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# Comments: Baltimore City's Green Building Standards, Building Towards an Uncertain Future

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# COMMENTS

## BALTIMORE CITY'S GREEN BUILDING STANDARDS, BUILDING TOWARDS AN UNCERTAIN FUTURE

Greg Franklin

### I. Introduction

In August 2007 the Baltimore City Council passed Council Bill 07-0602 mandating that newly built and “extensively modified” buildings over 10,000 square feet comply with “Green Building Standards.”<sup>1</sup> This law is considered among the first and most extensive green building codes to be passed so far in the United States.<sup>2</sup> This law has not surprisingly sparked praise and criticism.<sup>3</sup> While the law has been praised for its potential environmental benefits, it has also been criticized on the grounds that it is stricter than the laws of surrounding jurisdictions and has made building in Baltimore excessively expensive.<sup>4</sup> Moreover, the law has been criticized as being inflexible and the City has been criticized for the uncertain implementation of the law.<sup>5</sup>

The law in its current form is unlikely to last, as a new bill has been proposed that would adopt new standards for what constitutes a green building.<sup>6</sup> The new law is designed to address some of the criticisms leveled against the current law.<sup>7</sup> It is aimed to be both clearer and more flexible than the existing law.<sup>8</sup> Baltimore will continue to have green building requirements, but a change in the existing law is

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1. *Going Green in Baltimore*, BALTIMORE HOUSING, [http://www.baltimorehousing.org/permit\\_bcgbs](http://www.baltimorehousing.org/permit_bcgbs) (last visited Sept. 7, 2014).
  2. Stuart Kaplow, *Baltimore City is Adopting the IgCC*, GREEN BUILDING LAW UPDATE (June 22, 2014), <http://www.greenbuildinglawupdate.com/2014/06/articles/codes-and-regulations/baltimore-city-is-adopting-the-igcc/>.
  3. Tim Wheeler, *Baltimore's green building law still in limbo*, BALT. SUN (Feb. 3, 2010), [http://articles.baltimoresun.com/2010-02-03/features/bal-md.gr.green03feb03\\_1\\_lead-building-standards-new-mayor](http://articles.baltimoresun.com/2010-02-03/features/bal-md.gr.green03feb03_1_lead-building-standards-new-mayor).
  4. *See id.*
  5. *Id.*
  6. *See* Kaplow, *supra* note 2.
  7. *See id.*
  8. *See id.*

likely.<sup>9</sup> The effects of the new law remain to be seen, however it is hoped the new law will be an improvement on the existing law.<sup>10</sup>

## II. Background

### A. *The Green Building Movement in the United States*

Green building, also sometime referred to as “sustainable” or “high performance” building is defined as “the practice of creating structures and using processes that are environmentally responsible and resource-efficient throughout a building’s life-cycle from siting to design, construction, operation, maintenance, renovation and deconstruction.”<sup>11</sup> The purpose of the green building movement is straightforward.<sup>12</sup> It is essentially to create buildings that efficiently use resources, improve health, and reduce waste.<sup>13</sup> Green buildings are cited as having numerous environmental, economic, and social benefits.<sup>14</sup>

The green building movement in the United States is a relatively recent phenomenon.<sup>15</sup> The Environmental Protection Agency traces the beginning of the movement to 1989, when the American Institute of Architects formed its Committee on the Environment.<sup>16</sup> In 1992 Austin, Texas became the first jurisdiction to pass green building legislation.<sup>17</sup> Also in 1992 the United States Green Building Council (USGBC) was founded, and in 1998 the USGBC began its “LEED” or “Leadership in Energy and Environmental Design” standards.<sup>18</sup> LEED has since become the foundation for Baltimore’s current standards.<sup>19</sup>

### B. *Green Building Codes in Maryland*

Numerous Maryland jurisdictions have also adopted green building legislation.<sup>20</sup> The state has adopted a law mandating that government buildings of more than 7,500 square feet and all public schools achieve a LEED silver rating.<sup>21</sup> Howard County has adopted laws re-

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9. *See id.*

10. *Id.*

11. *Green Building Basic Information*, ENVTL. PROT. AGENCY, <http://www.epa.gov/greenbuilding/pubs/about.htm> (last updated Oct. 9, 2014).

