CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

..title

AN ORDINANCE relating to land use and zoning; adding a new Chapter 23.58D to the Seattle Municipal Code (SMC); amending SMC Sections 23.40.060, 23.41.004, 23.41.012, 23.42.056, 23.45.510, 23.45.516, 23.48.021, 23.48.221, 23.48.230, 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; and repealing SMC Sections 23.45.526, and 23.49.020; to revise the Living Building Pilot program and reorganize, consolidate, and update standards when meeting the green building standard is a condition of a permit.

..body

WHEREAS, the Living Building Challenge^{SM} 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, capture and treat all of their water, and operate efficiently with maximum beauty; and

WHEREAS, The City of Seattle ("City") 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 Living Building Pilot Program is to encourage the development of buildings that meet the Living Building Challenge^{SM} (full Living Building Certification or Petal Recognition), according to the criteria in the International Living Future Institute's certification programs, by allowing departures from Land Use Code requirements and providing height and floor area incentives; and

WHEREAS, the City Council adopted Ordinance 123206 in December 2009, Ordinance 123942 in July 2012, Ordinance 124535 in July 2014, and Ordinance 124843 in 2015 to establish, expand, and revise the Living Building Pilot Program; and

WHEREAS, the City Council adopted Resolution 31400 in June 2013, requesting the Department of Planning and Development, which is now known as the Seattle Department of Construction and Inspections (SDCI), develop recommendations for improving the Living Building Pilot Program; and

WHEREAS, the enrollment period for the Living Building Pilot Program will expire on June 30, 2017; 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 124843, is amended as follows:

23.40.060 Living Building Pilot Program

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

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

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

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

~~B. Project qualification~~)) A. Applications

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

~~2.~~)) 1. Enrollment period. The enrollment period for the Living Building Pilot Program expires on the earlier of ((~~June 30, 2017~~)) December 31, 2025, or when applications ((~~for 12 projects have been submitted for a Master Use Permit~~)) meeting the requirements of subsection 23.40.060.A.2 have been submitted for 20 Living Building Pilot projects from the date of the ordinance introduced as Council Bill _____.

((~~3.~~)) 2. Application requirements. In order to qualify for the Living Building Pilot Program, an applicant ((~~s~~)) shall submit a complete Master Use Permit application pursuant to Section 23.76.010 and a plan demonstrating how ((~~their~~)) the project will meet ((~~each of the imperatives of Living Building Challenge, including an overall design concept, proposed energy balance, proposed water balance, and descriptions of innovative systems~~)) the provisions of subsection 23.40.060.B. ((~~In addition, an~~)) The applicant shall include a description of how the project serves as a model for testing code improvements to stimulate and encourage Living Buildings in the city.

((~~4. Qualification process. An eligible project shall qualify for the Pilot Program upon determination by the Director that it has submitted a complete application pursuant to Section 23.76.010 and has complied with the application requirements of subsection 23.40.060.B.3.~~))

B. Minimum standards. A project shall qualify for the Living Building Pilot Program if it is located outside of the shoreline jurisdiction, has been reviewed in accordance with the design

review process provided in Section 23.41.014, and meets full Living Building Certification by achieving either all of the imperatives of the International Living Future Institute's (ILFI) Living Building Challenge℠ 3.0 certification or all of the following:

1. The project meets ILFI Living Building Challenge℠ 3.0 Petal Recognition certification by attaining at least three of the seven performance areas, or "Petals," of the ILFI Living Building Challenge℠ 3.0 program (Place, Water, Energy, Health and Happiness, Materials, Equity, and Beauty), including at least one of the following three petals: Water, Energy, or Materials;

2. Total building energy use is 75 percent or less of the energy use targets established in the 2012 Seattle Energy Code's Target Performance Path, Section C402.1.5; and

3. If approved by Public Health - Seattle and King County, no potable water is used for nonpotable uses.

C. ((~~Design review. All Living Building Pilot Program projects are subject to design review and shall be reviewed in accordance with the design review process provided in Section 23.41.014.~~)) Extra floor area or structure height beyond otherwise applicable maximum

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

a. Fifteen percent more floor area than the otherwise applicable maximum floor area ratio under the provisions of the zone; or

b. In the case of residential development in Downtown or Seattle Mixed zones, 15 percent more floor area than the maximum floor area otherwise resulting from the application of development standards.

2. A project qualifying for the Living Building Pilot Program may employ additional structure height, above the otherwise applicable maximum height, of up to 10 feet for a development in a zone with a height limit of 85 feet or less.

3. A project qualifying for the Living Building Pilot Program may employ additional structure height, above the otherwise applicable maximum height, of up to 20 feet for development in a zone with a height limit greater than 85 feet.

4. A rooftop feature of a project qualifying for the Living Building Pilot Program may extend above the structure height bonus provided in subsections 23.40.060.C.2 or 23.40.060.C.3 if the extension is consistent with the applicable standards established for that rooftop feature within the zone.

5. Extra floor area or structure height available pursuant to subsections 23.40.060.C.1 through C.4 shall be in addition to any bonus, extra, or otherwise additional floor area or structure height available according to any other provision of this Title 23, which shall be obtained in compliance with the applicable provisions of this Title 23.

6. Extra floor area or structure height included in a project pursuant to subsections 23.40.060.C.1 through 23.40.060.C.4, or the units contained in such extra floor area or structure height, shall be excluded for purposes of calculating performance or payment amounts pursuant to subsections 23.58B.040.A.1, 23.58B.050.A.1, 23.58C.040.A.1, and 23.58C.050.A.1.

D. ((~~Height measurement technique. At the discretion of the applicant, the height of a qualifying project shall be determined using either the definition of building height in Section 502 of the Seattle Building Code or the method described in Chapter 23.86 of the Land Use Code.~~)) For a project qualifying for the Living Building Pilot Program and not including extra floor area or structure height pursuant to subsections 23.40.060.C.1 through 23.40.060.C.4, the

lesser of the following, or units contained therein, shall be excluded for purposes of calculating performance or payment amounts pursuant to subsections 23.58B.040.A.1, 23.58B.050.A.1, 23.58C.040.A.1, and 23.58C.050.A.1, and shall also be exempt from satisfying any non-housing-related requirements for obtaining bonus, extra, or otherwise additional floor area or structure height according to Chapter 23.49 or Chapter 23.58A:

1. fifteen percent of floor area; and

2. either 10 feet of structure height for a development in a zone with a height limit of 85 feet or less; or

3. twenty feet of structure height for development in a zone with a height limit greater than 85 feet.

E. For a project qualifying for the Living Building Pilot Program, the provisions of the remainder of this Title 23 apply unless specifically modified by the provisions of this Section 23.40.060. In the event of a conflict, the provisions of this Section 23.40.060 prevail.

((~~E.~~)) F. Compliance with minimum standards

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

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

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

~~2) at least three of the seven performance areas, or "petals," of the Living Building Challenge, version 2.1 (Site, Water, Energy, Health, Materials, Equity, and~~

~~Beauty), including at least one of the following three petals: Energy, Water, or Materials, and all of the following standards:~~

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

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

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

~~b. RESERVED.~~))

((~~2.~~)) 1. No later than two years after issuance of a final Certificate of Occupancy for the project, or such later date as may be allowed by the Director for good cause or a phased project, the owner shall submit to the Director a report demonstrating how the project complies with the standards contained in subsection ((~~23.40.060.E.1.a~~)) 23.40.060.B. Compliance must be demonstrated through an independent report from a third party. The report must be produced by ((~~the International Living Future Institute (ILFI)~~)) ILFI or another independent entity approved by the Director.

((~~3.~~)) 2. If the Director determines that the report submitted provides satisfactory evidence that the project has complied with the standards contained in subsection ((~~23.40.060.E.1.a~~)) 23.40.060.B, the Director shall send the owner a written statement that the project has complied with the standards of the Living Building Pilot Program. If the Director

determines that the project does not comply with the standards in subsection ((~~23.40.060.E.1.a~~)) 23.40.060.B, the Director shall notify the owner of the aspects in which the project does not comply. Nothing in the written statement or participation in the Living Building Pilot Program shall constitute or imply certification of the project by ((~~International Living Future Institute (ILFI)~~)) ILFI as a Living Building under the Living Building Challenge℠. Components of the project that are included in order to comply with the minimum standards of the Living Building Pilot Program shall remain for the life of the project.

