
Councilmember Phil Mendelson

Councilmember Sharon Ambrose

Councilmember Jim Graham

Chairman Linda Cropp

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To establish a high-performance building standard to encourage the planning, design, construction, and operation of building projects that help to mitigate the environmental, economic, and social impacts of built structures in the District.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "District of Columbia Green Building Act of 2005".

Sec. 2. Definitions.

For the purposes of this act, the term:

(1) "Applicant" means any individual, firm, limited liability company, association, partnership, government agency, public or private corporation, or other entity that applies for a building permit to undertake any construction or renovation project within the District.

(2) "BTU/(hr. x ft.2)" means British Thermal units (BTUs) per hour as a measure of heating and cooling capacity expressed on a per square foot basis.

(3) "Building" means any structure as defined in section 199.1 of Title 11 of the District of Columbia Municipal Regulations.

(4) "Commercial project" means any construction project in the District, other than a District-sponsored project, that requires a certificate of occupancy pursuant to Title 11 of the District of Columbia Municipal Regulations.

(5) "Conditioned space" means an enclosed space in a building that is provided with a mechanical heating system that has a capacity exceeding 10 Btu/(hr. x ft.2), or is provided with a mechanical cooling system that has a capacity exceeding 5 Btu/(hr. x ft.2), unless the mechanical heating or cooling system is designed and thermostatically controlled to maintain a process

environment temperature less than 55°F or to maintain a process environment temperature greater than 90°F for the entire space the system serves.

(6) "Construction" means the building of any building or structure, or any portion thereof.

(7) "Covered project" means all District-sponsored projects and all commercial projects within the District that include 20,000 gross square feet or more of conditioned space. The term "covered project" includes renovation construction projects that incorporate 20,000 gross square feet or more of conditioned space within the scope of the renovation.

(8) "District-sponsored project" means any construction project funded, built, sponsored, or subsidized by the District or built on District-owned land.

(9) "District Green Building Supplement" or "Supplement" means any local variations to the LEED Green Building Rating System promulgated and adopted by the District government as a rulemaking under section 15.

(10) "Green building" means an integrated, or whole building, approach to the planning, design, construction, and operation of buildings and their surrounding landscapes that helps mitigate the environmental, economic, and social impacts of buildings so they are energy efficient, sustainable, secure and safe, cost-effective, accessible, functional, productive, and aesthetic.

(11) "Green Building Compliance Official" or "GBCO" means the Mayor's designee who manages the Green Building program.

(12) "Green Building Education Fund" or "Fund" means the segregated account within the General Fund of the District of Columbia established in section 13.

(13) "Green Building Project Checklist" means a scorecard developed by the USGBC for the purpose of calculating a score on the appropriate LEED Green Building Rating System or the local variant to the USGBC scorecard.

(14) "Green Building Worksheet" means a form that specifies the type and content of information an applicant must submit under this act prior to any hearings before the Zoning Commission or the Board of Zoning Adjustment or, if none of the preceding applies, prior to any hearing for a building permit for a covered project.

(15) "Historic structure" means any building or structure listed on or eligible for listing on a national, state or local register or list of historic resources.

(16) "LEED Green Building Rating System" means the most recent version of the Leadership in Energy and Environmental Design ("LEED") New Construction and Major

Renovation document approved by the USGBC.

(17) "LEED Green Building Reference Guide" means a supporting document published by the USGBC that provides detailed information, resources, and standards used for the LEED Green Building Rating System, including information regarding the documentation required for LEED certification.

(18) "Life cycle cost analysis" means an inclusive approach to costing a program, facility, or group of facilities that encompasses planning, design, construction, operation and maintenance over the useful life of the facilities, and any decommissioning or disassembly costs.

(19) "Pre-permitting documentation" means the written information required to be submitted by an applicant for approval by the Mayor of a project prior to the issuance of a certification under the LEED Green Building Rating System.

(20) "Renovation" means any change, addition, or modification to an existing building or structure that requires a building permit under the District of Columbia Construction Codes of 2003, Title 12A of the District of Columbia Municipal Regulations (12A DCMR).

