

Ordinance No. 123206

Council Bill No. 116740

An ordinance establishing a Living Building Pilot Program, amending Sections 23.41.004, 23.41.012, 23.41.014, 23.86.006, and 23.90.018, and adding a new Section 23.40.060 to the Seattle Municipal Code to implement the Pilot Program.

Related Legislation File: CF 310273

Date Introduced and Referred: <u>11.23.09</u>	To: (committee): <u>Planning, Land Use + Neighborhoods</u>
Date Re-referred:	To: (committee):
Date Re-referred:	To: (committee):
Date of Final Action: <u>12-14-09</u>	Date Presented to Mayor: <u>12-15-09</u>
Date Signed by Mayor: <u>12-21-09</u>	Date Returned to City Clerk: <u>12-22-09</u>
Published by Title Only _____	Date Vetoed by Mayor:
Published in Full Text <u>✓</u>	Date Passed Over Veto:
Date Veto Published:	Date Returned Without Signature:
Date Veto Sustained:	

The City of Seattle – Legislative Department

Council Bill/Ordinance sponsored by: [Signature]

Committee Action:

Date	Recommendation	Vote
<u>12.9.09</u>	<u>APPROVE</u>	<u>4-0</u>
	<u>SC, TB, TR, DG</u>	
	<u>DRAWN UP BY [Signature]</u>	

This file is complete and ready for presentation to Full Council.

Full Council Action:

Date	Decision	Vote
<u>12-14-09</u>	<u>Passed</u>	<u>9-0</u>

Law Department

ORDINANCE 123206

1
2 AN ORDINANCE establishing a Living Building Pilot Program, amending Sections 23.41.004,
3 23.41.012, 23.41.014, 23.86.006, and 23.90.018, and adding a new Section 23.40.060 to
4 the Seattle Municipal Code to implement the Pilot Program.

5 WHEREAS, the US Green Building Council estimates that, in the United States alone, buildings
6 account for 65% of electricity consumption, 36% of energy use, 30% of all greenhouse
7 gas emissions, 30% of raw materials use, 30% of waste output, and 12% of potable water
8 consumption (usgbc.org, April 27, 2009); and

9 WHEREAS, the City's Comprehensive Plan, originally adopted in 1994 and last amended in
10 2008, includes environmental goals to protect and improve the quality and function of the
11 city's air, land, and water resources; and

12 WHEREAS, the City's Comprehensive Plan also states Seattle's intent to reduce our climate
13 change impact, including a goal of reducing emissions of carbon dioxide and other
14 climate-changing greenhouse gases in Seattle from 1990 levels by 30 percent by 2024,
15 and by 80 percent from 1990 levels by 2050; and

16 WHEREAS, 1000 cities, including Seattle, have signed the United States Conference of Mayors'
17 Climate Protection Agreement, which calls on cities to take actions in their own
18 communities, including, among others, to reduce sprawl, to advocate for the development
19 of renewable energy resources to increase the use of clean, alternative energy, to improve
20 building codes to make energy efficiency a priority, to evaluate opportunities to increase
21 pump efficiency in water and wastewater systems, and to promote sustainable building
22 practices; and

23 WHEREAS, in 2008 the Washington State Legislature passed and the Governor signed ESSB
24 6001, now codified as RCW 70.235.020, which establishes a goal for the State of
25 Washington to reduce its output of greenhouse gas emissions to 1990 levels by 2020; and

26 WHEREAS, the *Living Building Challenge* is a performance-based rating system developed by
27 the International Living Building Institute to recognize developments that achieve an
28 advanced level of sustainability, given what is currently possible and the best knowledge
available today. Projects that achieve this level of performance can claim to be among
the 'greenest' anywhere, and will serve as role models to others that follow; and

WHEREAS, the *Living Building Challenge* challenges building owners, architects, design
professionals, engineers, and contractors to build well-designed, environmentally sound,
and self-sustaining buildings that generate all of their own energy with renewable



resources, that capture and treat all of the water needed, and that use resources efficiently;
and

WHEREAS, creating a Living Building requires a fundamentally different approach to building design, construction, and operations that may necessitate changes to current development codes; NOW THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Establishment of Pilot Program. This ordinance establishes the Living Building Pilot Program.