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

((~~5.~~)) 4. If the owner fails to timely submit the report required by subsection 23.40.060.F.1 or to demonstrate compliance with the standards contained in subsection 23.40.060.B, or if the owner fails to submit a supplemental report within the time allowed pursuant to subsection ((~~23.40.060.E.4~~)) 23.40.060.F.3, the Director shall determine that the project has failed to demonstrate ((~~full~~)) compliance with the standards contained in subsection ((~~23.40.060.E.1.a~~)) 23.40.060.B, and the owner shall be subject to the penalty in subsection ((~~23.90.018.B.6~~)) 23.40.060.G.

G. Penalties for the Living Building Pilot Program

1. Failure to submit the report required by subsection 23.40.060.F.1 by the date required is subject to a penalty of $500 per day from the date the report was due to the date it is submitted.

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

Section 2. Subsections 23.41.004.A and 23.41.004.B of the Seattle Municipal Code, which section was last amended by Ordinance 124843, is amended as follows:

23.41.004 Applicability

A. Design review required

1. Design review is required for any new multifamily, commercial, or industrial development proposal that exceeds one of the following thresholds in Table A for 23.41.004:

Table A for 23.41.004
Thresholds for Design Review

Zone		**Threshold**
a.	Lowrise 2 (LR2) and Lowrise 3 (LR3)	8 dwelling units or 4,000 square feet of non-residential gross floor area
b.	Midrise (MR)	20 dwelling units or 4,000 square feet of non-residential gross floor area
c.	Highrise (HR)	20 dwelling units or 4,000 square feet of non-residential gross floor area
d.	Neighborhood Commercial (NC1, NC2, NC3)	4 dwelling units or 4,000 square feet of non-residential gross floor area
e.	Commercial (C1, C2)	4 dwelling units or 12,000 square feet of non-residential gross floor area, located on a lot in an urban center or urban village[1], or on a lot that abuts or is across a street or alley from a lot zoned single-family, or on a lot located in the area bounded by: NE 95th St., NE 145th St., 15th Ave. NE, and Lake Washington
f.	Seattle Mixed (SM)	20 dwelling units or 12,000 square feet of non-residential gross floor area
g.	Industrial Commercial (IC) zone within all designated urban villages and urban centers	12,000 square feet of non-residential gross floor area
h.	Master Planned Community (MPC)[2]	20 dwelling units or 12,000 square feet of non-residential gross floor area

Table A for 23.41.004 Thresholds for Design Review		
i.	All zones - congregate residences, and residential uses in which more than 50 percent of dwelling units are small efficiency dwelling units[3]	Developments containing at least 5,000 but less than 12,000 square feet of gross floor area are subject to Streamlined Design Review (SDR) pursuant to Section 23.41.018. Developments containing at least 12,000 but less than 20,000 square feet of gross floor area are subject to Administrative Design Review (ADR) pursuant to Section 23.41.016. Developments containing 20,000 square feet or more of gross floor area are subject to Design Review pursuant to Chapter 23.41.
Footnotes to Table A for 23.41.004: [1]Urban centers and urban villages are identified in the Seattle Comprehensive Plan. [2]If an application in a Master Planned Community zone does not include a request for departures, the applicable design review procedures are in Section 23.41.020. If an application in a Master Planned Community zone includes a request for departures, then the applicable design review procedures are in Section 23.41.014. [3]When a congregate residence or development in which more than 50 percent of dwelling units are small efficiency dwelling units is subject to more than one design review threshold, the gross square footage threshold on line i shall apply.		

2. Design review is required for all new Major Institution development proposals that exceed any applicable threshold listed in this subsection 23.41.004.A, unless the structure is located within a Major Institution Overlay (MIO) district.

3. Design review is required for all new development proposals located in the Downtown zones listed in Table B for 23.41.004 that exceed any of the following thresholds in Table B for 23.41.004:

Table B for 23.41.004 Thresholds for Downtown Design Review	
DOC1, DOC2, or DMC zones	
Use	**Threshold**
Non-residential	50,000 square feet of gross floor area
Residential	20 dwelling units

Table B for 23.41.004 Thresholds for Downtown Design Review	
DRC, DMR, DH1 or DH2 zones, or PMM zone outside the Pike Place Market Historical District	
Use	**Threshold**
Non-residential	20,000 square feet of gross floor area
Residential	20 dwelling units

4. Design review is required for all new development proposals exceeding 120 feet in width on any single street frontage in the Stadium Transition Area Overlay District as shown in Map A for 23.74.004, and all new development proposals exceeding 12,000 square feet of nonresidential gross floor area and electing to add extra floor area above the base FAR that are located in an IC 85-160 zone.

5. Streamlined administrative design review (SDR) to protect trees. As provided in Sections 25.11.070 and 25.11.080, SDR pursuant to Section 23.41.018 is required for any new development proposals in LR, MR, and commercial zones if an exceptional tree, as defined in Section 25.11.020, is located on the lot and is not proposed to be preserved, if design review would not otherwise be required by this subsection 23.41.004.A.

6. Design review pursuant to Section 23.41.014 is required for projects that are eligible for design review under any provision of this Section 23.41.004 and that are participating in the Living Building Pilot Program authorized by Section 23.40.060.

7. SDR pursuant to Section 23.41.018 is required for all new developments that include at least three townhouse units, if design review is not otherwise required by this subsection 23.41.004.A.

8. Except for development ((~~with~~)) <u>within</u> the boundaries of a Master Planned Community, design review pursuant to Section 23.41.014 is required for a development proposal if the proposal is (a) for three or more attached or detached dwelling units or 2,000 square feet or

more of non-residential gross floor area; and (b) on a lot that is abutting one or more qualifying lots and the combined size of development proposals on the subject lot and abutting qualifying lot or lots exceeds thresholds in Table A or Table B to Section 23.41.004. For purposes of the preceding sentence, a "qualifying lot" is a lot for which, on the day a complete application is submitted for a development proposal on the subject lot: (a) a complete Master Use Permit or building permit application for a development proposal that does not exceed thresholds in Table A or B to Section 23.41.004 is or has been submitted; and (b) a certificate of occupancy for the development has not been issued or, for a project where no certificate of occupancy is required, the final inspection pursuant to any issued building permit has not been completed. If complete applications for development proposals are submitted for the subject lot and qualifying lot on the same day, design review is required for both development proposals.

9. Design review pursuant to Section 23.41.014 is required for any project seeking to participate in the Living Building Pilot Program, including a development proposal for an existing structure.

B. Design review - optional

1. Full design review is optional to any applicant for a new multifamily, commercial, or Major Institution development proposal ((~~s~~)) not otherwise subject to this Chapter 23.41, if the new development proposal not otherwise subject to this Chapter 23.41 is in the Stadium Transition Area Overlay District or if the new development proposal is in any multifamily, commercial, or downtown zone.

2. Administrative design review is optional for any applicant for new multifamily or commercial development proposals if the new multifamily or commercial development proposal does not exceed the thresholds provided in Table A for 23.41.004 and is not otherwise

subject to this Chapter 23.41 if the proposal is in the Stadium Transition Area Overlay District, or is in any multifamily, commercial, or downtown zone, according to the process described in Section 23.41.016. Projects that are not otherwise subject to this Chapter 23.41 and are in any multifamily zone not listed in Table A for 23.41.004 are eligible only for optional full design review under subsection 23.41.004.B.1 if the number of dwelling units exceeds 20. If the project contains 20 dwelling units or ((~~less~~)) fewer, then the project applicant may pursue either full or administrative design review.

3. Streamlined administrative design review is an option for:

a. ((~~applicants~~)) An applicant for a multifamily residential use ((~~s~~)) in an LR zone ((~~s~~)) for which design review is not otherwise required by subsection 23.41.004.A; and

b. ((~~applicants~~)) An applicant for a new multifamily and commercial development proposal ((~~s~~)) in a Lowrise, Midrise, and Commercial zone ((~~s~~)) to protect a tree over 2 feet in diameter measured 4.5 feet above the ground, if design review would not otherwise be required by subsection 23.41.004.A.5.