(21) "USGBC" means the United States Green Building Council, a not for profit organization, that has developed and published the LEED Green Building Rating System to measure the energy and environmental performance of buildings.

Sec. 3. Adoption of the LEED Green Building Rating System.

(a) The District shall adopt, by rulemaking, the LEED Green Building Rating System ("rating system") and the LEED Green Building Reference Guide ("reference guide") as well as a District Green Building Supplement or Supplement for the purposes of certifying eligible projects under this act.

(b) The Mayor shall maintain the most recent version of the rating system and the reference guide.

(c) For the first 6 months after the adoption of any amended version of the rating system, an applicant may submit an application to the Mayor for a covered project using either the amended version or the previous version of the rating system.

Sec. 4. Standards for covered projects.

(a) Covered projects shall be subject to the following requirements:

(1) All covered project applicants shall submit to the Green Building Compliance Official a completed Green Building Project Checklist ("Checklist") and Green

Building Worksheet (“Worksheet”) and shall pay a fee of \$0.03 per square foot of the project to the Green Building Education Fund (“Fund”). An applicant who achieves LEED certification at the required level of compliance and an Energy Star rating of 75, where eligible, may have this fee refunded, plus interest accrued. All covered project applicants shall utilize the Checklist that corresponds with the rating system approved for use.

(2) Within 365 days after the effective date of this act, all District-sponsored covered projects shall be required to achieve LEED Silver rating.

(3) Within 3 years from the effective date of this act, each covered commercial project shall be required to achieve a minimum LEED certified rating which is composed of no less than 4 energy optimization performance points.

(4) Within 3 years from the effective date of this act, each District-sponsored covered project shall be required to achieve a LEED Gold rating which is composed of no less than 4 energy optimization performance points.

(5) Within 5 years from the effective date of this act, each covered commercial project shall be required to achieve a LEED Silver rating with an Energy Star rating of 75 or no less than 4 energy optimization performance points and at least 20% of all District-owned buildings that existed prior to 2005 shall meet LEED Existing Building (EB) certification with an Energy Star rating of 75 or no less than 4 energy optimization performance points.

(b) All covered project applicants shall register each covered project with the USGBC and achieve, at a minimum, the equivalent of the required certification pursuant to subsection (a) of this section.

(c) Each applicant for a building permit for a non-covered project shall use its best efforts to incorporate as many criteria as feasible from the rating systems.

(d) Compliance with the provisions of this act shall be required for approval of project applications by the Zoning Commission or Board of Zoning Adjustment, or, if none of the preceding applies, for approval of a building permit for a covered project. Failure to comply with any of the requirements of this act shall subject the covered project to the enforcement provisions under section 9.

Sec. 5. Exemptions.

(a) Any District-sponsored projects that are buildings which are unoccupied or that serve a specialized function, including but not limited to buildings such as a pump station, garage, or storage building, shall not be subject to the requirements of this act.

(b) All historic structures as defined under the Historic Landmark and Historic District Protection Act of 1978, effective March 3, 1979, (D.C. Law 2-144; D.C. Official Code § 6-1101 et seq.), shall be exempt from the requirements of this act. Applicants for building projects at historic structures shall use their best efforts to incorporate as many of the criteria as feasible from the rating system without compromising the historical integrity of the structure.

Sec. 6. Affordable Housing Green Building regulations.

The Mayor shall issue Affordable Housing Green Building Regulations (“Regulations”) to create incentives for enforcement of this act that are consistent with the Housing Production Trust Fund Act of 1988, effective March 16, 1989 (D.C. Law 7-202; D.C. Official Code § 42-2801 et seq.), as amended. The Regulations shall be considered in the District’s evaluation of requests for proposals and negotiations for affordable housing projects receiving District or Federal funding or financing.

Sec. 7. Green Building Incentive Program.