12. *See id.*

13. *Why Build Green*, ENVTL. PROT. AGENCY, <http://www.epa.gov/greenbuilding/pubs/whybuild.htm> (last updated Oct. 9, 2014).

14. *Id.*

15. *See Green Building Basic Information*, *supra* note 11.

16. *Id.*

17. *Id.*

18. *Id.*

19. *See* Kaplow, *supra* note 2.

20. James B. Witkin & Kathleen J. Trinward, *Maryland’s Green Building Laws*, 43 Md. B.J. 22, 23 (Sept./Oct. 2010).

21. *Id.* at 24.

quiring newly constructed buildings over 50,000 square feet be LEED certified, although waivers may be available if achieving such standards would cause “unwarranted hardship (not including financial hardship).”<sup>22</sup> Howard County also applies green building standards to new government buildings greater than 10,000 square feet.<sup>23</sup> Baltimore County does not mandate green building standards, but offers property tax credits for commercial buildings with a Silver or higher LEED rating.<sup>24</sup> Carroll and Howard County offer similar tax incentives.<sup>25</sup> Anne Arundel County has yet to create a green building code.<sup>26</sup> While numerous other counties in the state have adopted green building legislation, the aforementioned counties are most relevant to Baltimore City due to proximity.<sup>27</sup>

### C. *The Baltimore City Green Building Code*

Baltimore City has adopted a building code which is far stricter than any of the nearby counties cited above. In contrast to the above counties, Baltimore City mandates all newly constructed and “extensively modified” buildings that are greater than 10,000 square feet<sup>28</sup> achieve LEED silver or equivalent rating.<sup>29</sup> Single family residential buildings are exempt<sup>30</sup> as are buildings already issued a building permit as of June 30, 2009.<sup>31</sup> Extensively modified buildings are defined as buildings with modifications that alter more than 50% of the “gross floor area as indicated on the application for a building permit.”<sup>32</sup> While initially passed in August 2007,<sup>33</sup> the law did not take effect until July 1, 2009.<sup>34</sup> For the equivalent standards provision the City developed the “Baltimore City Green Building Standards” which share a 70% commonality with the LEED standards.<sup>35</sup> The City Standards offer greater flexibility and lower cost as compared to the LEED standards.<sup>36</sup> Similar to the law in Harford County, the City law offers a waiver when “compliance would be impractical or unduly burden-

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22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*

27. *See id.*

28. BALTIMORE CITY CODE § 3702.1.3 (2000) (repealed 2014).

29. BALTIMORE CITY CODE § 3705.3 (2000) (repealed 2014).

30. BALTIMORE CITY CODE § 3702.1.3 (2000) (repealed 2014).

31. BALTIMORE CITY CODE § 3705.4 (2000) (repealed 2014).

32. BALTIMORE CITY CODE § 3705.1.4 (2000) (repealed 2014).

33. *Going Green in Baltimore*, *supra* note 1.

34. BALTIMORE CITY CODE § 3702.3 (2000) (repealed 2014).

35. Matthew L. Kimball, *Baltimore City Green Building Standards: New Regulations Pose Unanswered Questions*, NILES, BARTON & WILMER, <http://www.niles-barton.com/articles/baltimore-city-green-building-standards-new-regulations-pose-unanswered-que> (last visited Oct. 12, 2014).

36. *Id.*

some” or “the public interest would be served.”<sup>37</sup> By comparison to the surrounding jurisdictions, the law in Baltimore City is far stricter, as only Howard County mandates green construction.<sup>38</sup> Consequently, Baltimore City’s Green Building Standards are cited as unusually strict.<sup>39</sup>

### III. Analysis

#### A. *Benefits of the law*

The law has been cited as having potential positive effects on the environment.<sup>40</sup> The law was written with the intention that it would “protect health and welfare” and mitigate the “environmental impacts” of buildings.<sup>41</sup> The law has been claimed to have the potential to “add significantly to the quality of life in Baltimore, reducing our collective energy and water use, lower GHG emissions, reduce storm water runoff, aid in restoration of the Baltimore Harbor, and create more vibrant and healthy places and spaces.”<sup>42</sup> The law has even been cited to have the potential to “help Baltimore city become the greenest major city in America.”<sup>43</sup> While there are numerous claims regarding the potential of the law, it seems difficult to find any concrete proof of its achievement of such benefits.

