

CITY OF SEATTLE
ORDINANCE _____
COUNCIL BILL _____

..title

AN ORDINANCE relating to land use and zoning, amending Sections 23.40.060, 23.41.012, 23.45.510, 23.45.516, 23.48.011, 23.48.017, 23.49.011, 23.49.023, 23.49.180, 23.50.033, 23.66.140, 23.84A.014, 23.88.010 and 23.90.018 of the Seattle Municipal Code and repealing Sections 23.45.526, 23.48.025, and 23.49.020 to revise the Living Building Pilot program and adding a new Chapter 23.58C to reorganize, consolidate and update standards related to when a green building performance standard is a condition of a permit into a new Land Use Code chapter.

WHEREAS, the *Living Building Challenge*[™] establishes goals for building owners, architects, design professionals, engineers, and contractors to build in a way that provides for a sustainable future through buildings informed by their ecoregion’s characteristics, that generate all of their own energy with renewable resources, that capture and treat all of their water, and operate efficiently with maximum beauty; and

WHEREAS, the City of Seattle has been a leader in encouraging sustainable building since it adopted a Sustainable Building Policy in February 2000, and the City has implemented other processes, regulations, and incentives to encourage the private market to follow the City’s lead; and

WHEREAS, the goal of the Pilot Program is to encourage the development of buildings that meet the Living Building Challenge[™] (full Living Building Certification or Petal Recognition), according to the criteria in the International Living Future Institute’s certification programs, by allowing departures from code requirements and providing height and floor area bonuses; and

WHEREAS, the City Council adopted Ordinance 123206 in December 2009, Ordinance 123942 in July 2012 and Ordinance 124535 in July 2014 to establish and expand the Living Building Pilot Program; and

WHEREAS, the City Council adopted Resolution 31400 in June 2013, requesting the Department of Planning and Development develop recommendations for improving the Living Building Pilot Program; NOW, THEREFORE,

NOW, THEREFORE;

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Section 23.40.060 of the Seattle Municipal Code, last amended by Ordinance 124535, is amended as follows:

1 **23.40.060 Living Building Pilot Program**

2 A. ~~((Purpose. The purpose of this section is to establish a Living Building Pilot~~
3 ~~Program. The goal of the Pilot Program is to encourage the development of buildings that meet~~
4 ~~the Living Building Challenge by allowing departures from code requirements that might~~
5 ~~otherwise discourage or prevent buildings from meeting this standard. Overall, the Living~~
6 ~~Building Pilot Program is intended to:~~

7 1. ~~stimulate innovative development that meets the goals of the Living Building~~
8 ~~Challenge and City of Seattle design guidelines.~~

9 2. ~~encourage development that will serve as a model for other projects throughout~~
10 ~~the City and region and will stimulate development of new Living Buildings.~~

11 3. ~~identify barriers to Living Buildings in current codes and processes.~~

12 B. ~~))Project qualification~~

13 1. Eligible projects. Only projects that are eligible for design review under
14 Section 23.41.004 and located outside of the shoreline jurisdiction may qualify for the Living
15 Building Pilot Program.

16 2. ~~((Enrollment period. The enrollment period for the Living Building Pilot~~
17 ~~Program expires on the earlier of December 31, 2015, or when applications for 12 projects have~~
18 ~~been submitted for a Master Use Permit.~~

19 3. ~~))Application requirements. In order to qualify for the Living Building Pilot~~
20 ~~Program, applicants shall submit a plan demonstrating how their project will meet the provisions~~
21 ~~of subsection 23.40.060.B.1((each of the imperatives of Living Building Challenge (LBC),~~
22 ~~including an overall design concept, proposed energy balance, proposed water balance, and~~
23 ~~descriptions of innovative systems)). ~~((In addition, an))~~The applicant shall include a description~~

1 of how the project serves as a model for testing code improvements to stimulate and encourage
2 Living Buildings in the city.

3 ((4))3. Qualification process. An eligible project shall qualify for the Living
4 Building Pilot Program upon determination by the Director that ((#))the applicant has submitted
5 a complete application pursuant to Section 23.76.010 and has complied with the application
6 requirements of subsection ((23.40.060.B.3)) 23.40.060.A.2.

7 B. Minimum Standards

8 1. Qualifying projects under the Living Building Pilot Program shall meet full
9 Living Building Certification by achieving all of the imperatives of the International Living
10 Future Institute's (ILFI) Living Building Challenge™ (LBC) certification, v3.0, or all of the
11 following:

12 a. the project shall attain at least three of the seven performance areas, or
13 "petals," of the ILFI's Petal certification program (Place, Water, Energy, Health and Happiness,
14 Materials, Equity, and Beauty), among which must be at least one of the following three petals:
15 Energy, Water, or Materials;

16 b. total building energy use shall be 75 percent or less of the energy use
17 targets established in the 2012 Seattle Energy Code's Target Performance Path, Section
18 C402.1.5; and

19 c. subject to approval by Public Health- Seattle and King County, no
20 potable water shall be used for nonpotable uses.

21
22

1 C. ~~((Design review. All Living Building Pilot Program projects are subject to design~~
2 ~~review and shall be reviewed in accordance with the design review process provided in Section~~
3 ~~23.41.014.~~

4 D. ~~Height measurement technique. At the discretion of the applicant, the height of a~~
5 ~~qualifying project shall be determined using either the definition of building height in Section~~
6 ~~502 of the Seattle Building Code or the method described in Chapter 23.86 of the Land Use~~
7 ~~Code.))Bonuses for projects participating in the Living Building Pilot Program.~~

8 1. A project qualifying for the Living Building Pilot Program may contain:

9 a. 15 percent more floor area above the applicable floor area ratio; or

10 b. in the case of residential development in downtown or Seattle Mixed
11 zones, 15 percent more floor area above the floor area resulting from the application of
12 development standards.

13 2. A project qualifying for the Living Building Pilot Program may employ a
14 structure height bonus up to 10 feet for development in zones with height limits of 45 feet or
15 less.

16 3. A project qualifying for the Living Building Pilot Program may employ a
17 structure height bonus up to 20 feet for development in zones with height limits greater than 45
18 feet.

19 4. A rooftop feature may extend above the structure height bonus provided in
20 subsections 23.40.060.C.2 or .3 if the extension is consistent with the applicable standards
21 established for that rooftop feature within the zone.