* * *

Section 3. Subsection 23.41.012.D of the Seattle Municipal Code, which section was last amended by Ordinance 124883, is amended as follows:

23.41.012 Development standard departures

* * *

D. Departures for the Living Building Pilot Program

1. Criteria for departures. Departures from Land Use Code requirements for projects ((~~participating in~~)) qualifying for the Living Building Pilot Program pursuant to Section

23.40.060 may be allowed if an applicant demonstrates that the departure would result in a development that better meets the intent of adopted design guidelines, or that the departure would result in a development that better meets the goals of the Living Building Pilot Program and would not conflict with adopted design guidelines. In making this recommendation, the Design Review Board shall consider the extent to which the anticipated environmental performance of the building would be substantially compromised without the departures.

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

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

b. Residential density limits;

((~~c. Floor area ratios up to 15 percent above the otherwise applicable limit;~~

~~d.~~)) c. Maximum size of use;

((~~e. Structure height, subject to the following:~~

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

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

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

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

((~~f.~~)) d. Quantity of parking required, minimum and maximum parking limits, and minimum and maximum number of drive-in lanes;

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

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

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

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

Section 4. Subsection 23.42.056.A of the Seattle Municipal Code, which section was enacted by Ordinance 124747, is amended as follows:

23.42.056 Transitional encampment as an interim use

A Type I Master Use Permit may be issued for a transitional encampment interim use according to the requirements of this Section 23.42.056.

A. The Director, in consultation with the Human Services Director, shall adopt a rule according to ((~~subsection~~)) Section 23.88.010 ((~~.A~~)) that includes but is not limited to establishing:

1. Community outreach requirements that include:

a. Community outreach standards that the encampment operator shall comply with before filing a transitional encampment interim use permit application, whether for a new transitional encampment or relocation of an existing transitional encampment. At a minimum, outreach standards shall contain a requirement that the encampment operator convene at least one public meeting in the neighborhood where the transitional encampment interim use is proposed to be established, at least 14 days prior to applying for a permit;

b. A requirement that the proposed encampment operator establish a Community Advisory Committee that would provide advisory input on proposed encampment operations including identifying methods for handling community complaints or concerns as it relates to the facility or facility clients. The committee shall include one individual identified by each stakeholder group in the geographic area where the proposed encampment would be located as best suited to represent their interests. The committee shall consist of no more than seven members. Encampment operator representatives shall attend committee meetings to answer questions and shall provide regular reports to the committee concerning encampment operations. City staff may attend the meetings; and

2. Operations standards that the encampment operator is required to implement while an encampment is operating.

* * *

Section 5. Subsection 23.45.510.C of the Seattle Municipal Code, which section was last amended by Ordinance 124843, is amended as follows:

23.45.510 Floor area ratio (FAR) limits

* * *

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

1. ((~~Green building performance standards~~)) The applicant shall make a commitment that the proposed development will meet the green building standard and shall demonstrate compliance with that commitment, all in accordance with Chapter 23.58D; and

((~~a. Applicants shall make a commitment that the structure will meet green building performance standards by earning a Leadership in Energy and Environmental Design (LEED) Silver rating, certification by the Passive House Institute U. S. or the Passive House Institute, or a Built Green 4-star rating of the Master Builders Association of King and Snohomish Counties, except that an applicant who is applying for funding from the Washington State Housing Trust Fund and/or the Seattle Office of Housing to develop new affordable housing, may elect to meet green building performance standards by meeting the Washington Evergreen Sustainable Development Standards (ESDS). The standards referred to in this subsection 23.45.510.C.1.a are those identified in Section 23.45.526, and Section 23.45.526 shall apply as if the application were for new development gaining extra residential floor area.~~

~~b. If a site contains existing structures that were developed under the Land Use Code in place prior to April 19, 2011, the existing structures and any additions to those structures are not required to be upgraded or current green building performance standards for the higher FAR limits to apply to those structures. Any entirely new structure proposed to be~~

~~built on the lot shall meet current green building performance standards to gain the higher FAR limit. If a structure is developed under the Land Use Code in place as of or after April 19, 2011, and was not built to the higher FAR, then in order for the structure or addition to gain the higher FAR, the structure shall be updated to current green building performance standards.~~))

2. For all categories of residential use, if the lot abuts an alley and the alley is used for access, improvements to the alley shall be required as provided in subsections 23.53.030.E and 23.53.030.F, except that the alley shall be paved rather than improved with crushed rock, even for lots containing fewer than ten dwelling units.

3. Parking location if parking is provided

a. For rowhouse and townhouse developments, parking shall be totally enclosed within the same structure as the residential use, located in a structure or portion of a structure that meets the requirements of subsection 23.45.510.E.5, or located in parking area of structure at the rear of the lot. A parking area not within a structure that is located at the rear of the lot shall be located behind all structures except, if accessed from an alley, the parking area may be located no closer to the front lot line than 50 percent of the lot depth.

b. For apartments, parking may either:

1) be totally enclosed within the same structure as the residential use; or

2) on lots located outside of urban centers, urban villages, and the Station Area Overlay District, be located off an alley at the rear of the lot, provided that all surface parking is limited to a single row of spaces along the alley and access to each surface parking space is taken directly from the alley.

4. Access to parking if parking is provided

a. Access to required barrier-free parking spaces may be from either a street or an alley. Subsections 23.45.510.C.4.b, 23.45.510.C.4.c, and 23.45.510.C.4.d do not apply to required barrier-free parking spaces.

b. If the lot abuts an alley, access to parking shall be from the alley, unless one or more of the conditions in subsection 23.45.536.C.2 are met.

c. If access cannot be provided from an alley, access shall be from a street if the following conditions are met:

1) On corner lots, the driveway shall abut and run parallel to the rear lot line of the lot or a side lot line that is not a street lot line.

2) On a non-corner lot, there is no more than one driveway per 160 feet of street frontage.

d. If access to parking does not meet one of the standards in this subsection 23.45.510.C.4, or if an exception is granted that allows parking access from both an alley and a street pursuant to subsection 23.45.536.C, the lower FAR limit on Table A for 23.45.510 applies.

* * *

Section 6. Subsection 23.45.516.A of the Seattle Municipal Code, which section was last amended by Ordinance 124952, is amended as follows:

23.45.516 Additional height and extra residential floor area in MR and HR zones

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

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

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

* * *

Section 7. Section 23.45.526 of the Seattle Municipal Code, last amended by Ordinance 124919 and that currently reads as follows, is repealed:

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

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

~~1. This commitment is not required for building additions and alterations to structures existing or approved prior to April 19, 2011; and~~

~~2. An applicant who is applying for funding from the Washington State Housing Trust Fund and/or the Seattle Office of Housing to develop new affordable housing, as defined in subsection 23.45.526.D, may elect to meet green building performance standards by meeting the Washington Evergreen Sustainable Development Standards (ESDS).~~

~~B. The Director may establish, by rule, procedures for determining whether an applicant has demonstrated that a new structure has earned a LEED Silver rating or a Built Green 4-star rating, or met the ESDS, provided that no rule may assign authority for making a final~~

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

~~C. The applicant shall demonstrate to the Director the extent to which the applicant has complied with the commitment to meet the green building performance standards no later than 90 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. Performance is demonstrated through an independent report from a third party, pursuant to subsection 23.90.018.E.~~

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

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

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

~~b. A 4-Star rating either for Built Green Multi-Family Version 2008 or Built Green Single-Family/Townhome New Construction Version 2007, at the election of the applicant, according to the criteria in the Master Builders Association of King and Snohomish Counties Rating System;~~

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

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

Section 8. Subsection 23.48.021.D of the Seattle Municipal Code, which section was enacted by Ordinance 124883, is amended as follows:

23.48.021 Extra floor area <u>in Seattle Mixed zones</u>

* * *

D. Minimum requirement. Developments containing any extra floor area shall meet the following requirements:

1. Leadership in Energy and Environmental Design (LEED) requirement. ((~~Except as described in subsection 23.48.221.C.1.b, the applicant will earn a LEED Silver rating or meet a substantially equivalent standard, and shall demonstrate compliance with that commitment, in accordance with the provisions of Section 23.48.021.D.2.~~)) <u>The applicant shall make a commitment that the proposed development will meet the green building standard and shall demonstrate compliance with that commitment, all in accordance with Chapter 23.58D.</u>