#### B. *Difficulties in implementation*

Baltimore City has experienced difficulties in implementing the green building code. While the law required that alternative standards be made available, this aspect of the law was not carried out on time.<sup>44</sup> This added further legal difficulties for a law already facing serious controversy.<sup>45</sup> Moreover, the definition of “extensively modified” remains unclear, leaving further uncertainty in the implementation of the law.<sup>46</sup> Therefore, in addition to the unintended negative consequences that need to be addressed, clarification is necessary to insure the law is effective and that the City meets its legal obligations.<sup>47</sup>

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37. BALTIMORE CITY CODE § 3708 (2000) (repealed 2014).

38. See Witkin & Trinward, *supra* note 20, at 26-28.

39. Don Fry, *GBC’s Fry: Baltimore City’s “green building” standards well-intentioned but flawed*, GREATER BALTIMORE COMMITTEE (Jun. 30, 2009), <https://gbc.org/gbcs-fry-baltimore-citys-green-building-standards-well-intentioned-but-flawed/>.

40. *Baltimore City Green Building Standards*, TERRALOGOS: ECO ARCHITECTURE, <http://www.terralogos.com/offers/bcgbs.html> (last visited Oct. 12, 2014).

41. BALTIMORE CITY CODE § 3702.1.1 (2000) (repealed 2014).

42. TERRALOGOS: ECO ARCHITECTURE, *supra* note 40.

43. Wheeler, *supra* note 3.

44. *See id.*

45. *See id.*

46. Kaplow, *supra* note 2.

47. Wheeler, *supra* note 3.

*C. Potential drawbacks*

While receiving praise, the law has also been cited as having numerous potential drawbacks.<sup>48</sup> The law has been criticized as overly complex and expensive.<sup>49</sup> Perhaps the strongest criticism leveled against the law is its comparison to the laws of neighboring jurisdictions.<sup>50</sup> As noted above, the Baltimore City restrictions are far stricter than Anne Arundel, Baltimore, Carroll and Howard Counties. Only Howard County mandates green building, and only for buildings greater than 50,000 square feet.<sup>51</sup> Howard County also offers tax benefits, while the City does not.<sup>52</sup> This has had the effect of discouraging building in the city, as buildings can be built in the surrounding counties at a lower cost.<sup>53</sup>

Consequently, Baltimore City's green building code can be fairly criticized as "well-intentioned but flawed."<sup>54</sup> In addition to criticism from developers, the law has received harsh criticism from the Greater Baltimore Committee.<sup>55</sup> As the committee President points out, and a comparison with surrounding counties makes clear, Baltimore City's law has the potential to do more harm than good.<sup>56</sup> The combination of the stricter building codes and a higher property tax has the potential to encourage urban sprawl in contradiction to state objectives and undermine Baltimore City's tax base by encouraging businesses to build in neighboring jurisdictions instead of the city.<sup>57</sup> Because of Baltimore City's limited jurisdiction any code stricter than the surrounding counties risks this problem, which limits the ability of the City to effectively implement any green building code.<sup>58</sup>

A statewide program might be an option to offset this problem. In contrast to Maryland, Delaware has instituted a statewide building code, which mandates all construction in Delaware be built to International Code Council International Energy Conservation Code (ICC-IECC) standards.<sup>59</sup> Such a solution in Maryland would address the issue of codes which vary greatly across local jurisdictions.<sup>60</sup> But it would also encounter local government advocates who have already criticized the State Government for adopting "PlanMaryland," an anti-

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48. *See id.*

49. *Id.*

50. *Id.*

51. Witkin & Trinward, *supra* note 20, at 26.

52. Fry, *supra* note 39.

53. *See id.*

54. *Id.*

55. *Id.*

56. *See id.*

57. *See id.*

58. *Id.*

59. DEL. CODE ANN. tit. 16, § 7602 (West 2014).

60. *See Fry, supra* note 39.