22 ~~((E))~~D. Compliance with minimum standards

1 ~~((1. Qualifying projects under the Living Building Pilot Program that are granted~~
2 ~~departures shall meet one of the following:~~

3 ~~a. Living Building Challenge. The intent of the Living Building Pilot~~
4 ~~Program is to encourage development of buildings that meet or exceed the goals of the Living~~
5 ~~Building Challenge. A qualifying project shall meet:~~

6 ~~1) all of the imperatives of the Living Building Challenge, version~~
7 ~~2.1; or~~

8 ~~2) at least three of the seven performance areas, or "petals," of the~~
9 ~~Living Building Challenge, version 2.1 (Site, Water, Energy, Health, Materials, Equity, and~~
10 ~~Beauty), including at least one of the following three petals: Energy, Water, or Materials, and all~~
11 ~~of the following standards:~~

12 ~~a) total building energy usage shall be 75 percent or less of~~
13 ~~the energy consumed by a "standard reference design building," as defined in the Seattle Energy~~
14 ~~Code in effect at the time a complete building permit application is submitted;~~

15 ~~b) total building water usage, not including harvested~~
16 ~~rainwater, shall be 25 percent or less of the average water usage for a comparable building not in~~
17 ~~the Living Building Pilot Program, based on Seattle Public Utility estimates or other baseline~~
18 ~~approved by the Director that would provide a comparable estimate; and~~

19 ~~e) at least 50 percent of stormwater shall be captured and~~
20 ~~used on site.~~

21 ~~b. RESERVED.))~~

22 ~~((2))~~1. No later than two years after issuance of a final Certificate of Occupancy
23 for the project, or such later date as may be allowed by the Director for good cause, the owner

1 shall submit to the Director a report demonstrating how the project complies with the standards
2 contained in subsection (~~(23.40.060.E.1.a)~~) 23.40.060.B.1. Compliance must be demonstrated
3 through an independent report from a third party. The report must be produced by (~~the~~
4 ~~International Living Future Institute~~) ILFI(~~(I)~~) or another independent entity approved by the
5 Director.

6 (~~(3)~~)2. If the Director determines that the report submitted provides satisfactory
7 evidence that the project has complied with the standards contained in subsection
8 (~~(23.40.060.E.1.a)~~) 23.40.060.B.1, the Director shall send the owner a written statement that the
9 project has complied with the standards of the Living Building Pilot Program. If the Director
10 determines that the project does not comply with the standards in subsection (~~(23.40.060.E.1.a)~~)
11 23.40.060.B.1, the Director shall notify the owner of the aspects in which the project does not
12 comply. Nothing in the written statement or participation in the Living Building Pilot Program
13 shall constitute or imply certification of the project by (~~International Living Future Institute~~
14 ~~(ILFI)~~) ILFI as a Living Building under the (~~Living Building Challenge~~) LBC. Components of
15 the project that are included in order to comply with the minimum standards of the Living
16 Building Pilot Program shall remain for the life of the project.

17 (~~(4)~~)3. Within 90 days after the Director notifies the owner of the (~~(ways)~~) aspects
18 in which the project does not comply, or such longer period as the Director may allow for good
19 cause, the owner may submit a supplemental report demonstrating that it has made alterations or
20 improvements such that the project now meets the standards in subsection (~~(23.40.060.E.1.a)~~)
21 23.40.060.B.1.

22 (~~(5)~~)4. If the owner fails to submit a supplemental report within the time allowed
23 pursuant to subsection (~~(23.40.060.E.4)~~) 23.40.060.D.3, the Director shall determine that the

1 project has failed to demonstrate (~~(fuh)~~) compliance with the standards contained in subsection
2 (~~(23.40.060.E.1.a)~~) 23.40.060.B.1, and the owner shall be subject to the penalty in subsection
3 (~~(23.90.018.B.6)~~)23.40.060.E.

4 E. Penalties for the Living Building Pilot Program

5 1. Failing to submit the report required by subsection 23.40.060.D.2 by the date
6 required is subject to a penalty of \$500 per day from the date the report was due to the date it is
7 submitted.

8 2. Failing to demonstrate compliance with the provisions contained in subsection
9 23.40.060.B.1 is subject to a maximum penalty of five percent of the construction value set forth
10 in the building permit for the structure based on the extent of noncompliance with standards
11 contained in subsection 23.40.060.B.1.

12 F. Program expiration. This Section 23.40.060 expires on the earlier of December 31,
13 2025, or when applications for 20 projects have met the application requirements of subsection
14 23.40.060.A.2.

15 Section 2. Subsection 23.41.012.D of the Seattle Municipal Code, which section was last
16 amended by Ordinance 124680, is amended as follows:

17 **23.41.012 Development standard departures**

18 * * *

19 **D. Departures for the Living Building Pilot Program**

20 **1. Criteria for departures.** Departures from Land Use Code requirements for
21 projects participating in the Living Building Pilot Program pursuant to Section 23.40.060 may be
22 allowed if an applicant demonstrates that the departure would result in a development that better
23 meets the intent of adopted design guidelines or that the departure would result in a development

1 that better meets the goals of the Living Building Pilot Program and would not conflict with
2 adopted design guidelines. In making this recommendation, the Design Review Board shall
3 consider the extent to which the anticipated environmental performance of the building would be
4 substantially compromised without the departures.

5 2. Scope of departures. In addition to the departures allowed under subsection
6 23.41.012.B, departures for projects participating in the Living Building Pilot Program
7 established under Section 23.40.060 may also be granted for the following:

8 a. Permitted, prohibited, or conditional use provisions, but only for
9 accessory uses that would directly address ~~((an imperative of the Living Building Challenge,~~
10 ~~version 2.1))~~ the provisions contained in subsection 23.40.060.B.1, including but not limited to
11 uses that could re-use existing waste streams or reduce the transportation impacts of people or
12 goods;

13 b. Residential density limits;
14 ~~((e. Floor area ratios up to 15 percent above the otherwise applicable~~
15 ~~limit;~~

16 ~~ϕ))~~c. Maximum size of use;
17 ~~((e. Structure height, subject to the following:~~

18 1) ~~Structure height up to 10 feet for development in zones with~~
19 ~~height limits of 45 feet or less, to allow increased floor to floor heights;~~

20 2) ~~Structure height up to 20 feet for development in zones with~~
21 ~~height limits greater than 45 feet, to allow increased floor to floor heights;~~

1 ~~3) The additional height allowed for the structure will not allow an~~
2 ~~additional story beyond the number that could be built under the otherwise applicable height~~
3 ~~limit; and~~

4 ~~4) Rooftop features may be allowed to extend above the structure~~
5 ~~height approved pursuant to this subsection 23.41.012.D.2. e, if they are consistent with the~~
6 ~~applicable standards established for rooftop features within the zone;~~

7 ~~ƒ)d. Quantity of parking required, minimum and maximum parking~~
8 ~~limits, and minimum and maximum number of drive-in lanes;~~

9 ~~((g))e. Standards for storage of solid-waste containers;~~

10 ~~((h))f. The quantity of open space required for major office projects in~~
11 ~~Downtown zones in subsection 23.49.016.B;~~

12 ~~((i))g. Standards for the location of access to parking in Downtown zones;~~
13 ~~and~~

14 ~~((j))h. ~~((Provisions of Chapter 23.53, Requirements for streets, alleys and~~~~
15 ~~easements))Standards for structural building overhangs and minor architectural encroachments in~~
16 ~~Section 23.53.035.~~

17 Section 3. Subsection 23.45.510.C of the Seattle Municipal Code, which section was last
18 amended by Ordinance 124378, is amended as follows:

19 **23.45.510 Floor area ratio (FAR) limits**

20 * * *

21 C. LR zones, in order to qualify for the higher FAR limit shown in Table A for
22 23.45.510, the following standards shall be met:

1 1. ~~((Green building performance standards))~~Applicants shall make a commitment

2 that the proposed development will meet a green building performance standard, and shall

3 demonstrate compliance with that commitment, all in accordance with Chapter 23.58C; and

4 ~~((a. Applicants shall make a commitment that the structure will meet~~

5 ~~green building performance standards by earning a Leadership in Energy and Environmental~~