((~~2. Demonstration of LEED rating~~

~~a. Applicability. This subsection 23.48.021.D.2 applies if a commitment to earn a LEED rating or substantially equivalent standard is a condition of a permit. Applicants for all new development, except additions and alterations, gaining extra residential floor area pursuant to Section 23.48.021, or seeking to qualify for the higher FAR limit in the applicable Table A for 23.48.020 or Table A for 23.48.220, shall make a commitment that the structure will meet LEED rating, except that an applicant who is applying for funding from the Washington State Housing Trust Fund and/or the Seattle Office of Housing to develop new affordable~~

~~housing, as defined in Section 23.58A.180 may elect to meet green building performance standards by meeting the Washington Evergreen Sustainable Development Standards (ESDS).~~

~~b. The Director is authorized to determine, as a Type I decision, whether the applicant has demonstrated that a new structure has earned a LEED rating or met a substantially equivalent standard. The Director may establish by rule procedures for determining whether an applicant has demonstrated that a new structure has earned a LEED rating or met any such 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 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. Performance is demonstrated through an independent report from a third party, pursuant to subsection 23.90.018.D. For purposes of this subsection 23.48.021.D.2, if the Director shall have approved a commitment to achieve a substantially equivalent standard, the 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 23.48.021.D.2, 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] × CV × 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] × 200,000,000 × 0.0075 =~~	~~$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 paid in the amount determined under subsection 23.48.021.D.2.c.3, no additional penalty shall be imposed for the failure to comply with the commitment.~~

~~5) If the Director determines that the report submitted provides satisfactory evidence that the applicant's commitment is satisfied, the Director shall issue a certificate to the applicant so stating. If the Director determines that the applicant did not~~

~~demonstrate compliance with its commitment to earn a LEED rating in accordance with this subsection 23.48.021.D, the Director may give notice of such determination, and of the calculation of the penalty due, to the applicant.~~

~~6) If, within 90 days, or such longer period as the Director may allow for good cause, after initial notice from the Director of a penalty due under this subsection 23.48.021.D.2, the applicant shall demonstrate, through a supplemental report from the independent entity that provided the initial report, that it has made sufficient alterations or improvements to earn a LEED rating, or to earn more credits toward such a rating, then the penalty owing shall be eliminated or recalculated accordingly. The amount of the penalty as so re-determined shall be final. If the applicant does not submit a supplemental report in accordance with this subsection 23.48.021.D.2 by the date required under this subsection 23.48.021.D.2, then the amount of the penalty as set forth in the Director's original notice shall be final.~~

~~7) Any owner, other than the applicant, of any lot on which the bonus development was obtained or any part thereof, shall be jointly and severally responsible for compliance and liable for any penalty due under this subsection 23.48.021.D.2.~~

~~d. Use of penalties. A subfund shall be established in the City's General Fund to receive revenue from penalties under subsection 23.48.021.D.2. Revenue from penalties under that subsection 23.48.021.D.2 shall be allocated to activities or incentives to encourage and promote the development of sustainable buildings. The Director shall recommend to the Mayor and City Council how these funds should be allocated.~~))

((~~3.~~)) 2. Transportation Management Program (TMP). The applicant will provide a TMP for non-residential development, consistent with requirements for TMPs in any applicable Director's Rule, that demonstrates, to the satisfaction of the Director in consultation

with the Director of Transportation, that no more than 40 percent of trips to and from the development will be made using single-occupant vehicles (SOVs). The TMP shall be submitted with the Master Use Permit application.

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

b. Compliance with this subsection ((~~23.48.021.D.3~~)) 23.48.021.D.2 does not affect the responsibility of any employer to comply with Seattle's Commute Trip Reduction (CTR) Ordinance.

Section 9. Subsection 23.48.230.C of the Seattle Municipal Code, which section was enacted by Ordinance 124883, is amended as follows:

23.48.221 Extra floor area in South Lake Union Urban Center

* * *

C. Minimum requirement. ((~~Development containing any extra floor area in South Lake Union Urban Center shall meet the following requirements:~~

~~1. LEED requirement~~

~~a. Except as described in subsection 23.48.021.C.1.b, the applicant will earn a LEED Gold rating or meet a substantially equivalent standard, and shall demonstrate compliance with that commitment, in accordance with the provisions of subsection 23.48.021.D.2.~~

~~b. An applicant may choose to earn at least a LEED Silver rating, if the Director of the Office of Sustainability and Environment determines that the development is~~

~~served by a district energy provider. A building is considered served by a district energy provider if it is capable of connecting to a district energy system and has a contract with a district energy utility to serve primary heating and/or cooling needs. A district energy provider is an entity with a franchise agreement with the City that maintains a closed-loop district energy utility system that is either currently or scheduled to primarily use renewable and/or waste heat sources, per the system development plans and timeframes of an agreement with the City and the district energy provider. A district energy provider may, subject to City approval, rely on a temporary on-site or nearby transitional plant that is installed and maintained by the provider prior to connection of the development to a permanent district energy system.~~)) The applicant shall make a commitment that the proposed development will meet the green building standard and shall demonstrate compliance with that commitment, all in accordance with Chapter 23.58D.

Section 10. Subsection 23.48.230.D of the Seattle Municipal Code, which section was enacted by Ordinance 124883, is amended as follows:

23.48.230 ((~~Extra~~)) Additional height in certain SM-zoned areas in the South Lake Union Urban Center

* * *

D. ((~~LEED requirement. The applicant will strive to achieve a LEED Gold rating or better and at a minimum earn a LEED Silver rating or meet a substantially equivalent standard, and shall demonstrate compliance with that commitment, all in accordance with the provisions of Section 23.48.021.D.2.~~)) The applicant shall make a commitment that the proposed development will meet the green building standard and shall demonstrate compliance with that commitment, all in accordance with Chapter 23.58D.

* * *

Section 11. Subsection 23.49.011.A of the Seattle Municipal Code, which section was last amended by Ordinance 124883, is amended as follows:

23.49.011 Floor area ratio

A. General standards

1. The base and maximum floor area ratio (FAR) for each zone is provided in Table A for 23.49.011.

Table A for 23.49.011 Base and ((~~Maximum Floor Area Ratios~~))maximum floor area ratios (FARs)		
Zone ((~~Designation~~)) designation	**Base FAR**	**Maximum FAR**
Downtown Office Core 1 (DOC1)	6	20
Downtown Office Core 2 (DOC2)	5	14
Downtown Retail Core (DRC)	3	5
Downtown Mixed Commercial (DMC)	4 in DMC 65 4.5 in DMC 85 5 in DMC 125, DMC 160, DMC 240/290-400, and DMC 340/290-400 3 in DMC 85/65-150	4 in DMC 65 4.5 in DMC 85 5 in DMC 160, except 8 for hotels 7 in DMC 125 and DMC 240/290-400 10 in DMC 340/290-400 5 in DMC 85/65-150
Downtown Mixed Residential/Residential (DMR/R)	1 in DMR/R 85/65 1 in DMR/R 125/65 1 in DMR/R 240/65	1 in DMR/R 85/65 2 in DMR/R 125/65 2 in DMR/R 240/65
Downtown Mixed Residential/Commercial (DMR/C)	1 in DMR/C 85/65 1 in DMR/C 125/65 2 in DMR/C 240/125 2.5 in DMR/C 65/65-85 2.5 in DMR/C 65/65-150	4 in DMR/C 85/65 4 in DMR/C 125/65 5 in DMR/C 240/125 4 in DMR/C 65/65-85 4 in DMR/C 65/65-150
Pioneer Square Mixed (PSM)	NA	NA
International District Mixed (IDM)	3, except as stated below* 6 for hotels** in IDM 75-85 and IDM 75/85-150	3, except as stated below 6 for hotels** in IDM 75-85 and IDM 75/85-150 6 in IDM 150/85-150
International District Residential (IDR)	1	2 if 50 percent or more of the total gross floor area on the lot is in residential use

Table A for 23.49.011 Base and ((~~Maximum Floor Area Ratios~~))maximum floor area ratios (FARs)		
International District Residential/Commercial (IDR/C)	3, except hotels 6 for hotels**	3, except hotels 6 for hotels**
Downtown Harborfront 1 (DH1)	NA	NA
Downtown Harborfront 2 (DH2)	2.5	Development standards regulate maximum FAR
Pike Market Mixed (PMM)	7	7
Footnotes to Table A for 23.49.011 NA = Not Applicable ((~~.~~)) * In the IDM 150/85-150 zone, hotel uses are subject to the base FAR of 3 FAR. ** Hotel use may be combined with up to 3 FAR of other chargeable floor area, up to a total of 6 FAR.		

