

Councilmember Sharon Ambrose

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D.C. OFFICE OF ZONING

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A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To establish a green building law and guidelines in the District of Columbia to encourage the 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, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity that applies to the District for the applicable building permits to undertake any construction or renovation project within the District.

(2) "Building" means any structure used for support or shelter of any use or occupancy, as defined in the District of Columbia Construction Codes of 2003, Title 12 of the District of Columbia Municipal Regulations (12 DCMR).

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

(4) "Commercial project" means any construction project in the District, other than a District-sponsored project, that requires a Certificate of Occupancy pursuant to the District of Columbia Zoning Regulations, Title 11 of the District of Columbia

Regulations (11 DCMR).

(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 space-conditioning 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. For the purposes of this act, covered projects shall include renovation construction projects that incorporate 20,000 gross square feet or more of additional conditioned space.

(8) "Green building" means a whole systems approach to the design, construction, and operation of buildings and their surrounding landscapes that helps mitigate the environmental, economic, and social impacts of buildings. Green building practices recognize the relationship between natural and built environments and seek to minimize the use of energy, water, and other natural resources and provide a healthy, productive indoor environment.

(9) "Green Building Compliance Official" means the Mayor or his or her designee who manages the District's Green Building program under this act.

(10) "Green Building Education Fund" means the fund in the general fund created in section xx of this act.

(11) "Green Building Project Checklist" means a checklist or scorecard developed by the USGBC, and as may be amended, for the purpose of calculating a score on the

appropriate LEED™ Green Building Rating System plus the DC LEED supplement.

(12) "Green Building Worksheet" means a worksheet or form developed by the Mayor which specifies the information to be submitted under this act prior to any hearings before the Zoning Commission or the Board of Zoning Adjustment, including cases involving Special Exceptions, Large Tract Review or Planned Unit Development Review [involving approvals under this act] or, if none of the preceding applies, Building Permit approval for a covered project. The Green Building Worksheet shall specify the form and content of the required documentation.

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

(14) "LEED™ Green Building Rating System" means the most recent version of the Leadership in Energy and Environmental Design (LEED™) Commercial Green Building Rating System™, or other related LEED™ Rating System, approved by the USGBC.

(15) "LEED™ Green Building Reference Guide" means ^{the} supporting document published by the USGBC that provides detailed information, resources, and standards for the five environmental categories covered by the LEED™ Rating System, including information regarding the documentation required for LEED™ certification.

(16) "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 finally any decommissioning or disassembly costs. Life cycle cost analysis looks at the net present value of design options as investments. The goal is to achieve the highest, most cost-effective environmental performance possible over the life of the project.

(17) "Pre-permitting documentation" means the documentation required by section 5 of this act.

(18) "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 12 of the District of Columbia Municipal Regulations (12 DCMR).

(19) "Structure" means that which is built or constructed, an edifice, or building of any kind or any piece of work artificially built or composed of parts joined together in some definite manner and permanently attached to the ground, as defined in the District of Columbia Construction Codes of 2003, Title 12 of the District of Columbia Municipal Regulations (12 DCMR).

(20) "USGBC" means the United States Green Building Council, a not for profit organization, that has developed the Leadership in Energy and Environmental ("LEED") Green Building Rating System as a way to measure the energy and environmental performance of buildings in the District.

Sec. 3. Adoption of USGBC LEED™ Green Building Rating System.

(a) Upon the effective date of this act, the District adopts the USGBC LEED™ Green Building Rating System and the "LEED™ Green Building Reference Guide". All covered projects under this act shall utilize the Green Building Project Checklist that corresponds with the Green Building Rating System approved for use.

(b) As new rating systems are developed by the USGBC, the Mayor may specify the applicable LEED™ Rating System for a covered project.

(c) For the first 6 months after the release of any new version of the Green Building Rating System, an applicant may choose at the time the project is formally submitted for approval with the payment of appropriate fees whether to use the most current version of the Green Building Rating System or the version to be superseded.

(d) The Mayor shall maintain the most recent version of the applicable LEED™ Rating Systems at all times. LEED ND (Neighborhood Design) and LEED R

(Residential) may be incorporated into separate ordinances as they are developed.

(e) The Mayor shall maintain the most recent version of the LEED™ Reference Guide at all times.

Sec. 4. Required standards for compliance of covered projects.

(a) Covered projects shall be subject to the requirements of this act at the specified level as follows:

(1) All District-sponsored covered projects shall be required to achieve LEED™ Silver certification 180 days [this might be too short a time frame] after the effective date of this act.