6 ~~Design (LEED) Silver rating or a Built Green 4-star rating of the Master Builders Association of~~

7 ~~King and Snohomish Counties, except that an applicant who is applying for funding from the~~

8 ~~Washington State Housing Trust Fund and/or the Seattle Office of Housing to develop new~~

9 ~~affordable housing, may elect to meet green building performance standards by meeting the~~

10 ~~Washington Evergreen Sustainable Development Standards (ESDS). The standards referred to in~~

11 ~~this subsection 23.45.510.C.1.a are those identified in Section 23.45.526, and Section 23.45.526~~

12 ~~shall apply as if the application were for new development gaining extra residential floor area.~~

13 ~~b. On sites developed with existing structures, the higher FAR limit is~~

14 ~~applicable to the site if new buildings and additions to existing buildings meet green building~~

15 ~~performance standards. Existing buildings built prior to January 1, 2013 are not required to be~~

16 ~~upgraded to current green building performance standards for the higher FAR to apply to the~~

17 ~~site.))~~

18 2. For all categories of residential use, if the lot abuts an alley and the alley is

19 used for access, improvements to the alley shall be required as provided in subsections

20 23.53.030.E and 23.53.030.F, except that the alley shall be paved rather than improved with

21 crushed rock, even for lots containing fewer than ten dwelling units.

22 * * *

1 Section 4. Subsection 23.45.516.A of the Seattle Municipal Code, which section was last
2 amended by Ordinance 124307, is amended as follows:

3 **23.45.516 Additional height and extra residential floor area in Midrise and Highrise zones**

4 A. General. Definitions in Section 23.58A.004 apply in this Section 23.45.516 unless
5 otherwise specified. (~~According to the provisions of this Section 23.45.516, Section 23.45.526,~~
6 ~~and Chapter 23.58A:~~)

7 1. In MR, MR/85, and HR zones, extra residential floor area may be permitted up
8 to the maximum limits allowed by Section 23.45.510; and

9 2. In MR and HR zones, additional height, above the base height limit, is
10 permitted for structures that qualify for extra residential floor area, up to the maximum limits
11 allowed by Section 23.45.514 and 23.45.516.

12 * * *

13 Section 5. Section 23.45.526 of the Seattle Municipal Code, last amended by Ordinance
14 124378 and that currently reads as follows, is repealed:

15 ~~((**23.45.526 LEED, Built Green, and Evergreen Sustainable Development standards**~~

16 ~~A. Applicants for all new development gaining extra residential floor area, pursuant to~~
17 ~~this Chapter 23.45, or seeking to qualify for the higher FAR limit in Table A for 23.45.510 shall~~
18 ~~make a commitment that the structure will meet green building performance standards by~~
19 ~~earning a Leadership in Energy and Environmental Design (LEED) Silver rating or a Built Green~~
20 ~~4-star rating of the Master Builders Association of King and Snohomish Counties, except:~~

21 ~~1. This commitment is not required for building additions and alterations; and~~

22 ~~2. An applicant who is applying for funding from the Washington State Housing~~
23 ~~Trust Fund and/or the Seattle Office of Housing to develop new affordable housing, as defined in~~

1 ~~subsection 23.45.526.D, may elect to meet green building performance standards by meeting the~~
2 ~~Washington Evergreen Sustainable Development Standards (ESDS).~~

3 ~~B. The Director may establish, by rule, procedures for determining whether an applicant~~
4 ~~has demonstrated that a new structure has earned a LEED Silver rating or a Built Green 4 star~~
5 ~~rating, or met the ESDS, provided that no rule may assign authority for making a final~~
6 ~~determination to any person other than an officer of the Department of Planning and~~
7 ~~Development or another City agency with regulatory authority and expertise in green building~~
8 ~~practices.~~

9 ~~C. The applicant shall demonstrate to the Director the extent to which the applicant has~~
10 ~~complied with the commitment to meet the green building performance standards no later than~~
11 ~~90 days after issuance of final Certificate of Occupancy for the new structure, or such later date~~
12 ~~as may be allowed by the Director for good cause. Performance is demonstrated through an~~
13 ~~independent report from a third party, pursuant to subsection 23.90.018.E.~~

14 ~~D. For purposes of this Section 23.45.526:~~

15 ~~1. LEED Silver, Built Green 4 star or Evergreen Sustainable Development~~
16 ~~Standard rating means a level of performance for a structure that earns at least the minimum~~
17 ~~number of credits specified to achieve one of the following:~~

18 ~~a. A silver certificate either for LEED for New Construction Version~~
19 ~~2009 or for LEED for Homes Version 2008 with 2009 errata, at the election of the applicant,~~
20 ~~according to the criteria in the U.S. Green Building Council's LEED Green Building Rating~~
21 ~~System;~~

22 ~~b. A 4 Star rating either for Built Green Multi-Family Version 2008 or~~
23 ~~Built Green Single Family/Townhome New Construction Version 2007, at the election of the~~

1 applicant, according to the criteria in the Master Builders Association of King and Snohomish
2 Counties Rating System;

3 ~~e. Evergreen Sustainable Development Standard Version 1.2 according to~~
4 ~~the State of Washington Department of Commerce Rating System;~~

5 ~~2. Copies of the rating systems listed in subsection 23.45.526.D.1 are filed with~~
6 ~~the City Clerk in C.F. 310286, and incorporated by reference.)~~

7 Section 6. Subsection 23.48.011.E of the Seattle Municipal Code, which section was last
8 amended by Ordinance 124513, is amended as follows:

9 **23.48.011 Extra floor area in Seattle Mixed zones**

10 * * *

11 E. Minimum requirement. Developments containing any extra floor area shall meet the
12 following requirements:

13 1. ~~((LEED requirement))~~ Applicants shall make a commitment that the proposed
14 development will meet a green building performance standard, and shall demonstrate compliance
15 with that commitment, all in accordance with Chapter 23.58C.

16 ~~((a. Except as described in 23.48.011.E.1.b, the applicant will earn a~~
17 ~~LEED Gold rating or meet a substantially equivalent standard, and shall demonstrate compliance~~
18 ~~with that commitment, in accordance with the provisions of Section 23.48.025.~~

19 ~~b. An applicant may choose to earn at least a LEED Silver rating, if the~~
20 ~~Director of the Office of Sustainability and Environment determines that the development is~~
21 ~~served by a district energy provider. A building is considered served by a district energy provider~~
22 ~~if it is capable of connecting to a district energy system and has a contract with a district energy~~
23 ~~utility to serve primary heating and/or cooling needs. A district energy provider is an entity with~~

1 ~~a franchise agreement with the City that maintains a closed-loop district energy utility system~~
2 ~~that is either currently or scheduled to primarily use renewable and/or waste heat sources, per the~~
3 ~~system development plans and timeframes of an agreement with the City and the district energy~~
4 ~~provider. A district energy provider may, subject to City approval, rely on a temporary on-site or~~
5 ~~near-by transitional plant that is installed and maintained by the provider prior to connection of~~
6 ~~the development to a permanent district energy system.))~~

7 2. Transportation Management Program. The applicant will provide a
8 Transportation Management Program (TMP), consistent with requirements for TMPs in any
9 applicable Director's Rule, that demonstrates to the satisfaction of the Director in consultation
10 with the Director of Transportation, that no more than 40 percent of trips to and from the
11 development will be made using single-occupant vehicles (SOVs). The TMP shall be submitted
12 with the Master Use Permit application.