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

a. In DOC1, DOC2, and DMC zones that are located outside of South Downtown, if chargeable floor area above the base FAR is allowed on a lot for development that includes a new structure and the project is located within the Local Infrastructure Project Area for Downtown and South Lake Union as shown on Map A for 23.58A.044, the first increment of chargeable floor area above the base FAR, shown for each zone in Table B for 23.49.011, shall be gained by acquiring regional development credits pursuant to Section 23.58A.044.

Table B for 23.49.011 First increment of FAR above the base FAR achieved through acquisition of regional development credits	
Zone	**((~~First increment of FAR above the base FAR achieved acquisition of regional development credits~~)) Increment of FAR**
All DOC1 zones	1.0
All DOC2 zones	0.75
DMC 340/290-400	0.50
DMC 125, DMC 160, DMC 240/290-400	0.25

b. In DOC1, DOC2, DH2, and DMC zones outside of South Downtown, additional chargeable floor area above the first increment of FAR that exceeds the base FAR

may be obtained only by qualifying for floor area bonuses pursuant to Section 23.49.012 or 23.49.013, or by the transfer of ((~~transferable development rights~~)) TDR pursuant to Section 23.49.014, or both, except as otherwise expressly provided in this subsection 23.49.011.A.2. If the requirements of subsection 23.49.011.A.2.a do not apply, the first increment of floor area that exceeds the base FAR shall be zero.

c. In no event shall the use of bonuses, TDR, or regional development credits, or any combination of them, be allowed to result in chargeable floor area in excess of the maximum as set forth in Table A for 23.49.011, except that a structure on a lot in a planned community development pursuant to Section 23.49.036 or a combined lot development pursuant to Section 23.49.041 may exceed the floor area ratio otherwise permitted on that lot, provided the chargeable floor area on all lots included in the planned community development or combined lot development as a whole does not exceed the combined total permitted chargeable floor area.

d. Except as otherwise provided in this subsection 23.49.011.A.2.d or subsections 23.49.011.A.2.f or 23.49.011.A.2.h, and except in South Downtown, not less than 5 percent of all floor area above the base FAR to be gained on any lot, excluding any floor area gained under subsections 23.49.011.A.2.a, 23.49.011.A.2.j, and 23.49.011.A.2.k, shall be gained through the transfer of Landmark TDR, to the extent that Landmark TDR are available. Landmark TDR shall be considered "available" only to the extent that, at the time of the Master Use Permit application to gain the additional floor area, ((~~the~~)) The City of Seattle is offering Landmark TDR for sale, at a price per square foot no greater than the total bonus contribution under Section 23.49.012 for a project using the cash option for both housing and childcare facilities. An applicant may satisfy the minimum Landmark TDR requirement in this Section 23.49.011 by purchases from private parties, by transfer from an eligible sending lot owned by

the applicant, by purchase from the City, or by any combination of the foregoing. This subsection 23.49.011.A.2.d does not apply to any lot in a DMR zone.

e. Except as otherwise permitted under subsections 23.49.011.A.2.g, 23.49.011.A.2.h, or 23.49.011.A.2.l, on any lot outside of South Downtown except a lot in a DMR zone, the total amount of chargeable floor area gained through bonuses under Section 23.49.012, together with any housing TDR and Landmark housing TDR used for the same project, shall equal 75 percent of the amount, if any, by which the total chargeable floor area to be permitted on the lot exceeds the sum of:

1) the base FAR, as determined under this Section 23.49.011 and Section 23.49.032 if applicable, plus

2) any chargeable floor area gained on the lot pursuant to subsections 23.49.011.A.2.a, 23.49.011.A.2.g, 23.49.011.A.2.h, 23.49.011.A.2.j, and 23.49.011.A.2.k. Except in South Downtown, at least half of the remaining 25 percent shall be gained by using TDR from a sending lot with a major performing arts facility, to the extent available, and the balance of the 25 percent shall be gained through bonuses under Section 23.49.013 or through TDR other than housing TDR, or both, consistent with this Chapter 23.49. TDR from a sending lot with a major performing arts facility shall be considered "available" only to the extent that, at the time of the Master Use Permit application to gain the additional floor area, ((~~the~~)) The City of Seattle is offering such TDR for sale, at a price per square foot not exceeding the prevailing market price for TDR other than housing TDR, as determined by the Director.

f. In order to gain chargeable floor area on any lot in a DMR zone outside of South Downtown, an applicant may:

1) use any types of TDR eligible under this Chapter 23.49 in any proportions, or

2) use bonuses under Section 23.49.012 or 23.49.013, or both, subject to the limits for particular types of bonus under Section 23.49.013, or

3) combine such TDR and bonuses in any proportions.

g. On any lot in a DMC zone allowing a maximum FAR of 7, in addition to the provisions of subsection 23.49.011.A.2.e, an applicant may gain chargeable floor area above the first increment of FAR above the base FAR through use of DMC housing TDR, or any combination of DMC housing TDR with floor area gained through other TDR and bonuses as prescribed in subsection 23.49.011.A.2.e.

h. If the amount of bonus development sought in any permit application does not exceed 5,000 square feet of chargeable floor area, the Director may permit such floor area to be achieved solely through the bonus for housing and child care.

i. No chargeable floor area above the base FAR shall be granted to any proposed development that would result in significant alteration to any designated feature of a Landmark structure, unless a certificate of approval for the alteration is granted by the Landmarks Preservation Board.

j. On a lot entirely in a DOC1 zone, additional chargeable floor area equal to 1.0 FAR may be permitted above the increment achieved through a commitment as prescribed in subsection 23.49.011.A.2.a, or above the base FAR after expiration of that subsection 23.49.011.A.2.a, on a lot that includes one or more qualifying Landmarks, subject to the following conditions:

1) the structure is rehabilitated to the extent necessary so that all features and characteristics controlled or designated by ordinance pursuant to Chapter 25.12 or Ordinance 102229 are in good condition and consistent with the applicable ordinances and with any certificates of approval issued by the Landmarks Preservation Board, all as determined by the Director of Neighborhoods; and

2) a notice shall be recorded in the King County real estate records, in form satisfactory to the Director, regarding the bonus allowed and the effect thereof under the terms of this Chapter 23.49. For purposes of this Section 23.49.011, a "qualifying Landmark" is a structure that:

a) has a gross floor area above grade of at least 5,000 square feet;

b) is separate from the principal structure or structures existing or to be developed on the lot, except that it may abut and connect with one such structure along one exterior wall;

c) is subject, in whole or in part, to a designating ordinance pursuant to Chapter 25.12, or was designated pursuant to Ordinance 102229; and

d) is on a lot on which no improvement, object, feature, or characteristic has been altered or removed contrary to any provision of Chapter 25.12 or any designating ordinance. A qualifying Landmark for which a bonus is allowed under this subsection 23.49.011.A.2.j shall be considered a public benefit feature, but shall not be considered an amenity for purposes of Section 23.49.013. For so long as any of the chargeable floor area allowed under this subsection 23.49.011.A.2.j remains on the lot, each qualifying Landmark for which such bonus was granted shall remain designated as a Landmark under

Chapter 25.12 and the owner shall maintain the exterior and interior of each qualifying Landmark in good condition and repair and in a manner that preserves the features and characteristics that are subject to designation or controls by ordinance, and that maintains compliance with all applicable requirements of federal, state, and local laws, ordinances, regulations, and restrictions.

k. On a lot entirely in a DOC1 zone, as an incentive to maintain diversity in the scale of downtown development, additional floor area equal to 0.5 FAR may be granted above the increment achieved through a commitment as prescribed in subsection 23.49.011.A.2.a, or above the base FAR after expiration of ((~~that~~)) subsection ((~~23.48.011.A.2.a~~)) 23.49.011.A.2.a, on a lot that includes one or more qualifying small structures, subject to the conditions in this subsection 23.49.011.A.2.k.

1) A "qualifying small structure" is one that satisfies all of the following standards:

a) the gross floor area of the structure above grade is a minimum of 5,000 square feet and does not exceed 50,000 square feet;

b) the height of the structure is 125 feet or less, not including rooftop features as specified in subsection 23.49.008.D;

c) the structure was not constructed or substantially structurally modified since July 13, 1982; and

d) the structure is not occupied by parking above the ground floor.