sprawl measure.<sup>61</sup> Consequently, a statewide program would also prove problematic, and might discourage manufacturing at a time when Maryland is struggling to retain its manufacturing base.<sup>62</sup> Therefore, short of a state law, Baltimore's best option might be to take the same route as the surrounding counties, and encourage green building through tax incentives rather than simply mandating green building.<sup>63</sup>

#### D. Looking forward

The existing law has been difficult to implement and has had unintended adverse effects.<sup>64</sup> The law has proven problematic enough that law in its current form is being repealed.<sup>65</sup> A new law has been proposed to address some of the criticisms the current law has faced.<sup>66</sup> This bill claims to "reduce the negative impacts and increase the positive impacts of the built environment on the natural environment and building occupants."<sup>67</sup> The new law will continue to mandate green building, but will adopt a new standard.<sup>68</sup> The proposed law would abandon the USGBC LEED based system in favor of one based on the International Green Construction Code (IgCC). Buildings achieving a LEED silver or higher rating will be exempt from the new rules.<sup>69</sup> It is hoped that the newer law will give builders more flexibility in meeting the City requirements.<sup>70</sup>

While the new code hopes to address some of the problems of the existing code, it has not been without controversy.<sup>71</sup> The proposed law only applies to new buildings and fails to address problems associated with the unclear provisions involving modifications to existing buildings.<sup>72</sup> City Council Bill No. 14-0413 is also only focused on mak-

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61. See Sabri Ben-Achour, *Maryland To Offer Preferential Funding For Smart Growth*, WAMU 88.5 (Dec. 21, 2011), [http://wamu.org/news/11/12/21/maryland\\_to\\_offer\\_preferential\\_funding\\_for\\_smart\\_growth](http://wamu.org/news/11/12/21/maryland_to_offer_preferential_funding_for_smart_growth). "PlanMaryland is a statewide policy that sets a course to grow where it makes sense while protecting valuable resources such as waterways, farmland and forests. It aims to create sustainable growth by directing state agencies to target their resources to help achieve smart growth at the local level and for Maryland's counties and municipalities to identify their growth and preservation areas to meet land use, planning and development goals." PLANMARYLAND, <http://plan.maryland.gov/> (last visited Oct. 12, 2014)).

62. Wheeler, *supra* note 3.

63. See Fry, *supra* note 39.

64. Wheeler, *supra* note 3.

65. Kaplow, *supra* note 2.

66. See *id.*

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

71. *Green Building Code Changes in Baltimore City*, GORDON FEINBLATT (Aug. 11, 2014), <http://www.gfrlaw.com/pubs/GordonPubDetail.aspx?xpST=PubDetail&pub=1198>.

72. *Id.*

ing standards more flexible.<sup>73</sup> Therefore, it does not address the fact that City law remains inconsistent with the law of surrounding jurisdictions and fails to offer financial incentive for green building, and thus it does nothing to address the fact that builders will still have a financial incentive to build outside the City.<sup>74</sup>

#### IV. Conclusion

It can hardly be said that Baltimore City's Green Building Law has been a success. The law is in the process of being repealed, despite the fact that it is only been in effect for five years.<sup>75</sup> The repeal does demonstrate that the City government is aware of and has responded to complaints as it promised when the law was first implemented.<sup>76</sup> While the proposed law is a step forward in granting greater flexibility, it fails to address the primary failings of the existing law.<sup>77</sup> It fails to address the ambiguities regarding building modifications,<sup>78</sup> and fails to provide an incentive to build in Baltimore City.<sup>79</sup> The City still has to offer greater clarity and financial incentives to address the problems associated with the law.<sup>80</sup> Otherwise, nothing short of a state law can keep builders from circumventing the law by building outside the city limits.<sup>81</sup> It can be hoped that problems involving Baltimore City's Green Building Law will prove to be a warning to other jurisdictions of how a law with the best intentions can be more a harmful than beneficial, and proof of the necessity of nearby jurisdictions coordinating their land use laws.

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73. *Id.*

74. *See* Fry, *supra* note 39.

75. Kaplow, *supra* note 2.

76. Wheeler, *supra* note 3.

77. *See* Fry, *supra* note 39.

78. GORDON FEINBLATT, *supra* note 71.

79. *See* Fry, *supra* note 39.

80. *See id.*

81. *See id.*