13 a. For purposes of measuring the percent of trips to and from the
14 development made using SOVs in the TMP, the number of SOV trips shall be calculated for the
15 p.m. peak hour in which an applicant expects the largest number of vehicle trips to be made by
16 employees at the site (the p.m. peak hour of the generator).

17 b. Compliance with this subsection 23.48.011.E.2 does not affect the
18 responsibility of any employer to comply with Seattle's Commute Trip Reduction (CTR)
19 Ordinance.

20 3. Energy management plan. The applicant will provide an energy management
21 plan, approved by the Superintendent of Seattle City Light, demonstrating specific energy
22 conservation or alternative energy generation methods or on-site electrical systems that together
23 can ensure that the existing electrical system can accommodate the projected loads from the

1 development. The approved energy management plan shall be submitted prior to issuance of a
2 Building Permit. The Director, after consulting with the Superintendent of Seattle City Light,
3 may condition the approval of the Building Permit on the implementation of the energy
4 management plan.

5 Section 7. Subsection 23.48.017.D of the Seattle Municipal Code, which section was last
6 amended by Ordinance 124172, is amended as follows:

7 **23.48.017 Additional height in certain SM-zoned areas in the South Lake Union Urban**
8 **Center**

9 * * *

10 D. ~~((LEED requirement. The applicant will strive to achieve a LEED Gold rating or~~
11 ~~better and at a minimum earn a LEED Silver rating or meet a substantially equivalent standard,~~
12 ~~and shall demonstrate compliance with that commitment, all in accordance with the provisions of~~
13 ~~Section 23.48.025))~~Applicants shall make a commitment that the proposed development will
14 meet a green building performance standard, and shall demonstrate compliance with that
15 commitment, all in accordance with Chapter 23.58C.

16 * * *

17 Section 8. Section 23.48.025 of the Seattle Municipal Code, last amended by Ordinance
18 124172 and that currently reads as follows, is repealed:

19 ~~((**23.48.025 Demonstration of LEED rating**~~

20 ~~A. Applicability. This Section 23.48.025 applies if a commitment to earn a LEED rating~~
21 ~~or substantially equivalent standard is a condition of a permit. Applicants for all new~~
22 ~~development, except additions and alterations, gaining extra residential floor area pursuant to~~
23 ~~Section 23.48.011, or seeking to qualify for the higher FAR limit in the applicable Table A for~~

1 ~~23.48.009 or Table B for 23.48.009, shall make a commitment that the structure will meet~~
2 ~~Leadership in Energy and Environmental Design (LEED) rating, except that an applicant who is~~
3 ~~applying for funding from the Washington State Housing Trust Fund and/or the Seattle Office of~~
4 ~~Housing to develop new affordable housing, as defined in Section 23.58A.180 may elect to meet~~
5 ~~green building performance standards by meeting the Washington Evergreen Sustainable~~
6 ~~Development Standards (ESDS).~~

7 ~~B. The Director is authorized to determine, as a Type I decision, whether the applicant~~
8 ~~has demonstrated that a new structure has earned a LEED rating or met a substantially equivalent~~
9 ~~standard. The Director may establish by rule procedures for determining whether an applicant~~
10 ~~has demonstrated that a new structure has earned a LEED rating or met any such substantially~~
11 ~~equivalent standard, provided that no rule shall assign authority for making a final determination~~
12 ~~to any person other than an officer of the Department of Planning and Development or another~~
13 ~~City agency with regulatory authority and expertise in green building practices.~~

14 ~~C. Demonstration of compliance; penalties~~

15 ~~1. The applicant shall demonstrate to the Director the extent to which the~~
16 ~~applicant has complied with the commitment to earn a LEED rating no later than 180 days after~~
17 ~~issuance of final Certificate of Occupancy for the new structure, or such later date as may be~~
18 ~~allowed by the Director for good cause, by submitting a report analyzing the extent credits were~~
19 ~~earned toward such rating from the U.S. Green Building Council or another independent entity~~
20 ~~approved by the Director. Performance is demonstrated through an independent report from a~~
21 ~~third party, pursuant to subsection 23.90.018.D. For purposes of this Section 23.48.025, if the~~
22 ~~Director shall have approved a commitment to achieve a substantially equivalent standard, the~~
23 ~~term "LEED rating" shall mean such other standard.~~

2. Failure to submit a timely report regarding a LEED rating from an approved independent entity by the date required is a violation of the Land Use Code. The penalty for such violation is \$500 per day from the date that the report was due to the date it is submitted, without any requirement of notice to the applicant.

3. Failure to demonstrate, through an independent report as provided in this subsection 23.48.025 D, full compliance with the applicant's commitment to earn a LEED rating, is a violation of the Land Use Code. The penalty for each violation is an amount determined as follows:

$$P = [(LSM - CE) / LSM] \times CV \times 0.0075,$$

where:

P is the penalty;

LSM is the minimum number of credits to earn the required LEED rating;

CE is the number of credits earned as documented by the report; and

CV is the Construction Value as set forth on the building permit for the new structure.

Example:

Construction Value	\$200,000,000.00
Minimum LEED Credits for rating	33
Credits Earned	32
Penalty = $[(33 - 32) / 33] \times 200,000,000 \times .0075 =$	\$45,454.55

4. Failure to comply with the applicant's commitment to earn a LEED rating is a violation of the Land Use Code independent of the failure to demonstrate compliance; however, such violation shall not affect the right to occupy any chargeable floor area, and if a penalty is

1 ~~paid in the amount determined under subsection 23.48.025.C.3, no additional penalty shall be~~
2 ~~imposed for the failure to comply with the commitment.~~

3 ~~5. If the Director determines that the report submitted provides satisfactory~~
4 ~~evidence that the applicant's commitment is satisfied, the Director shall issue a certificate to the~~
5 ~~applicant so stating. If the Director determines that the applicant did not demonstrate compliance~~
6 ~~with its commitment to earn a LEED rating in accordance with this Section 23.48.025, the~~
7 ~~Director may give notice of such determination, and of the calculation of the penalty due, to the~~
8 ~~applicant.~~

9 ~~6. If, within 90 days, or such longer period as the Director may allow for good~~
10 ~~cause, after initial notice from the Director of a penalty due under this subsection 23.48.025.C,~~
11 ~~the applicant shall demonstrate, through a supplemental report from the independent entity that~~
12 ~~provided the initial report, that it has made sufficient alterations or improvements to earn a~~
13 ~~LEED rating, or to earn more credits toward such a rating, then the penalty owing shall be~~
14 ~~eliminated or recalculated accordingly. The amount of the penalty as so re-determined shall be~~
15 ~~final. If the applicant does not submit a supplemental report in accordance with this subsection~~
16 ~~23.48.025.C by the date required under this subsection 23.48.025.C, then the amount of the~~
17 ~~penalty as set forth in the Director's original notice shall be final.~~

18 ~~7. Any owner, other than the applicant, of any lot on which the bonus~~
19 ~~development was obtained or any part thereof, shall be jointly and severally responsible for~~
20 ~~compliance and liable for any penalty due under this subsection 23.48.025.C.~~

21 ~~D. Use of penalties. A subfund shall be established in the City's General Fund to receive~~
22 ~~revenue from penalties under subsection 23.48.025.C. Revenue from penalties under that~~
23 ~~subsection 23.48.025.C shall be allocated to activities or incentives to encourage and promote the~~

1 ~~development of sustainable buildings. The Director shall recommend to the Mayor and City~~
2 ~~Council how these funds should be allocated.))~~

3 Section 9. Subsection 23.49.011.A of the Seattle Municipal Code, which section was last
4 amended by Ordinance 124680, is amended as follows:

5 **23.49.011 Floor area ratio**

6 A. General standards

7 * * *

8 2. Chargeable floor area shall not exceed the applicable base FAR except as
9 expressly authorized pursuant to this Chapter 23.49.

