

Summary to revisions made in September version of Model Municipal Green Building Ordinance

Center for Climate Change Law at Columbia Law School

The Center for Climate Change Law (CCCL) published a draft of a Model Municipal Green Building Ordinance on June 1, 2010. Subsequent to publication, CCCL received numerous insightful comments on that draft. In response to those comments, the ordinance has been revised. This paper describes the major changes made to the ordinance pursuant to the comments received. Please also reference the redlined version of the ordinance, explicitly showing the text added to and removed from the revised ordinance.

Comment on § 2(A)

Commentary on the ordinance's choice to use a building's conditioned space as a threshold for coverage instead of building cost was added.

Definition of "PROJECT"

The definition of the term "project" was revised to eliminate potential loopholes in coverage. As previously defined, the term potentially allowed developers to make major modifications to several conjoined structures in such a way as to evade regulation. Further explanation of this change was added to commentary.

Comment on "CERTIFIABLE"

Commentary on the ordinance's choice to leave LEED's forestry certification system intact was added.

Comment on "MAJOR MODIFICATION"

Commentary on a potential weakness in the ordinance's definition of major modifications was added.

Comment on "MUNICIPAL BUILDING"

Under the comment for the definition of "municipal building," a reference to a police department building was eliminated in favor of a reference to an economic development agency. Because police departments are often autonomous municipal corporations outside of the ordinance's purview, the original comment was inaccurate. Economic development agencies are instrumentalities of municipalities and are regulated by the ordinance.

Section 4: Green Building Rating Systems

The U.S. Green Building Council's (USGBC) LEED for Schools rating system was added in § 4(A) to cover schools. This is in response to a comment noting that LEED for New Construction is not well-suited to guide the construction of school buildings. Statutory language and commentary was added in several sections in accordance with this change. Note, however, that the ordinance does not cover public

schools because school districts in New York state are autonomous from municipalities in the majority of jurisdictions.

Comment on § 4(A)

Comments were received that noted the disparity between the impact of implementing LEED standards and implementing the Energy Star standard. LEED addresses several aspects of a building's sustainability, such as requiring sustainable building materials, whereas EnergyStar focuses on a building's energy usage. While the choice of EnergyStar for small residential buildings remains intact, added commentary to § 4(A) clarifies this choice in light of the disparity.

Comment on § 4(B)

Comments were received questioning the delegation of authority to change the green building standard to the Green Building Compliance Official. The ordinance's option to keep authority in the hands of the municipal legislature addresses this concern while retaining the default position that such authority can and should be delegated.

Section 5: Standards for Compliance

For LEED certification, buildings are required to disclose certain information concerning energy and water usage to USGBC. While the ordinance is steadfastly divorced from USGBC certification procedures, the ordinance could conceivably be read to require these disclosures. To avoid any uncertainty, a clause was added here specifically stipulating that these disclosures are not required. Commentary on this point was also added.

Comment on § 9

Commentary clarifying the choice to exempt healthcare facilities from regulation was added.

Comment on former Appendix A

Appendix A from the previous version of the ordinance, concerning PACE bonds, was eliminated for reasons described in the commentary.

Appendix C

For added simplicity, a new Appendix C has been added that clarifies the ways a municipality may modify the green building standard implemented. Several sections of the ordinance are created with LEED in mind. By following the direction of Appendix C, the ordinance can be modified to make use of any green building standard. In this way, the ordinance enjoys more flexibility.

While the ordinance is currently recommended for adoption, CCCL will continue to accept comments on the model ordinance and update its contents.

Legal Analysis

Discussion of federal preemption in the legal analysis memo has been updated to reflect current case law.