2) If the structure is removed from the lot or ceases to be a qualifying small structure, then any development on the portion of the lot previously occupied by

the structure, defined by a rectangle enclosing the exterior walls of the structure as they exist at the time the bonus is granted and extended to the nearest street frontage, shall be limited to a maximum floor area of 50,000 square feet for all uses and a maximum height of 125 feet, excluding any rooftop features as specified in subsection 23.49.008.D.

3) A notice shall be recorded in the King County real estate records, in form satisfactory to the Director, regarding the bonus allowed and the effect thereof under the terms of this Chapter 23.49.

4) Bonus floor area under this subsection 23.49.011.A.2.k may not be granted on the basis of a Landmark structure for which bonus floor area is allowed under subsection 23.49.011.A.2.j, but may be allowed on the basis of a different structure or structures that are on the same lot as a Landmark structure for which such bonus floor area is allowed.

l. Chargeable floor area in excess of the base FAR in the PSM 85-120 zone may be gained only in accordance with Section 23.49.180.

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

1) For a new or existing structure, ((~~the applicant makes a commitment, approved by the Director as a Type I decision, that the proposed development will earn a LEED Silver rating or meet a substantially equivalent standard. If such a commitment is made, Section 23.49.020 applies~~)) the applicant shall make a commitment that the proposed

development will meet the green building standard and shall demonstrate compliance with that commitment, all in accordance with Chapter 23.58D.

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

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

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

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

3. In a DOC1, DOC2, DRC, or DMC zone, for a lot that includes a qualifying Landmark structure with a performing arts theater, the base FAR specified in Table A for 23.49.011 is increased by 4 FAR, or by the amount of FAR between the base and maximum FAR of the zone, whichever is less, provided that the conditions of this subsection 23.49.011.A.3 are met.

a. For purposes of this subsection 23.49.011.A.3, a "qualifying Landmark structure with a performing arts theater" is a structure that is a designated Landmark pursuant to Chapter 25.12 and that meets the following:

1) the structure was built before 1930;

2) the structure contains performing arts theater space that has combined seating capacity in one or more venues for at least 800; and

3) the structure is subject to an ordinance granting incentives for and imposing controls on the Landmark structure.

b. At the time a qualifying Landmark structure with a performing arts theater uses the additional base FAR, either on the site or through transfer of TDR to another site, the following conditions shall be met:

1) the performing arts theater use established under approved permits, including combined seating capacity in one or more venues for at least 800, shall be ensured by binding covenants between the property owner and the City for at least 40 years from the first use of any of the additional base FAR, either on the site or through the first transfer of any TDR to another site; and

2) the Director, after consulting with the property owner, determines, as a Type I decision, that the property owner has executed a contract(s) with one or more theater groups or performing arts organizations for regularly scheduled use of the Landmark structure for live performances and that the anticipated use of the Landmark theater structure for live theater performances, combined with any other use of the structure, is adequate to contribute sufficiently to the presence of live theater in the Downtown Historic Theatre District established by Resolution 31341 and to support the desired level of activity in the area near the Landmark structure. In making this determination, the Director shall consider the following:

a) the extent and duration of the contract(s) between the property owner and one or more theater groups or performing arts organizations for regularly scheduled use of the Landmark structure for live performances;

b) the presence of uses in the structure that will contribute to activity in the area beyond the typical workday hours; and

c) programmed use of the Landmark structure by other activities during periods when the structure is not in use for live performances; and

3) any use of the additional base FAR on the site complies with all provisions of the designating ordinance and Chapter 25.12.

c. If a Landmark structure is on a lot that is not entirely regulated by a designating ordinance, then the area used to calculate the additional base FAR is the area of the footprint of the Landmark structure.

d. A lot that uses the additional base FAR on the site as allowed by this subsection 23.49.011.A.3 is not allowed to gain chargeable floor area under subsection 23.49.011.A.2.j.

e. If a qualifying Landmark structure with a performing arts theater is on a lot that is not entirely regulated by a designating ordinance, then the additional base FAR may be transferred as TDR to another site, or may be used on the site on the portion of the lot that is within the footprint of the Landmark structure, but shall not be used elsewhere on the lot.

4. The Master Use Permit application to establish any bonus development under this subsection 23.49.011.A.4 shall include a calculation of the amount of bonus development sought and shall identify the manner in which the conditions to such bonus development shall be satisfied. The Director shall, at the time of issuance of any Master Use Permit decision approving

any such bonus development, issue a Type I decision as to the amount of bonus development to be allowed and the conditions to such bonus development, which decision may include alternative means to achieve bonus development, at the applicant's option, if each alternative would be consistent with this Section 23.49.011 and any other conditions of the permit, including Design Review if applicable.

* * *

Section 12. Section 23.49.020 of the Seattle Municipal Code, last amended by Ordinance 124919 and that currently reads as follows, is repealed:

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

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

~~B. The Director is authorized to determine, as a Type I decision, whether the applicant has demonstrated that a new structure has earned a LEED Silver rating or met a substantially equivalent standard. The Director may establish by rule procedures for determining whether an applicant has demonstrated that a new structure has earned a LEED Silver rating or met any such substantially equivalent standard, provided that no rule shall assign authority for making a final determination to any person other than an officer of the Seattle Department of Construction and Inspections 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] × CV × 0.0075,~~

~~where:~~

~~P is the penalty;~~

~~LSM is the minimum number of credits to earn a LEED Silver 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 Silver rating~~	~~33~~
~~Credits Earned~~	~~32~~

~~Penalty = [(33-32)/33] × 200,000,000 × .0075 =~~	~~$45,454.55~~

~~4. Failure to comply with the applicant's commitment to earn a LEED Silver 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 paid in the amount determined under subsection 23.49.020.C.3, no additional penalty shall be imposed for the failure to comply with the commitment.~~

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

~~6. If, within 90 days, or such longer period as the Director may allow for good cause, after initial notice from the Director of a penalty due under this subsection 23.49.020.C, the applicant shall demonstrate, through a supplemental report from the independent entity that provided the initial report, that it has made sufficient alterations or improvements to earn a LEED Silver rating, or to earn more credits toward such a rating, then the penalty owing shall be eliminated or recalculated accordingly. The amount of the penalty as so re-determined shall be final. If the applicant does not submit a supplemental report in accordance with this subsection 23.49.020.C by the date required under this subsection 23.49.020.C, then the amount of the penalty as set forth in the Director's original notice shall be final.~~

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

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

Section 13. Subsection 23.49.023.F of the Seattle Municipal Code, which section was last amended by Ordinance 124172, is amended as follows:

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

* * *

F. ((~~LEED Silver rating.~~)) For new structures in PSM, IDM, DMR, and DMC zones within South Downtown that include extra residential floor area pursuant to Chapter 23.58A, the applicant shall make a commitment ((~~satisfactory to the Director that the proposed development shall earn a LEED Silver rating or meet a substantially equivalent standard approved by the Director as a Type I decision. If such commitment is made, Section 23.49.020 applies~~)) that the proposed development will meet the green building standard and shall demonstrate compliance with that commitment, all in accordance with Chapter 23.58D.

* * *

Section 14. Subsection 23.49.180.H of the Seattle Municipal Code, which section was enacted by Ordinance 123034, is amended as follows:

23.49.180 Additional height in the ((~~Pioneer Square Mixed~~)) PSM 85-120 zone

* * *

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

* * *

Section 15. Subsection 23.50.033.B of the Seattle Municipal Code, which section was enacted by Ordinance 123589, is amended as follows:

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

* * *

B. ((~~LEED requirement.~~)) The applicant shall make a commitment ((~~acceptable to the Director that the proposed development will earn a LEED Silver rating or meet a substantially equivalent standard, and shall demonstrate compliance with that commitment, all in accordance with Section 23.49.020~~)) that the proposed development will meet the green building standard and shall demonstrate compliance with that commitment, all in accordance with Chapter 23.58D.