Section 2. Program Reporting and Evaluation. The Department of Planning and Development (DPD) shall provide the City Council with an annual status report on the Living Building Pilot Program, summarizing the types of projects submitted, types of projects that qualified for participation in the pilot program, and an evaluation of how the proposals have met or are meeting the goals and intent of the Living Building Pilot Program. In order to assess the effectiveness of the Living Building Pilot Program in achieving desired goals, the program shall be evaluated within five years after the effective date of this ordinance, or within 12 months after the first project has been evaluated for its performance against the Living Building Challenge, whichever comes later.

Section 3. A new Section 23.40.060 is added to the Seattle Municipal Code, 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.



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

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

4 B. Project qualification.

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

8 2. Enrollment period. The enrollment period is limited to three years from the
9 effective date of this ordinance or when twelve projects have successfully qualified, whichever
10 comes first.

11 3. Application requirements. In order to qualify for the Living Building Pilot
12 Program, applicants must submit a plan demonstrating how their project will meet each of the
13 prerequisites of the Living Building Challenge, including an overall design concept, proposed
14 energy balance, proposed water balance, and descriptions of innovative systems. In addition, an
15 applicant shall include a description of how the project serves as a model for testing code
16 improvements to stimulate and encourage Living Buildings in the city.

17 4. Qualification process. An eligible project shall qualify for the Pilot Program
18 upon determination by the Director that it has submitted a complete application pursuant to
19 Section 23.76.010 and has complied with the application requirements in Section 23.40.060.B.3.

20 C. Design review. All Living Building Pilot Program projects are subject to Design
21 Review and shall be reviewed in accordance with the Design Review Process provided in
22 Section 23.41.014.

23 D. Height measurement technique. At the discretion of the applicant, the height of a
24 qualifying project shall be determined using either the definition of building height in Section
25



1 502 of the Seattle Building Code or the method described in Chapter 23.86 of the Land Use
2 Code.

3 E. Compliance with minimum standards.

4 1. Minimum standards. While the intent of the Living Building Pilot Program is to
5 encourage development of buildings that meet or exceed the goals of the Living Building
6 Challenge, qualifying projects that are granted departures shall meet either all of the prerequisites
7 of the Living Building Challenge or 60 percent of the prerequisites of the Living Building
8 Challenge and all of the following alternative standards:

9 a. total building energy usage, subtracting energy generated on site, is 25
10 percent or less of the average energy usage for a comparable building not in the Living Building
11 Program, based on the Energy Information Administration's 2003 Commercial Buildings Energy
12 Use Survey, Energy Information Administration's 2005 Residential Energy Consumption
13 Survey, or other baseline approved by the Director that would provide a comparable estimate;

14 b. total building water usage, subtracting harvested rainwater, is 25
15 percent or less of the average water usage for a comparable building not in the Living Building
16 Program, based on Seattle Public Utility estimates or other baseline approved by the Director
17 that would provide a comparable estimate; and

18 c. at least 50 percent of stormwater is captured and used on site.

19 2. No later than two years after issuance of a final Certificate of Occupancy for
20 the project, or such later date as may be allowed by the Director for good cause, the owner shall
21 submit to the Director a report demonstrating how the project has met the Living Building
22 Challenge prerequisites and the standards described in subsection 23.40.006.E.1.

23 3. If the Director determines that the report submitted pursuant to subsection
24 23.40.060.E.2 provides satisfactory evidence that the project has complied with the standards
25 contained in subsection 23.40.060.E.1, the Director shall send the owner a certificate stating that



1 the project has complied with the performance standards of the Living Building Pilot Program. If
2 the Director determines that the project does not comply with the standards in subsection
3 23.40.060.E.1, the Director shall notify the owner of the aspects in which the project does not
4 comply. Components of the project that are included in order to comply with the minimum
5 standards of this program shall remain for the life of the project.

6 4. Within 90 days after the Director notifies the owner of the ways in which the
7 project does not comply, or such longer period as the Director may allow for good cause, the
8 owner may submit a supplemental report demonstrating that it has made alterations or
9 improvements such that the project now meets the standards in subsection 23.40.060.E.1.