(2) All covered project applicants shall submit a completed LEED™ checklist and worksheet and shall pay a fee of 3% of the total cost of the project to the Green Building Education Fund. An applicant who achieves a LEED certification may have this fee refunded. [but what if the certification is lower than required?]

(3) Three years from the effective date of this act, all covered commercial projects shall meet a minimum LEED™ “Certified” rating and covered District-sponsored projects shall meet a LEED™ Gold rating.

(4) Five years from the effective date of this act, all covered commercial projects shall meet a minimum LEED™ Silver rating and at least 20% of all District-owned buildings that existed prior to 2005 shall meet LEED™ EB certification.

(5) Any District-sponsored projects that are buildings which are unoccupied or that serve specialized functions (e.g. pump station, garage, storage building, etc.) shall not be subject to the District’s green building guidelines and shall not be required to follow the exemption process.

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

(c) Applicants for building permits for non-covered projects may be encouraged to use their best efforts to incorporate as many green building measures as feasible from the LEED™ Commercial Rating System.

(d) All historic structures, as defined as historic under the Historic Landmark and Historic District Protection Act of 1978, March 3, 1979, (D.C. Law 2-144; D.C. Official Code § 6-1101 *et seq.*), are exempt from the requirements of this act. Applicants for building projects at historic structures may be encouraged to use their best efforts to incorporate as many of the green building measures as feasible from the LEED™ Commercial Rating System without compromising the historical integrity of the structure.

(e) Compliance with the provisions of this act shall be listed as a condition of approval for actions before the Zoning Commission or Board of Zoning Adjustment, including a Special Exception, Large Tract Review or Planned Unit Development Review or, if none of the preceding applies, Building Permit approval issued for a covered project. Failure to comply with any of the terms of this act shall subject the covered project to the full range of enforcement mechanisms set forth in section 10 of this act.

Sec. 5. Affordable Housing Green Building Guidelines.

Within 180 days of the effective date of this act, the Mayor and District of Columbia Housing Authority, in consultation with the Department of Housing and Community Development, the Office of Energy, the Department of Consumer and Regulatory Affairs, and other relevant and knowledgeable District and federal agencies, shall jointly promulgate Affordable Housing Green Building Guidelines. The proposed Affordable Housing Green Building Guidelines shall be published in the D.C. Register, for a 30-day period of public comment, prior to their adoption. The Affordable Housing Green Building Guidelines shall be considered in the District's evaluation of requests for proposals and developer negotiations for all affordable housing projects receiving District

or Federal funding or financing.

Sec. 6. Green Building Incentive Program. -- discuss with Canavan, Jay Greene, & Chuck Clinton.

Upon the effective date of this act, the Mayor shall establish a Green Building Incentive Program. Under the Green Building Incentive Program, the Mayor may allow a developer of a private commercial building project to apply for expedited permit review or PUD approval if the project achieves a LEED™ award from the USGBC ((defined?)). The Green Building Incentive Program shall apply to all types of commercial (?) building projects, including offices, multi-unit residential, and mixed use. The expedited process shall range from a [] for a LEED™ Silver project, [] for a LEED™ Gold project, to a maximum of [] for a LEED™ Platinum project.

Sec. 7. Submission of pre-permitting documentation.

(a) The Mayor shall promulgate rules with procedures for submission and review of pre-permitting documentation needed to effectuate this act no later than 180 days of the effective date of this act. At a minimum these rules shall indicate the measures to be used to achieve the applicable LEED™ rating, require that the pre-permitting documentation be submitted for review, indicate how many credits the covered project will achieve in each category, and the level of LEED™ certification that will be met. The rules shall require the documentation to 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 may deem necessary to demonstrate compliance with this act.

(b) Whenever a covered project applicant applies for a building permit, the covered project applicant shall submit a completed Green Building Project Checklist

with the first building permit plan set submitted. [What happens if it does not occur?]

All building plans shall indicate in the general notes or individual detail drawings, where feasible, the green building measures to be used to attain the applicable LEED™ rating.

(c) After 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, prior to an application for a building permit if no hearing will be held before either the Zoning Commission or the Board of Zoning Adjustment, the applicant shall schedule a meeting with the Green Building Compliance Official to discuss the proposed measures needed.

Sec. 8. Rulemaking for review of pre-permitting documentation.