10 * * *

11 m. In IDM, DMR, and DMC zones within South Downtown, chargeable
12 floor area in excess of the base FAR may be obtained only by qualifying for floor area bonuses
13 pursuant to Sections 23.58A.024 and 23.49.013, or by the transfer of transferable development
14 rights pursuant to Section 23.49.014, or both, and except as permitted in subsection
15 23.49.011.A.2.h, only if the conditions of this subsection 23.49.011.A.2.m also are satisfied:

16 1) For a new structure, ~~((the applicant makes a commitment,~~
17 ~~approved by the Director as a Type I decision, that the proposed development will earn a LEED~~
18 ~~Silver rating or meet a substantially equivalent standard. If such a commitment is made, Section~~
19 ~~23.49.020 applies))applicants shall make a commitment that the proposed development will meet~~
20 ~~a green building performance standard, and shall demonstrate compliance with that commitment,~~
21 all in accordance with Chapter 23.58C.

1 2) Seventy-five percent of the chargeable floor area in excess of
2 base FAR shall be gained through bonuses under Section 23.58A.024 or through use of Housing
3 TDR from within South Downtown.

4 3) Twenty-five percent of the chargeable floor area in excess of
5 base FAR shall be gained by one or any combination of transferable development rights or
6 public open space amenities, subject to the conditions and limits of this Section 23.49.011,
7 Section 23.49.013, and Section 23.49.014:

8 a) TDR that may be used on a lot in South Downtown are
9 limited to South Downtown Historic TDR, open space TDR from within South Downtown, or
10 any combination of these consistent with this Chapter 23.49.

11 b) Amenities eligible for a bonus on a lot in South
12 Downtown are limited to public open space amenities pursuant to Section 23.49.013.

13 * * *

14 Section 10. Section 23.49.020 of the Seattle Municipal Code, last amended by Ordinance
15 123649 and that currently reads as follows, is repealed:

16 ~~((23.49.020 **Demonstration of LEED Silver rating**~~

17 ~~A. **Applicability.** This section applies if a commitment to earn a LEED Silver rating or~~
18 ~~substantially equivalent standard is a condition of a permit.~~

19 ~~B. The Director is authorized to determine, as a Type I decision, whether the applicant~~
20 ~~has demonstrated that a new structure has earned a LEED Silver rating or met a substantially~~
21 ~~equivalent standard. The Director may establish by rule procedures for determining whether an~~
22 ~~applicant has demonstrated that a new structure has earned a LEED Silver rating or met any such~~
23 ~~substantially equivalent standard, provided that no rule shall assign authority for making a final~~

~~determination to any person other than an officer of the Department of Planning and Development or another City agency with regulatory authority and expertise in green building practices.~~

~~C. Demonstration of Compliance; Penalties.~~

~~1. The applicant shall demonstrate to the Director the extent to which the applicant has complied with the commitment to earn a LEED Silver rating no later than 180 days after issuance of final Certificate of Occupancy for the new structure, or such later date as may be allowed by the Director for good cause, by submitting a report analyzing the extent credits were earned toward such rating from the U.S. Green Building Council or another independent entity approved by the Director. For purposes of this Section 23.49.020, if the Director has approved a substantially equivalent standard, the term "LEED Silver rating" shall mean such other standard.~~

~~2. Failure to submit a timely report regarding a LEED Silver rating from an approved independent entity by the date required is a violation of the Land Use Code. The penalty for such violation is \$500 per day from the date that the report was due to the date it is submitted. The owner is subject to this fine regardless of whether the City provides the owner with notice that the report is overdue or that the fine is accruing.~~

~~3. Failure to demonstrate, through an independent report as provided in this subsection, full compliance with the applicant's commitment to earn a LEED Silver rating, is a violation of the Land Use Code. The penalty for each violation is an amount determined as follows:~~

$$P = [(LSM - CE) / LSM] \times CV \times 0.0075,$$

~~where:~~

- 1 ~~P is the penalty;~~
- 2 ~~LSM is the minimum number of credits to earn a LEED Silver rating;~~
- 3 ~~CE is the number of credits earned as documented by the report; and~~
- 4 ~~CV is the Construction Value as set forth on the building permit for the new structure.~~

5 Example:

Construction Value	\$200,000,000.00
Minimum LEED Credits for Silver rating	33
Credits Earned	32
Penalty = $[(33-32)/33] \times 200,000,000 \times .0075 =$	\$45,454.55

6 ~~4. Failure to comply with the applicant's commitment to earn a LEED Silver~~
 7 ~~rating is a violation of the Land Use Code independent of the failure to demonstrate compliance;~~
 8 ~~however, such violation shall not affect the right to occupy any chargeable floor area, and if a~~
 9 ~~penalty is paid in the amount determined under subsection 23.49.020.C.3, no additional penalty~~
 10 ~~shall be imposed for the failure to comply with the commitment.~~

11 ~~5. If the Director determines that the report submitted provides satisfactory~~
 12 ~~evidence that the applicant's commitment is satisfied, the Director shall issue a certificate to the~~
 13 ~~applicant so stating. If the Director determines that the applicant did not demonstrate compliance~~
 14 ~~with its commitment to earn a LEED Silver rating in accordance with this section, the Director~~
 15 ~~may give notice of such determination, and of the calculation of the penalty due, to the applicant.~~

16 ~~6. If, within 90 days, or such longer period as the Director may allow for good~~
 17 ~~cause, after initial notice from the Director of a penalty due under this subsection 23.49.020.C,~~
 18 ~~the applicant shall demonstrate, through a supplemental report from the independent entity that~~

1 ~~provided the initial report, that it has made sufficient alterations or improvements to earn a~~
2 ~~LEED Silver rating, or to earn more credits toward such a rating, then the penalty owing shall be~~
3 ~~eliminated or recalculated accordingly. The amount of the penalty as so re-determined shall be~~
4 ~~final. If the applicant does not submit a supplemental report in accordance with this subsection~~
5 ~~23.49.020.C by the date required under this subsection 23.49.020.C, then the amount of the~~
6 ~~penalty as set forth in the Director's original notice shall be final.~~

7 7. ~~Any owner, other than the applicant, of any lot on which the bonus~~
8 ~~development was obtained or any part thereof, shall be jointly and severally responsible for~~
9 ~~compliance and liable for any penalty due under this subsection 23.49.020.C.~~

10 D. ~~Use of Penalties. A subfund shall be established in the City's General Fund to receive~~
11 ~~revenue from penalties under subsection 23.49.020.C. Revenue from penalties under that~~
12 ~~subsection shall be allocated to activities or incentives to encourage and promote the~~
13 ~~development of sustainable buildings. The Director shall recommend to the Mayor and City~~
14 ~~Council how these funds should be allocated.))~~

