to Consider

Several key issues arise out of the Ordinance and the Guide which merit further consideration. What exposure exists for passive investors in real estate, such as ground lessors or owners of net leased properties, and how can that exposure best be addressed? What proactive measures should owners who are parties to collective bargaining agreements take prior to the solicitation of information from employees regarding an employee’s disabilities, which information will be included in the evacuation plan? What actions should a landlord take with its tenants to ensure compliance with the Ordinance’s requirements?

Likewise, the formulation of an emergency evacuation plan may result in a property owner's becoming aware of potential violations of the Code including, but not limited to, a building's egress capacity, floor-load capacity, arrangement and location of exits, distances between exits, capacity of exits, and accessibility compliance. For example, the Code requires that there be not less than two unobstructed exits from every building, floor, space or room. Over the decades many buildings have subdivided space to accommodate the needs of a changing tenant base. Such space reconfigurations may have resulted in non-Code compliant solutions and will be identified in an emergency evacuation plan. What steps should a building owner take in order to identify and address any such issues in order to preclude municipal prosecution?

Piper Rudnick's Governmental Affairs, Land Use and Development team is ready to assist building owners, and other interested parties in preparing and implementing emergency evacuation plans. A considered, timely response is the best safeguard against potential liability.

City of Chicago On-Site Generation Requirements

As a result of the electric power outages that occurred in the central business and lakefront districts during the summer of 1999, the city of Chicago's Building Code was amended to mandate the use of on-site diesel driven emergency generators for all residential and commercial buildings in excess of 300 feet in height and all hospitals, irrespective of the date of construction of any such buildings. In addition to the installation of on-site diesel driven generators, alternative auxiliary power sources are permissible for certain commercial and residential buildings, provided any such building is greater than 80 but less than 300 feet in height. The installation of on-site generation must be completed by no later than **January 1, 2003**. Failure to install a code-compliant auxiliary power source could subject the property owners to fines of \$500 to \$1,000 per day for each day the property is not in compliance and could lead to the imposition of other sanctions.

The Code requires these on-site generation systems provide emergency electricity for lighting, fire alarm, fire

pump, and exit systems in the event of a power outage. The specific requirements for compliance differ based upon the size and use of the building. Substantial issues will arise for many property owners in connection with the formulation of plans to comply with the Code. Some of those issues include:

- Are there alternate designs of emergency systems which provide an equivalent or greater level of safety and reliability in lieu of on-site diesel generation?
- What alternatives, if any, are available regarding the requirement that on-site generators be located at grade level or not more than two levels above or below grade level?
- Is it possible that building owners and managers can use this on-site generation requirement as a means to reduce their electric bills?

Piper Rudnick's Governmental Affairs, Land Use and Development team and Energy and Public Utilities practice group are ready to assist building owners, property managers and other interested parties in addressing their on-site generation requirements. For assistance, please contact Chris Townsend (312-368-4039) or Mark Nora (312-368-7083).

Baltimore
6225 Smith Avenue
Baltimore, MD 21209-3600
410.580.3000 fax 410.580.3001

111 South Calvert Street, Suite 1950
Baltimore, MD 21202-6174
410.580.3000 fax 410.580.3665

Chicago
(Piper Rudnick, an Illinois General Partnership)
203 North LaSalle Street, Suite 1800
Chicago, IL 60601-1293
312.368.4000 fax 312/236-7516

Dallas
1717 Main Street, Suite 4600
Dallas, TX 75201-4605
214/743-4500 fax 214/743-4545

Edison
*(Piper Rudnick LLP, a New Jersey
Limited Liability Partnership,
Robert A. Assuncao, Managing Partner)*
379 Thornall Street, 8th Floor
Edison, NJ 08837-2226
732.590.1850 fax 732.590.1860

Los Angeles
9255 Sunset Boulevard, Suite 710
Los Angeles, CA 90069-3309
310.288.8110 fax 310.288.8111

New York
1251 Avenue of the Americas, 29th Floor
New York, NY 10020-1104
212.835.6000 fax 212.835.6001

Philadelphia
3400 Two Logan Square
18th and Arch Streets, 34th Floor
Philadelphia, PA 19103-2762
215.656.3300 fax 215.656.3301

Reston
1775 Wiehle Avenue, Suite 400
Reston, VA 20190-5159
703.773.4000 fax 703.773.5000

Tampa
101 East Kennedy Boulevard, Suite 2000
Tampa, FL 33602-5149
813.229.2111 fax 813.229.1447

Washington
1200 Nineteenth Street, NW, 7th Floor
Washington, DC 20036-2412
202.861.3900 fax 202.223.2085

www.piperrudnick.com

PRACTICE GROUP MEMBERS

Richard W. Klawiter
(312) 368-7243
richard.klawiter@piperrudnick.com

Mark J. Nora
(312) 368-7083
mark.nora@piperrudnick.com

Theodore J. Novak
(312) 368-4037
theodore.novak@piperrudnick.com

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