Upon the effective date of this act, the Mayor shall establish a Green Building Incentive Program (“Program”). The purpose of the Program shall be to allow a developer of a commercial project to apply for expedited permit review or planned unit development or PUD approval if the project plans contain sufficient documentation to show that LEED certification will be attained upon project completion and application to the USGBC. The Program shall apply to all types of commercial building projects, including offices, multi-unit residential, and mixed use. In establishing the Program, the Mayor shall set expedited deadlines for the purposes of this Program for projects that meet the LEED standards.

Sec. 8. Pre-permitting documentation.

(a) An applicant for a building permit for a covered project may submit pre-permitting documentation to the Mayor for a determination of eligibility of the application for LEED certification prior to the award of the applicable LEED certification for the project. The documentation shall include:

- (1) The Green Building Project Checklist;
- (2) The Green Building Worksheet with an analysis of each credit claimed;

and

(3) Any other documentation that the Mayor determines to be necessary to comply with this act.

(b) An applicant for a building permit for a covered project shall submit a completed Green Building Project Checklist with the first building permit plan set submitted. All building plans shall include the green building and Energy Star measures to be used to attain the applicable LEED and Energy Star ratings.

(c) If the GBCO determines that the application is insufficient to meet the appropriate LEED or Energy Star ratings or the purposes of this act following submission of the documentation required by subsection (a) of this section, but prior to any hearing before the Zoning Commission or the Board of Zoning Adjustment, or, if none of the preceding apply, prior to an application for a building permit, the GBCO shall meet with the applicant to discuss any additional green building or Energy Star measures required for approval.

(d) The Mayor shall promulgate, by rulemaking, procedures for review of pre-permitting documentation of covered projects for achievement of the appropriate LEED, District Green Building Supplement, and Energy Star ratings which shall include:

- (1) The credits needed for a project to achieve certification, including any affordable housing green building credits or requirements;
- (2) The applicable LEED rating and the measures needed to achieve that rating;
- (3) The deadlines for the review and submission of pre-permitting documentation;
- (4) The approval process; and
- (5) Any other procedures needed to comply with this act.

Sec. 9. Compliance and enforcement.

(a) The Mayor shall determine whether the requirements under the pre-permitting documentation are implemented at each stage of construction, including at the foundation inspection, framing inspection, and prior to issuance of a final certificate of occupancy. The Mayor may conduct other inspections, as needed, to ensure compliance with this act.

(b) If, as a result of any inspection under subsection (a) of this section, the Mayor determines that the covered project does not comply with the pre-permitting documentation, a stop-work order may be issued. A stop-work order may apply to the portion of the project impacted by noncompliance or to the entire project. This order shall remain in effect until the Mayor determines that the project shall be brought into compliance.

(c) The Mayor shall review the information submitted by the applicant and determine whether the applicant will achieve the required LEED rating, as set forth in section 4. If the Mayor finds that the applicant is not reasonably expected to achieve the required LEED rating, the Mayor shall make the following findings:

- (1) If the covered project has not met the requirements for the applicable LEED rating, whether the applicant has made a good faith effort to comply with this act;
- (2) If the applicant has not made a good faith effort to comply, or if the applicant fails to submit the documentation within the time period required under the regulations, whether the final building permit approval or certificate of occupancy should be withheld;
- (3) If the applicant has not complied with this act, whether the applicant should be required to undertake further actions to mitigate this non-compliance.

Sec. 10. Hardship or infeasibility exemption.

(a) The Mayor may issue an exemption from any of the requirements of this act upon finding that circumstances exist that make it a hardship or infeasible for the applicant to meet those requirements. These circumstances may include, but are not limited to:

(1) The availability of markets for materials to be recycled; 1
(2) The availability of green building materials and technologies; and 2
(3) The compatibility of green building requirements with existing 3
building standards. 4

(b) The burden shall be on the applicant to show circumstances to establish 5
hardship or infeasibility under subsection (a) of this section. 6
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Sec. 11. Appeals. 8
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(a) Any applicant or person may appeal to the Mayor the determination of the 10
GBCO regarding: 11