10 5. If the owner fails to submit a supplemental report within the time allowed
11 pursuant to Section 23.40.060.E.4, the Director shall determine that the project has failed to
12 demonstrate full compliance with the standards contained in Section 23.40.060.E.1, and the
13 owner shall be subject to the penalty in Section 23.90.018.B.6.

14 Section 4. Subsection A of Section 23.41.004 of the Seattle Municipal Code, which
15 section was last amended by Ordinance 123034, is amended as follows:

16 **23.41.004 Applicability((~~r~~))**

17 A. Design Review Required.

18 1. Design review is required for any new multifamily or commercial development
19 proposal that exceeds one of the following thresholds:

Zone		Threshold
a.	Lowrise (L3, L4)	8 dwelling units
b.	Midrise (MR)	20 dwelling units
c.	Highbise (HR)	20 dwelling units
d.	Neighborhood Commercial (NC1, 2, 3)	4 dwelling units or 4,000 square feet of



		nonresidential gross floor area
e.	Commercial (C1, C2)	4 dwelling units or 12,000 square feet of nonresidential gross floor area, when located 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 located in the area bounded by: NE 95th St, NE 145th St, 15th Ave. NE and Lake Washington((-))
f.	Seattle Mixed (SM)	20 units or 12,000 square feet of nonresidential gross floor area
g.	Industrial Commercial (IC) zone within the South Lake Union Urban Center	12,000 square feet of nonresidential gross floor area

¹Urban centers and urban villages are identified in the Seattle Comprehensive Plan.

2. Design review is required for all new Major Institution development proposals that exceed thresholds in the zones listed in subsection A.1 of this ((s))Section 23.41.004, 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 following Downtown zones ((and)) that equal or exceed any of the following thresholds:

DOC 1, DOC 2 or DMC Zones

Use	Threshold
Nonresidential	50,000 square feet of gross floor area
Residential	20 dwelling units

DRC, DMR, DH1 or DH2

Use	Threshold
Nonresidential	20,000 square feet of gross floor area
Residential	20 dwelling units



1 1. Criteria for Departures. Departures from Land Use Code requirements for
2 projects participating in the Living Building Pilot Program pursuant to Section 23.40.060 may be
3 allowed if an applicant demonstrates that the departure would result in a development that better
4 meets the intent of adopted design guidelines or that the departure would result in a development
5 that better meets the goals of the Living Building Challenge and would not conflict with adopted
6 design guidelines. In making this recommendation, the Board shall consider the extent to which
7 the anticipated environmental performance of the building would be substantially compromised
8 without the departures.

9 2. Scope of Departures. In addition to the departures allowed under Section
10 23.41.012.B, departures for projects participating in the Living Building Pilot Program
11 established under Section 23.40.060 may also be granted for the following:

12 a. Permitted, prohibited or conditional use provisions, but only for
13 accessory uses that would directly address a prerequisite of the Living Building Challenge,
14 including but not limited to uses that could re-use existing waste streams or reduce the
15 transportation impacts of people or goods.

16 b. Residential density limits;

17 c. Downtown view corridor requirements;

18 d. Floor Area Ratios up to 15 percent above the otherwise applicable limit;

19 e. Maximum size of use;

20 f. Structure height, except only rooftop features may extend more than 10
21 feet above the otherwise applicable limit;

22 g. Quantity of parking required, minimum and maximum parking limits,
23 and minimum and maximum number of drive-in lanes;

24 h. Standards for storage of solid-waste containers;



1 Review Board a condition of permit approval, unless the Director concludes that the
2 recommendation of the Design Review Board:

- 3 a. Reflects inconsistent application of the design review guidelines; or
- 4 b. Exceeds the authority of the Design Review Board; or
- 5 c. Conflicts with SEPA conditions or other regulatory requirements applicable to
6 the site; or
- 7 d. Conflicts with the requirements of state or federal law.