* * *

Section 16. A new Chapter 23.58D of the Seattle Municipal Code is added as follows:

Chapter 23.58D GREEN BUILDING STANDARD

23.58D.002 Green building standard

A. When a commitment to meet the green building standard is required to qualify for additional height or extra floor area in the applicable zone, the owner shall make a commitment that the proposed development will meet the green building standard, or a substantially equivalent or superior standard, and shall demonstrate compliance with that commitment in accordance with the provisions of Section 23.58D.004.

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

C. The Director shall adopt and amend rules establishing the green building standard and enabling an owner to demonstrate compliance with a commitment to meet the standard using a substantially equivalent or superior standard.

23.58D.004 Demonstration of compliance

A. The Director may adopt and amend rules establishing procedures for documenting an owner's commitment that a proposed development will meet the green building standard and

determining whether the development complies with that commitment. No rule may assign authority for making a final determination to any person other than an officer of the Department or another City agency with regulatory authority and expertise in green building practices.

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

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

D. No later than 180 days after the Director sends notice that the report does not provide satisfactory evidence that the development complies with the owner's commitment, or by such later date as may be allowed by the Director for good cause, the owner shall demonstrate, through a supplemental report from an independent third party, that the development complies with the owner's commitment. If the Director determines that the supplemental report demonstrates compliance, the Director shall send the owner a written statement that the development complies with the owner's commitment. If the owner does not timely submit a supplemental report, or if the Director determines that the supplemental report does not

demonstrate compliance, the Director shall send the owner a written statement that the development does not comply with the owner's commitment.

23.58D.006 Penalties

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

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

C. Failure to comply with the owner's commitment that the development will meet the green building standard is a violation of the Land Use Code independent of the failure to demonstrate compliance; however, failure to comply with the owner's commitment shall not affect the right to occupy any extra floor area, and if a penalty is paid in the amount determined under subsection 23.58D.006.B, no additional penalty shall be imposed for the failure to comply with the commitment.

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

E. Use of penalties. A subfund shall be established in the City's General Fund to receive revenue from penalties under this Section 23.58D.006. Revenue from penalties under this

Section 23.58D.006 shall be allocated to activities or incentives to encourage and promote the development of sustainable buildings. The Director shall recommend to the Mayor and City Council how these funds should be allocated.

Section 17. Subsection 23.66.140.C of the Seattle Municipal Code, which section was last amended by Ordinance 124883, is amended as follows:

23.66.140 Height

* * *

C. Rooftop features and additions to structures

1. The height limits established for the rooftop features described in this Section 23.66.140 may be increased by the average height of the existing street parapet or a historically substantiated reconstructed parapet on the building on which the rooftop feature is proposed.

2. For development in the PSM 85-120 zone in the area shown on Map A for 23.49.180 and subject to the provisions of Section 23.49.180, the height limits for rooftop features are provided in subsection 23.49.008.D. The standards contained in subsections 23.66.140.C.1 and 23.66.140.C.4 do not apply to rooftop features on development subject to the provisions of Section 23.49.180.

3. The setbacks required for rooftop features may be modified by the Department of Neighborhoods Director, after a sight line review by the Preservation Board to ensure that the features are minimally visible from public streets and parks within 300 feet of the structure.

4. Height limits for rooftop features

a. Religious symbols for religious institutions, smokestacks, and flagpoles may extend up to 50 feet above the roof of the structure or the maximum height limit, whichever

is less, except as regulated in Chapter 23.64 ((~~of this Land Use Code~~)), provided that they are a minimum of 10 feet from all lot lines.

b. For existing structures, open railings, planters, clerestories, skylights, play equipment, parapets, and firewalls may extend up to 4 feet above the roof of the structure or the maximum height limit, whichever is less. For new structures, such features may extend up to 4 feet above the maximum height limit. No rooftop coverage limits apply to such features regardless of whether the structure is existing or new.

c. Solar collectors, excluding greenhouses, may extend up to 7 feet above the roof of the structure or the maximum height limit, whichever is less, with unlimited rooftop coverage, provided they are a minimum of 10 feet from all lot lines. For new structures, solar collectors may extend up to 7 feet above the maximum height limit, except as provided in subsection 23.66.140.C.4.j.1, and provided that they are a minimum of 10 feet from all lot lines.

d. The following rooftop features may extend up to 8 feet above the roof or maximum height limit, whichever is less, if they are set back a minimum of 15 feet from the street and 3 feet from an alley. They may extend up to 15 feet above the roof if set back a minimum of 30 feet from the street. A setback may not be required at common wall lines subject to review by the Preservation Board and approval by the Department of Neighborhoods Director. The combined coverage of the following listed rooftop features shall not exceed 15 percent of the roof area:

1) Solar collectors, excluding greenhouses;

2) Stair and elevator penthouses;

3) Mechanical equipment;

4) Minor communication utilities and accessory communication devices, except that height is regulated according to the provisions of Section 23.57.014.

Additional combined coverage of these rooftop features, not to exceed 25 percent of the roof area, may be permitted subject to review by the Preservation Board and approval by the Department of Neighborhoods Director.

e. On structures existing prior to June 1, 1989, and on additions to such structures permitted according to subsection 23.66.140.C.4.i or otherwise, new or replacement mechanical equipment and stair and elevator penthouses may extend up to 8 feet above the elevation of the existing roof or addition, as applicable, when they are set back a minimum of 15 feet from the street and 3 feet from an alley; or may extend up to 12 feet above the elevation of the existing roof or addition, as applicable, if they are set back a minimum of 30 feet from the street, subject to review by the Preservation Board and approval by the Department of Neighborhoods Director. On structures where rooftop features are allowed under subsection 23.66.140.C.4.e, the combined coverage of these rooftop features and any other features listed in subsection 23.66.140.C.4.d shall not exceed the limit provided in subsection 23.66.140.C.4.d, as it may be increased pursuant to ((~~that~~)) subsection 23.66.140.C.4.d.

f. Residential and office penthouses

1) Residential penthouses may cover a maximum of 50 percent of the total roof surface and may extend up to 8 feet above the roof if set back a minimum of 15 feet from the street property line, or 12 feet above the roof if set back a minimum of 30 feet from the street property line.

2) Office penthouses are permitted only if the footprint of the existing structure is greater than 10,000 square feet and the structure is at least 60 feet in height.

When permitted, office penthouses shall be set back a minimum of 15 feet from all property lines and may cover a maximum of 50 percent of the total roof surface. Office penthouses may extend up to 12 feet above the roof of the structure and shall be functionally integrated into the existing structure.

3) The combined height of the structure and a residential penthouse or office penthouse, if permitted, shall not exceed the maximum height limit for that area of the District in which the structure is located.

g. Screening of ((~~Rooftop Features~~)) rooftop features. Measures may be taken to screen rooftop features from public view subject to review by the Preservation Board and approval by the Department of Neighborhoods Director. The amount of ((~~roof top~~)) rooftop area enclosed by rooftop screening may exceed the maximum percentage of the combined coverage of rooftop features listed in subsection 23.66.140.C.4.d ((~~above~~)). In no circumstances shall the height of rooftop screening exceed 15 feet above the maximum height limit or height of an addition permitted according to subsection 23.66.140.C.4.i or otherwise, whichever is higher.

h. See Section 23.57.014 for regulation of communication utilities and accessory devices.

i. For a structure that has existed since before June 10, 1985, and is nonconforming as to structure height, an addition to the structure may extend to the height of the roof of the existing structure if:

((~~i)~~)) 1) the use of the addition above the limit on structure height applicable under Section 23.49.178 is limited to residential use; and

((~~ii~~))) 2) the addition occupies only all or a portion of the part of a lot that is bounded by an alley on one side and is bounded on at least two sides by walls of the existing structure that are not street-facing ((~~façades~~)) facades.

j. Enclosed rooftop recreational spaces for new structures

1) If included on new structures, enclosed rooftop recreational spaces and solar collectors may exceed the maximum height limit by up to 15 feet. The applicant shall ((~~: make a commitment to achieve a LEED Gold rating or better or meet a substantially equivalent standard and demonstrate compliance with that commitment according to the provisions of subsection 23.48.021.D.2~~)) make a commitment that the proposed development will meet the green building standard and shall demonstrate compliance with that commitment, all in accordance with Chapter 23.58D, and meet a Green Factor requirement of .30 or greater according to the provisions of Section 23.86.019. Each enclosed rooftop recreational space shall include interpretive signage explaining the sustainable features employed on or in the structure. Commercial, residential, or industrial uses shall not be established within enclosed rooftop recreational spaces that are allowed to exceed the maximum height limit under this subsection 23.66.140.C.4.j.