15 Section 11. Subsection 23.49.023.F of the Seattle Municipal Code, which section was
16 last amended by Ordinance 124172, is amended as follows:

17 **23.49.023 Extra residential floor area and hotel floor area in South Downtown;**
18 **transferable development potential (TDP); limits on TDP sending sites**

19 * * *

20 F. ~~((LEED Silver rating.))~~For new structures in PSM, IDM,
21 DMR, and DMC zones within South Downtown that include extra residential floor area pursuant
22 to Chapter 23.58A, the applicant shall make a commitment ~~((satisfactory to the Director that the~~
23 ~~proposed development shall earn a LEED Silver rating or meet a substantially equivalent~~

1 ~~standard approved by the Director as a Type I decision. If such commitment is made, Section~~
2 ~~23.49.020 applies))~~that the proposed development will meet a green building performance
3 standard, and shall demonstrate compliance with that commitment, all in accordance with
4 Chapter 23.58C.

5 * * *

6 Section 12. Subsection 23.49.180.H of the Seattle Municipal Code, which section was
7 last amended by Ordinance 123034, is amended as follows:

8 **23.49.180 Additional height in the Pioneer Square Mixed 85-120 zone**

9 * * *

10 H. ~~((LEED requirement.))~~The applicant shall ~~((strive to achieve a~~
11 ~~LEED Gold rating or better, make a commitment acceptable to the Director that the proposed~~
12 ~~development will earn at least a LEED Silver rating or meet a substantially equivalent standard,~~
13 ~~and demonstrate compliance with that commitment, all in accordance with the provisions of~~
14 ~~Section 23.49.020))~~make a commitment that the proposed development will meet a green
15 building performance standard, and shall demonstrate compliance with that commitment, all in
16 accordance with Chapter 23.58C.

17 * * *

18 Section 13. Subsection 23.50.033.B of the Seattle Municipal Code, which section was
19 last amended by Ordinance 123589, is amended as follows:

20 **23.50.033 Conditions for extra floor area in an IC 85-160 zone**

21 * * *

22 B. ~~((LEED requirement.))~~The applicant shall make a commitment ~~((acceptable to the~~
23 ~~Director that the proposed development will earn a LEED Silver rating or meet a substantially~~

1 ~~equivalent standard, and shall demonstrate compliance with that commitment, all in accordance~~
2 ~~with Section 23.49.020))~~that the proposed development will meet a green building performance
3 standard, and shall demonstrate compliance with that commitment, all in accordance with
4 Chapter 23.58C.

5 * * *

6 Section 14. A new Chapter 23.58C of the Seattle Municipal Code is added as follows:

7 **Chapter 23.58C GREEN BUILDING STANDARDS**

8 **23.58C.002 Green building performance standards**

9 A. When a commitment to meet a green building performance standard is required to
10 qualify for extra height or floor area in the applicable zone, the owner shall make a commitment
11 that the proposed development will meet Green Building Standard A, Green Building Standard
12 B, or a substantially equivalent standard, and shall demonstrate compliance with that
13 commitment in accordance with the provisions of Section 23.58C.004.

14 B. If a site contains existing structures developed according to a version of the Land Use
15 Code in effect before April 19, 2011, the existing structures and any additions to those structures
16 are not required to be upgraded to a current green building performance standard to qualify for
17 extra height or floor area for those structures. Any entirely new structure proposed to be built on
18 the lot shall meet current green building performance standards to gain the higher FAR for the
19 site or height limit for the structure. If a structure is developed under the Land Use Code in in
20 effect on or after April 19, 2011, and was not built to the higher FAR, then in order for the
21 structure or addition to gain the higher FAR, the structure shall be updated to current green
22 building performance standards.

1 C. The Director shall adopt and amend rules establishing Green Building Standard A and
2 Green Building Standard B, and enabling an owner to demonstrate compliance with a
3 commitment to meet either standard using a substantially equivalent standard.

4 **23.58C.004 Demonstration of Compliance**

5 A. The Director may adopt and amend rules establishing procedures for documenting an
6 owner's commitment that a proposed development will meet a green building performance
7 standard and determining whether the development complies with that commitment. No rule
8 may assign authority for making a final determination to any person other than an officer of the
9 Department of Planning and Development or another City agency with regulatory authority and
10 expertise in green building practices.

11 B. No later than 180 days after issuance of final Certificate of Occupancy for the
12 development (or after final inspection if a Certificate of Occupancy is not required), or by such
13 later date as may be allowed by the Director for good cause, the owner shall demonstrate to the
14 Director the extent to which the development complies with the commitment to meet the green
15 building performance standard. Compliance shall be demonstrated through a report from an
16 independent third party.

17 C. If the Director determines that the report provides satisfactory evidence that the
18 development complies with the owner's commitment, the Director shall send the owner a written
19 statement that the development complies with the commitment. If the Director determines that
20 the report does not provide satisfactory evidence that the development complies the owner's
21 commitment, the Director shall send the owner a written statement that the development does not
22 comply with the commitment.

1 D. If, within 180 days or such longer period as the Director may allow for good cause,
2 after notice from the Director that the report does not provide satisfactory evidence that the
3 development complies with the owner's commitment, the owner demonstrates, through a
4 supplemental report from an independent third party, that the development complies with the
5 owner's commitment, the Director shall send the owner a written statement that the development
6 complies with the owner's commitment. If the owner does not timely submit a supplemental
7 report, or if the Director determines that the supplemental report does not demonstrate
8 compliance, the Director shall send the owner a written statement that the development does not
9 comply with the owner's commitment.

10 **23.58C.006 Penalties**

11 A. Failure to timely submit the report required by subsection 23.58C.004.C is a violation
12 of the Land Use Code. The penalty for such violation shall be \$500 per day from the date when
13 the report was due to the date it is submitted. The penalty shall accrue even if the owner is not
14 notified of the violation.

15 B. Failure to demonstrate compliance with the owner's commitment to meet a green
16 building performance standard is a violation of the Land Use Code. The penalty for each
17 violation is subject to a maximum penalty of two percent of the construction value set forth in
18 the building permit for the development based on the extent of noncompliance with the
19 commitment.

20 C. Failure to comply with the owner's commitment that the development will meet a
21 green building performance standard is a violation of the Land Use Code independent of the
22 failure to demonstrate compliance; however, failure to comply with the owner's commitment
23 shall not affect the right to occupy any extra floor area, and if a penalty is paid in the amount

1 determined under subsection 23.58C.006.B, no additional penalty shall be imposed for the failure
2 to comply with the commitment.

3 D. In addition to the owner, the applicant for the development for which extra height or
4 floor area was obtained in exchange for a commitment to meet a green building performance
5 standard shall be jointly and severally responsible for compliance and liable for any penalty
6 imposed pursuant to this Section 23.58C.006.

7 E. Use of Penalties. A subfund shall be established in the City's General Fund to receive
8 revenue from penalties under this Section 23.58C.006. Revenue from penalties under this
9 Section 23.58C.006 shall be allocated to activities or incentives to encourage and promote the
10 development of sustainable buildings. The Director shall recommend to the Mayor and City
11 Council how these funds should be allocated.