(1) The approval or denial of an exemption pursuant to section 5; 12
(2) Compliance with the requirements under section 9; or 13
(3) The type or scope of mitigation measures required for a hardship or 14
infeasibility exemption pursuant to section 10. 15
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(b) Any decision of the Mayor under subsection (a) of this section shall be in 17
writing and include the findings and reasons for the decision. 18
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(c) The Mayor shall establish by rulemaking reasonable time limits to file an 20
appeal and for issuance of a decision. 21
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Sec. 12. District-sponsored covered projects budget and financing. 23
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All District-sponsored covered projects under this act shall be budgeted to 25
achieve, at minimum, a LEED Silver rating. For these projects, budget planning, and life cycle 26
cost analysis to achieve a higher rating of gold or platinum shall be encouraged to the maximum 27
rating to the extent feasible. These budgets shall be prepared at the time when the capital budget 28
is being presented for the project to the Council or when building permits are sought, whichever 29
is earlier. These budgets shall be submitted to both the Chief Financial Officer and Council for 30
their review for compliance with this act. 31
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Sec. 13. Green Building Education Fund. 33
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(a) There is established a fund designated as the Green Building Education Fund 35
("Fund"), which shall be a segregated account within the General Fund of the District of 36
Columbia. All funds shall be deposited into the Fund without regard to fiscal year limitation and 37
shall not revert to the fund balance of the General Fund of the District of Columbia at the end of 38
any fiscal year or at any other time, but shall be continually available for the uses and purposes 39
set forth in subsection (c) of this section, subject to authorization by Congress; provided, that 40
excluding funds collected in the current year, those funds deposited in the Fund in the year prior 41
to the current year and the interest earned on that money remaining in the Fund after the payment 42
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of costs accrued in the prior year, less 10% of that remaining amount, to be retained as a reserve operating balance, shall be transferred or revert to the fund balance of the General Fund of the District of Columbia. The Fund shall be administered by the Chief Financial Officer of the District of Columbia.

(b) The Mayor shall deposit into the Fund all revenues, proceeds, and moneys (“moneys”) from the fees collected or received by the Mayor on behalf of covered project applicants pursuant to this act.

(c) The purpose of the Fund shall be to educate relevant District employees, the building community, and the public regarding the benefits and techniques of high- performance building standards. The Fund moneys shall be first used to educate District government employees who are managing or may manage District-sponsored covered projects pursuant to this act and who are required to attend LEED or Energy Star training or other training on high-performance building standards, as well as to achieve and maintain LEED Accredited Professional accreditation.

(d) The Mayor shall provide the Council with an annual accounting of the receipts of and the expenditures from the Fund.

Sec. 14. Delegation, review, and reporting.

(a) The Mayor may designate responsibility for compliance with this act to the agencies and departments (“agency”) of the District government responsible for planning, designing, constructing, or renovating District-sponsored projects and approving commercial projects. The Mayor shall designate one agency to administer the Green Building Education Fund and coordinate educational, technical, and financial resources available to other agencies that support and promote sustainable design and construction of District-sponsored projects.

(b) The Mayor shall be required to:

(1) Submit an annual report to the Council no later than September 30 of each year stating how each District-sponsored project has met the purposes and requirements of this act;

(2) Promulgate, as a rulemaking, within 180 days of the effective date of this act, and thereafter review and update annually any District Green Building Supplement which, at a minimum, shall include local requirements for hazard mitigation, security, energy efficiency, water conservation, recycled content materials, construction waste management, indoor air quality, and acoustics;

(3) Provide technical expertise on green building issues on a case by case basis; and

(4) Maintain trained staff to effectuate the purposes of this act.

Sec. 15. Rulemaking.

(a) Within 180 days of the effective date of this act, the Mayor shall issue rules pursuant to sections 3, 6, 7, and 8(d) to implement this act.

(b) The proposed rules shall be submitted to the Council in accordance with Title 1 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved.

Sec. 16. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 17. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.