The Mayor shall promulgate, by rulemaking, procedures for review of pre-permitting documentation of covered projects for achievement of the appropriate LEED™ rating, as set forth in section 2 of this act, no later than two years after the effective date of this act. This rulemaking shall, at a minimum, set forth the timing of the review and submission of pre-permitting documentation, the approval and disapproval processes for covered projects, and any other procedures needed for compliance with this act. Covered projects shall utilize the Green Building Project Checklist that corresponds with the Green Building Rating System approved for use. [does this fit here?]

Sec. 9. [Rulemaking for] compliance and enforcement procedures.

(a) The Mayor shall issue, [by rulemaking], procedures for compliance and enforcement with this act no later than two years after the effective date of this act.

(b) At a minimum the procedures for compliance and enforcement shall provide for a compliance review by the Mayor or his designee to verify that the green building measures and provisions indicated in the pre-permitting documentation are being implemented at foundation inspection, framing inspection, and prior to issuance of a final certificate of occupancy. The procedures shall permit the Mayor to conduct other

inspections, as needed, to ensure compliance with this act. If, as a result of any such inspection, the Mayor determines that the covered project does not comply with the pre-permitting documentation, a stop-work order may be issued. The Mayor may issue such a stop-work order to apply to the portion of the project impacted by noncompliance or to the entire project. The stop-work order shall remain in effect until the Mayor determines that the project will be brought into compliance with the pre-permitting documentation and this act.

c. The procedures for compliance review for covered projects shall provide flexibility to be exercised by the Mayor or his designee to substitute the approved credits with other credits in the approved LEED™ Rating System.

d. The procedures for compliance review for covered projects shall provide that prior to issuance of an occupancy permit, the Mayor or his designee 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 of this act. The procedures for compliance review for covered projects shall provide that if the Mayor or his designee determines that the applicant has not achieved the required LEED™ rating, the Mayor or his designee shall make the following findings:

(1) If Mayor or his designee determines that the covered project has not met the requirements for the applicable LEED™ rating, as set forth in section 4 of this act, he or she shall determine on a case-by-case basis whether the applicant has made a good faith effort to comply with this act.

(2) If the Mayor or his designee determines that the applicant has not made a good faith effort to comply with this act, or if the applicant fails to submit the documentation within the required time period required by the rules making promulgated under section 7 of this act, then the final building approval and/or occupancy permit may be withheld.

(3) If the Mayor or his designee determines that the applicant has not complied with this act, the Mayor may require further reasonable green building measures to be employed in the operation and maintenance of the covered project to mitigate the applicant's failure to comply fully with this act. Such mitigation measures may include, but are not limited to, landscaping the covered project to decrease water and energy consumption, use of energy efficient fixtures, including the use of energy efficient light bulbs, and education of the building's occupants and owners regarding on-going energy and resource savings techniques.

Sec. 10. Hardship or infeasibility exemption.

The Mayor shall issue procedures for a hardship or infeasibility exemption no later than two years after the effective date of this act. At a minimum the procedures shall allow an applicant for a covered project who believes that circumstances exist that make it a hardship or infeasible to meet the requirements of this act to apply for an exemption. In applying for an exemption, the burden shall be on the applicant to show hardship or infeasibility. Such circumstances may include, but are not limited to, availability of markets for materials to be recycled, availability of green building materials and technologies, and compatibility of green building requirements with existing building standards.

Sec. 11. Appeals.

The Mayor shall issue procedures for appeal of disapproval under this act no later than two years after the effective date of this act. At a minimum the procedures for appeal of disapprovals under this act shall allow any aggrieved applicant or person to appeal the determination of the Mayor regarding: (i) the granting or denial of an exemption pursuant to section xx of this act (ii) compliance with the act pursuant to section xx of this act; or (iii) the type or scope of mitigation measures required for noncompliance pursuant to section xx(d)(3) of this act. The procedures for appeal shall include reasonable time limits

for filing an appeal with the Mayor and for the Mayor to issue a decision.

Sec. 12. Enforcement.

The Mayor shall issue procedures for enforcement no later than two years after the effective date of this act.

~~a. Violation of any provision of this act due to the applicant's failure to build the covered project in accordance with the covered project's plans, including the pre-permitting documentation and the conditions of approval in the applicable permit, shall be punishable as provided in Chapter _____ of the Washington, DC Municipal Code.~~

~~b. Where the applicant has violated any provision of this act due to the applicant's failure to build the covered project in accordance with the project plans, including the pre-permitting documentation and the conditions of approval in the applicable permit, the Mayor may require mitigation as set forth in Section 7(d)(3) of the act.~~

~~c. Enforcement pursuant to this section shall be undertaken by the City through its DCRA??? or the DC Attorney General.~~

~~d. These remedies are cumulative and the choice of one by the Mayor shall not preclude pursuing the others."~~

Sec. 13. Review and reporting responsibilities.