12 Section 15. Subsection 23.66.140.C of the Seattle Municipal Code, which section was
13 last amended by Ordinance 124305, is amended as follows:

14 **23.66.140 Height**

15 * * *

16 C. Rooftop features and additions to structures

17 * * *

18 4. Height limits for rooftop features

19 * * *

20 j. Enclosed rooftop recreational spaces for new structures

21 1) If included on new structures, enclosed rooftop recreational
22 spaces and solar collectors may exceed the maximum height limit by up to 15 feet. The applicant
23 shall: (~~make a commitment to achieve a LEED Gold rating or better or meet a substantially~~

1 ~~equivalent standard and demonstrate compliance with that commitment according to the~~
2 ~~provisions of subsections 23.48.025.A through 23.48.025.D))~~make a commitment that the
3 proposed development will meet a green building performance standard, and shall demonstrate
4 compliance with that commitment, all in accordance with Chapter 23.58C, and meet a Green
5 Factor requirement of .30 or greater according to the provisions of Section 23.86.019. Each
6 enclosed rooftop recreational space shall include interpretive signage explaining the sustainable
7 features employed on or in the structure. Commercial, residential, or industrial uses shall not be
8 established within enclosed rooftop recreational spaces that are allowed to exceed the maximum
9 height limit under this subsection 23.66.140.C.4.j.

10 * * *

11 Section 16. Section 23.084A.014 of the Seattle Municipal Code, last amended by
12 Ordinance 123913, is amended as follows:

13 **23.84A.014 "G"**

14 * * *

15 "Grade." See "Lot grade."

16 "Green Building Standard A" means a performance-based standard adopted by the
17 Director by rule that is equivalent to the most advanced standard accepted in the building
18 industry for development that imposes the least harm on environmental systems and contributes
19 most positively to its surroundings. As of the date of this ordinance, a Green Building Standard
20 A could be equivalent to the International Living Future Institute's Living Building Challenge
21 3.0 Standard.

22 "Green Building Standard B" means a green building standard adopted by the Director by
23 rule that is less stringent than Green Building Standard A and is equivalent to standards accepted

1 in the building industry for high-level development strategies and practices that apply to a range
2 of structure types, save resources, and promote renewable, clean energy. As of the date of this
3 ordinance, a Green Building Standard B could consist of requirements sufficient to attain the
4 credits needed to achieve a Gold level in the Building Design and Construction rating system in
5 the U.S. Green Building Council LEED v4 green building certification program.

6 "Green Factor" means a scoring system for required landscaping, as described in Section
7 23.86.019.

8 * * *

9 Section 17. Section 23.88.010 of the Seattle Municipal Code, last amended by Ordinance
10 123649, is amended as follows:

11 **23.88.010 Rulemaking**

12 ((A-))The Director may promulgate rules consistent with this ((€))Title 23 pursuant to the
13 authority granted in Section 3.06.040 and pursuant to the procedures established for rulemaking
14 in the Administrative Code, Chapter 3.02. In addition to the notice provisions of Chapter 3.02,
15 notice of the proposed adoption of a rule shall be placed in the Land Use Information Bulletin.

16 ~~((B- The Director may adopt and amend, by rule, performance standards for determining~~
17 ~~whether a proposed new structure has earned, at a minimum, a Leadership in Energy and~~
18 ~~Environmental Design (LEED) Silver rating, a Built Green 4 star rating of the Master Builders~~
19 ~~Association of King and Snohomish Counties, or meets the Washington Evergreen Sustainable~~
20 ~~Development Standards (ESDS). No rule may assign authority for making a final determination~~
21 ~~of whether a proposed new structure has earned, at a minimum, a LEED Silver rating, a Built~~
22 ~~Green 4 star rating of the Master Builders Association of King and Snohomish Counties, or~~
23 ~~meets the Washington Evergreen Sustainable Development Standards (ESDS) to any person~~

1 ~~other than an officer of the Department of Planning and Development or another City agency~~
2 ~~with regulatory authority and expertise in green building practices.))~~

3 Section 18. Section 23.90.018 of the Seattle Municipal Code, last amended by Ordinance
4 124535, is amended as follows:

5 **23.90.018 Civil enforcement proceedings and penalties**

6 * * *

7 B. Specific violations

8 * * *

9 3. Violations of Chapter 23.58C with respect to failure to demonstrate
10 compliance with commitments to meet a green building performance standard are subject to
11 penalty in the amount specified in Chapter 23.58C.~~((Section 23.49.011, 23.49.015, 23.49.023, or~~
12 ~~23.50.051 with respect to failure to demonstrate compliance with commitments to earn LEED~~
13 ~~Silver ratings under applicable sections are subject to penalty in amounts determined under~~
14 ~~Section 23.49.020, and not to any other penalty, but final determination and enforcement of~~
15 ~~penalties under that Section 23.49.020 are subject to subsection 23.90.018.C.~~

16 4. ~~Violations of Sections 23.45.510 and 23.45.526 with respect to failure to~~
17 ~~demonstrate compliance with commitments to earn a LEED Silver rating or a 4-Star rating~~
18 ~~awarded by the Master Builders Association of King and Snohomish Counties or other eligible~~
19 ~~green building ratings systems under applicable sections are subject to penalty in amounts~~
20 ~~determined under subsection 23.90.018.E, and not to any other penalty.~~

21 5)4. Violation of subsection 23.40.007.B with respect to failure to demonstrate
22 compliance with a waste diversion plan for a structure permitted to be demolished under
23 subsection 23.40.006.D is subject to a penalty in an amount determined as follows:

1 $P = SF \times .02 \times RDR,$

2 where:

3 P is the penalty;

4 SF is the total square footage of the structure for which the demolition permit was issued;

5 and

6 RDR is the refuse disposal rate, which is the per ton rate established in Chapter 21.40,

7 and in effect on the date the penalty accrues, for the deposit of refuse at City recycling and

8 disposal stations by the largest class of vehicles.

9 ~~((6. Violations of subsection 23.40.060.E.2 by failing to submit the report~~
10 ~~required by subsection 23.40.060.E.2 by the date required is subject to a penalty of \$500 per day~~
11 ~~from the date the report was due to the date it is submitted.~~

12 ~~7. Violation of subsection 23.40.060.E.1.a by failing to demonstrate full~~
13 ~~compliance with the standards contained in subsection 23.40.060.E.1.a is subject to a maximum~~
14 ~~penalty of 10 percent of the construction value set forth in the building permit for the structure~~
15 ~~and a minimum penalty of 1 percent of construction value, based on the extent of compliance~~
16 ~~with standards contained in subsection 23.40.060.E.1.a.~~

17 8))5. Violations of subsections 23.55.030.E.3.a.3, 23.55.030.E.3.b,
18 23.55.034.D.2.a, and 23.55.036.D.3.b, or, if ((DPD))Department of Planning and Development
19 has issued an on-premises sign permit for a particular sign and the actual sign is not being used
20 for on-premises purposes or does not meet the definition of an on-premises sign as defined in
21 Chapter 23.84A, are subject to a civil penalty of \$1,500 per day for each violation from the date
22 the violation begins until compliance is achieved.