2) Elevator penthouses serving an enclosed rooftop recreational space may exceed the maximum height limit by up to 20 feet.

3) Enclosed rooftop recreational spaces, mechanical equipment, and elevator and stair penthouses shall not exceed 35 percent of the roof area.

4) Enclosed rooftop recreational spaces, mechanical equipment, and elevator and stair penthouses shall be set back a minimum of 30 feet from all streets and

((~~three~~)) 3 feet from all alleys. Solar collectors shall be set back as provided in subsections 23.66.140.C.4.c and 23.66.140.C.4.d.

5) Owners of structures with enclosed rooftop recreational spaces permitted pursuant to this subsection 23.66.140.C.4.j shall submit to the Director, the Pioneer Square Preservation Board, and the Director of Neighborhoods a report documenting compliance with the LEED Gold rating commitment and Green Factor requirements set forth ((~~above~~)) in Chapter 23.58D.

* * *

Section 18. Section 23.84A.014 of the Seattle Municipal Code, last amended by Ordinance 124952, is amended as follows:

23.84A.014 "G ((~~.~~))"

* * *

"Grade." See "Lot grade."

"Green building standard" means a performance-based standard adopted by the Director by rule that is equivalent to standards accepted in the building industry for high-level development strategies and practices that apply to a range of structure types, save resources, and promote renewable, clean energy. As of the date of the ordinance introduced as Council Bill _____, the green building standard could consist of requirements sufficient to attain the credits needed to achieve a Gold level in the Building Design and Construction rating system in the U.S. Green Building Council LEED v4 green building certification program.

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

* * *

Section 19. Section 23.88.010 of the Seattle Municipal Code, last amended by Ordinance 124919, is amended as follows:

23.88.010 Rulemaking

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

((~~B. The Director may adopt and amend, by rule, performance standards for determining whether a proposed new structure has earned, at a minimum, a Leadership in Energy and Environmental Design (LEED) Silver rating, a Built Green 4-star rating of the Master Builders Association of King and Snohomish Counties, or meets the Washington Evergreen Sustainable Development Standards (ESDS). No rule may assign authority for making a final determination of whether a proposed new structure has earned, at a minimum, a LEED Silver rating, a Built Green 4-star rating of the Master Builders Association of King and Snohomish Counties, or meets the Washington Evergreen Sustainable Development Standards (ESDS) to any person other than an officer of the Seattle Department of Construction and Inspections or another City agency with regulatory authority and expertise in green building practices.~~))

Section 20. Section 23.90.018 of the Seattle Municipal Code, last amended by Ordinance 124919, is amended as follows:

23.90.018 Civil enforcement proceedings and penalties

A. In addition to any other remedy authorized by law or equity, any person violating or failing to comply with any of the provisions of this Title 23 shall be subject to a cumulative

penalty of up to $150 per day for each violation from the date the violation begins for the first ten days of noncompliance; and up to $500 per day for each violation for each day beyond ten days of noncompliance until compliance is achieved, except as provided in subsection 23.90.018.B. In cases where the Director has issued a notice of violation, the violation will be deemed to begin for purposes of determining the number of days of violation on the date compliance is required by the notice of violation. In addition to the per diem penalty, a violation compliance inspection charge equal to the base fee set by Section 22.900B.010 shall be charged for the third inspection and all subsequent inspections until compliance is achieved. The compliance inspection charges shall be deposited in the General Fund.

B. Specific violations

1. Violations of Section 23.71.018 are subject to penalty in the amount specified in subsection 23.71.018.H.

2. Violations of the requirements of subsection 23.44.041.C are subject to a civil penalty of $5,000, which shall be in addition to any penalty imposed under subsection 23.90.018.A. Falsely certifying to the terms of the covenant required by subsection 23.44.041.C.3 or failure to comply with the terms of the covenant is subject to a penalty of $5,000, in addition to any criminal penalties.

3. Violation ((~~s~~)) of ((~~Section 23.49.011, 23.49.015, 23.49.023, or 23.50.051 with respect to failure to demonstrate compliance with commitments to earn LEED Silver ratings under applicable sections are subject to penalty in amounts determined under Section 23.49.020, and not to any other penalty, but final determination and enforcement of penalties under that Section 23.49.020 are subject to subsection 23.90.018.C~~)) <u>Chapter 23.58D with respect to a failure to timely submit the report required by subsection 23.58D.004.B or to demonstrate</u>

compliance with a commitment to meet the green building standard is subject to a penalty in an amount determined by subsection 23.58D.006.

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

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

P = SF × .02 × RDR,

where:

P is the penalty;

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

RDR is the refuse disposal rate, which is the per ton rate established in Chapter 21.40, and in effect on the date the penalty accrues, for the deposit of refuse at City recycling and disposal stations by the largest class of vehicles.

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

~~7. Violation of subsection 23.40.060.E.1.a by failing to demonstrate full compliance with the standards contained in subsection 23.40.060.E.1.a is subject to a maximum~~

~~penalty of 10 percent of the construction value set forth in the building permit for the structure and a minimum penalty of 1 percent of construction value, based on the extent of compliance with standards contained in subsection 23.40.060.E.1.a.~~))

((~~8.~~)) 5. Violation ((~~s~~)) of subsections 23.55.030.E.3.a.3, 23.55.030.E.3.b, 23.55.034.D.2.a, and 23.55.036.D.3.b, or, if the Seattle Department of Construction and Inspections has issued an on-premises sign permit for a particular sign and the actual sign is not being used for on-premises purposes or does not meet the definition of an on-premises sign as defined in Chapter 23.84A, are subject to a civil penalty of $1,500 per day for each violation from the date the violation begins until compliance is achieved.

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

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

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

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

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

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

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

~~a. The applicant shall demonstrate to the Director the extent to which the applicant has complied with the commitment to meet the green building performance requirements no later than 90 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. Performance is demonstrated through an independent report from a third party.~~

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

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

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

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

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

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

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

~~where:~~

~~P is the penalty;~~

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

~~d. Failure to comply with the applicant's commitment to meet green building performance requirements 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 paid in the amount determined under subsection~~

~~23.90.018.E.2, no additional penalty shall be imposed for the failure to comply with the commitment.~~

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

~~f. If, within 90 days, or such longer period as the Director may allow for good cause, after initial notice from the Director of a penalty due under this subsection, the applicant shall demonstrate, through a supplemental report from the independent entity that provided the initial report, that it has made sufficient alterations or improvements to earn the required green building performance rating, then the penalty owing shall be eliminated. If the applicant does not submit a supplemental report in accordance with this subsection by the date required under this subsection, or if the Director determines that the supplemental report does not demonstrate compliance, then the amount of the penalty as set forth in the Director's original notice shall be final, subject to subsection 23.90.018.C.~~

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

~~F.~~)) E. Use of ((~~Penalties~~)) penalties. ((~~A subfund shall be established in the City's General Fund to receive revenue from penalties under subsections 23.90.018.B.3, 23.90.018.B.5 and 23.90.018.E. Revenue from penalties under that subsection shall be allocated to activities or~~

~~incentives to encourage and promote the development of sustainable buildings. The Director shall recommend to the Mayor and City Council how these funds should be allocated.~~)) A subfund shall be established in the City's General Fund to receive revenue from penalties under subsection ((~~23.90.018.B.8~~)) 23.90.018.B.5, which shall annually be directed to the Seattle Department of Construction and Inspections' Operations Division, after ten percent of the gross receipts are paid to the Parks and Recreation Fund as required by Article XI, Section 3 of the Charter.

Section 21. If any section or subsection of the Seattle Municipal Code affected by this ordinance is amended by another ordinance without reference to amendments made by this ordinance, each ordinance shall be given effect to the extent that the amendments do not conflict in purpose, and the code reviser may publish the section or subsection in the official code with all amendments incorporated therein.

Section 22. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the ____ day of _____, 2016, and signed by me in open session in authentication of its passage this _____ day of _____, 2016.

_____

President _____ of the City Council

Approved by me this ____ day of _____, 2016.

_____

Edward B. Murray, Mayor

Filed by me this ____ day of _____, 2016.

_____

Monica Martinez Simmons, City Clerk

(Seal)