The Mayor may designate responsibility for compliance with this act among the Directors of the District's agencies whose responsibilities include planning, designing, constructing, or renovating District-sponsored projects and approving commercial projects. The Mayor shall designate one agency to be responsible for administering the Green Building Fund and for coordinating educational, technical, and financial resources available to other District agencies that support and promote sustainable design and construction of District-sponsored projects. The Mayor shall be responsible for annually evaluating and reporting to the Council the results of how each District-sponsored project has met the goals of sustainability under this act. The Mayor shall be responsible for: (1)

reviewing and updating the District's portion of the LEED reference manual annually, (2) providing technical expertise on specific sustainable building issues on a case by case basis, and (3) maintaining sufficient trained staff to effectuate the purposes of this act.

Sec. 14. District-sponsored covered projects budget and financing.

All District-sponsored covered projects which are required to comply with this act shall be budgeted to achieve, at minimum, a LEED Silver rating. For these projects, budget planning and life cycle cost analysis to achieve a higher rating of gold or platinum may be encouraged. These budgets shall be prepared at the time when the capital budget is being presented for the project to the Council or when building permits are sought, whichever is earlier. These budgets shall be submitted to both the Chief Financial Officer and Council for their review for compliance with this act. **[Who reviews the budget to assure compliance with this requirement? What happens if not achieved?]**

Sec. 15. Green Building Education Fund.

(a) There is established the Green Building Education Fund ("Fund"), an interest-bearing account, pursuant to § 47-373(4)(2)(D). The Fund shall be operated by the Mayor in accordance with generally accepted accounting principles.

(b) The Mayor shall deposit into the Fund all revenues, proceeds, and moneys from whatever source derived which are collected or received by the Mayor on behalf of covered project applicants pursuant to this act. These revenues, proceeds, and moneys shall be credited to the Fund and shall not, at anytime, be transferred to, lapse into, or be commingled with the General Fund of the District of Columbia, the Cash Management Pool, or any other funds or accounts of the District of Columbia, except for funds transferred to the District of Columbia Treasurer to pay all expenses related to the management and maintenance of District-sponsored capital projects.

(c) The sole purpose of the Fund shall be to educate relevant District employees, the building community, and the public about the benefits and techniques of green

building. The Fund monies shall be first used to educate District of Columbia government employees who are managing or may manage District-sponsored covered projects pursuant to this act and who are required to attend LEED training, both introductory and annual follow-up training, as well as achieve and maintain accreditation.

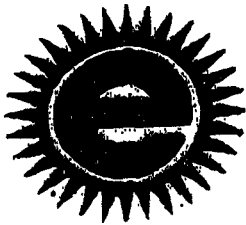
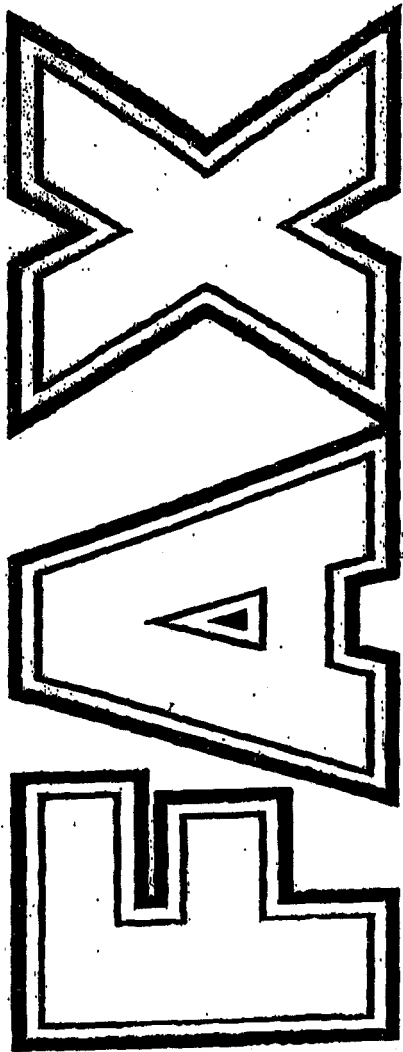
(d) The Fund accounts shall be independently audited triennially by the District of Columbia Auditor, and the audit shall be submitted to the Mayor and the Council.

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.



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FROM: Sabrina Williams/For Williams
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SUBJECT: Draft Legislation PAGE 1 OF 14

PHONE NUMBER: (202) 671-2305 DATE: 12-13-05

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