1 C. Civil actions to enforce Title 23 shall be brought exclusively in Seattle Municipal
2 Court except as otherwise required by law or court rule. The Director shall request in writing that
3 the City Attorney take enforcement action. The City Attorney shall, with the assistance of the
4 Director, take appropriate action to enforce Title 23. In any civil action filed pursuant to this
5 ~~((e))~~Chapter 23.90, the City has the burden of proving by a preponderance of the evidence that a
6 violation exists or existed. The issuance of the notice of violation or of an order following a
7 review by the Director is not itself evidence that a violation exists.

8 D. Except in cases of violations of ~~((Section 23.45.510, 23.45.526, 23.49.011, 23.49.015,~~
9 ~~23.49.023, or 23.50.051))~~Chapter 23.58C with respect to failure to demonstrate compliance with
10 a commitment to ~~((earn LEED Silver, Built Green 4 Star, or ESDS ratings))~~meet a green
11 building performance standard or satisfy alternative standards, the violator may show as full or
12 partial mitigation of liability:

13 1. That the violation giving rise to the action was caused by the willful act, or
14 neglect, or abuse of another; or

15 2. That correction of the violation was commenced promptly upon receipt of the
16 notice thereof, but that full compliance within the time specified was prevented by inability to
17 obtain necessary materials or labor, inability to gain access to the subject structure, or other
18 condition or circumstance beyond the control of the defendant.

19 E. ~~((Demonstration of green building certification pursuant to LEED Silver or Built~~
20 ~~Green 4 Star or ESDS ratings for certain development in multifamily zones.~~

21 1. ~~Applicability. This section applies whenever a commitment to earn a LEED~~
22 ~~Silver rating, or a Built Green 4 Star or ESDS rating, or a substantially equivalent standard, as~~
23 ~~approved by the Director, is a condition of a permit in a multifamily zone.~~

1 ~~2. Demonstration of Compliance; Penalties.~~

2 ~~a. The applicant shall demonstrate to the Director the extent to which the~~
3 ~~applicant has complied with the commitment to meet the green building performance~~
4 ~~requirements no later than 90 days after issuance of final Certificate of Occupancy for the new~~
5 ~~structure, or such later date as may be allowed by the Director for good cause. Performance is~~
6 ~~demonstrated through an independent report from a third party.~~

7 ~~1) For projects committed to achieve a LEED Silver rating, the~~
8 ~~report will be produced by the U.S. Green Building Council or another independent entity~~
9 ~~approved by the Director and submitted by the applicant to the Director.~~

10 ~~2) For projects using the Built Green Multi-family Program the~~
11 ~~report will be produced by the Master Builders Association of King and Snohomish Counties or~~
12 ~~another independent entity approved by the Director and submitted by the applicant to the~~
13 ~~Director.~~

14 ~~3) For projects using the ESDS, the report will be produced~~
15 ~~according to the process managed by the Housing Trust Fund Contract Manager for the State of~~
16 ~~Washington.~~

17 ~~4) For purposes of this subsection 23.90.018.E, if the Director~~
18 ~~approves a commitment to achieve a substantially equivalent standard, the terms "LEED Silver~~
19 ~~rating", "Built Green 4 Star" or "ESDS" shall mean such other standard.~~

20 ~~b. Failure to submit a timely report regarding the green building~~
21 ~~performance rating from an approved independent entity by the date required is a violation of the~~
22 ~~Land Use Code. The penalty for such violation shall be \$500 per day from the date when the~~
23 ~~report was due to the date it is submitted, without any requirement of notice to the applicant.~~

1 e. ~~Failure to demonstrate, through an independent report as provided in~~
2 ~~this subsection, full compliance with the applicant's commitment to meet a green building~~
3 ~~performance requirement, is a violation of the Land Use Code. Each day of noncompliance is a~~
4 ~~separate violation. The penalty for each violation is determined as follows:~~

5
$$P = CV \times 0.01,$$

6 where:

7 P is the penalty;

8 CV is the Construction Value as set forth on the building permit for the new structure.

9 d. ~~Failure to comply with the applicant's commitment to meet green~~
10 ~~building performance requirements is a violation of the Land Use Code independent of the~~
11 ~~failure to demonstrate compliance; however, such violation shall not affect the right to occupy~~
12 ~~any chargeable floor area, and if a penalty is paid in the amount determined under subsection~~
13 ~~23.90.018.E.2, no additional penalty shall be imposed for the failure to comply with the~~
14 ~~commitment.~~

15 e. ~~If the Director determines that the report submitted provides~~
16 ~~satisfactory evidence that the applicant's commitment is satisfied, the Director shall issue a~~
17 ~~certificate to the applicant so stating. If the Director determines that the applicant did not~~
18 ~~demonstrate compliance with its commitment to meet green building performance requirements~~
19 ~~in accordance with this Section 23.90.018, the Director may give notice of such determination,~~
20 ~~and of the calculation of the penalty due, to the applicant.~~

21 f. ~~If, within 90 days, or such longer period as the Director may allow for~~
22 ~~good cause, after initial notice from the Director of a penalty due under this subsection, the~~
23 ~~applicant shall demonstrate, through a supplemental report from the independent entity that~~

1 ~~provided the initial report, that it has made sufficient alterations or improvements to earn the~~
2 ~~required green building performance rating, then the penalty owing shall be eliminated. If the~~
3 ~~applicant does not submit a supplemental report in accordance with this subsection by the date~~
4 ~~required under this subsection, or if the Director determines that the supplemental report does not~~
5 ~~demonstrate compliance, then the amount of the penalty as set forth in the Director's original~~
6 ~~notice shall be final, subject to subsection 23.90.018.C.~~

7 ~~g. Any owner, other than the applicant, of any lot on which the bonus~~
8 ~~development or extra floor area was obtained or any part thereof, shall be jointly and severally~~
9 ~~responsible for compliance and liable for any penalty due under this subsection 23.90.018.E.~~

10 ~~F.))Use of Penalties. ((A subfund shall be established in the City's General Fund to~~
11 ~~receive revenue from penalties under subsections 23.90.018.B.3, 23.90.018.B.5 and 23.90.018.E.~~
12 ~~Revenue from penalties under that subsection shall be allocated to activities or incentives to~~
13 ~~encourage and promote the development of sustainable buildings. The Director shall recommend~~
14 ~~to the Mayor and City Council how these funds should be allocated.))A subfund shall be~~
15 ~~established in the City's General Fund to receive revenue from penalties under subsection~~
16 ~~((23.90.018.B.8))23.90.018.B.5, which shall annually be directed to the Department of Planning~~
17 ~~and Development's Operations Division, after 10 percent of the gross receipts are paid to the~~
18 ~~Parks and Recreation Fund as required by Article XI, Section 3 of the Charter.~~

19 Section 19. This ordinance shall take effect and be in force 30 days after its approval by
20 the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it
21 shall take effect as provided by Seattle Municipal Code Section 1.04.020.

22 Passed by the City Council the ____ day of _____, 2015, and
23 signed by me in open session in authentication of its passage this

1 _____ day of _____, 2015.

2

3

4

President _____ of the City Council

5

6 Approved by me this ____ day of _____, 2015.

7

8

9

Edward B. Murray, Mayor

10

11 Filed by me this ____ day of _____, 2015.

12

13

14

Monica Martinez Simmons, City Clerk

15

16

17 (Seal)

18