8 ***

9 Section 7. Section 23.86.006 of the Seattle Municipal Code, which section was last
10 amended by Ordinance 122823, is amended as follows:

11 **23.86.006 Structure height((-))**

12 A. Height ~~((M))~~ measurement ~~((F))~~ technique in ~~((A))~~ all ~~((Z))~~ zones ~~((E))~~ except
13 ~~((D))~~ downtown ~~((Z))~~ zones, ~~((and W))~~ within the South Lake Union Hub Urban Village, and for
14 the Living Building Pilot Program authorized by Section 23.40.060.

15 ***

16 H. For Projects accepted into the Living Building Pilot Program authorized pursuant to
17 Section 23.40.060, the applicant may choose either the height definition of Section 502 of the
18 Seattle Building Code or the height measurement method described in this Section 23.86.006.

19 Section 8. Subsection B of Section 23.90.018 of the Seattle Municipal Code, which
20 section was last amended by Ordinance 122901, is amended as follows:

21 **23.90.018 Civil enforcement proceedings and penalties((-))**

22 ***

23 B. Specific Violations.

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



1 2. Violations of Section 23.44.041.C are subject to a civil penalty of \$5,000,
2 which shall be in addition to any penalty imposed under subsection A of this section 23.90.018.

3 3. Violations of Section 23.49.011, 23.49.015 or 23.50.051 with respect to failure
4 to demonstrate compliance with commitments to earn LEED Silver ratings or satisfy alternative
5 standards under any such ((S))section are subject to a penalty in amounts determined under
6 Section 23.49.020, and not to any other penalty.

7 4. Violations of Section 23.40.007.B with respect to failure to demonstrate
8 compliance with a waste diversion plan for a structure permitted to be demolished under
9 subsection 23.40.006.C is subject to a penalty in an amount determined as follows:

10
$$P = SF \times .02 \times RDR,$$

11 where:

12 P is the penalty;

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

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

18 5. Violations of Section 23.40.060.E.2 by failing to submit the report required by
19 Section 23.40.060.E.2 by the date required is subject to a penalty of \$500 per day from the date
20 the report was due to the date it is submitted.

21 6. Violation of Section 23.40.060.E.1 by failing to demonstrate full compliance
22 with the standards contained in Section 23.40.060.E.1 is subject to a maximum penalty of 5
23 percent of the construction value set forth in the building permit for the structure and a minimum
24 penalty of 1 percent of construction value, based on the extent of compliance with standards
25 contained in Section 23.40.060.E.1.



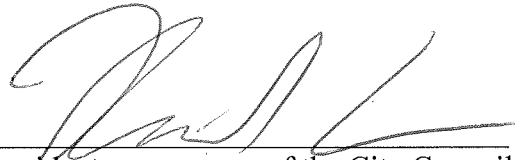
1 Section 9. This ordinance shall take effect and be in force thirty (30) days from and after
2 its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days
3 after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

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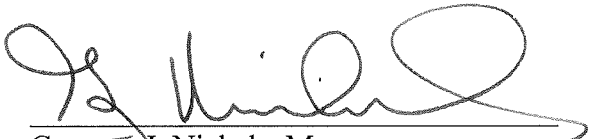
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Passed by the City Council the 14th day of December, 2009, and
signed by me in open session in authentication of its passage this
14th day of December, 2009.




President _____ of the City Council

Approved by me this 21st day of December, 2009.



Gregory J. Nickels, Mayor

Filed by me this 22nd day of December, 2009.



City Clerk

(Seal)



FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	DOF Analyst/Phone:
Planning and Development	Brennon Staley/684-4625	Karen Grove/684-5805

Legislation Title: An ordinance establishing a Living Building Pilot Program, amending Sections 23.41.004, 23.41.012, 23.41.014, 23.86.006, and 23.90.018 and adding a new Section 23.40.060 to the Seattle Municipal Code to implement the Pilot Program.

- **Summary of the Legislation:** This ordinance would create a Living Building Pilot Program to facilitate the development of buildings that are attempting to meet the Living Building Challenge. This proposal would use the existing design review process for selected projects; expand the scope of departures allowed to allow departures for sustainability as well as design criteria. The ordinance also establishes specific requirements for enrollment, minimum green building standards, and penalties for non-compliance.
- **Background:** The Living Building Challenge is a green building certification created by the International Living Building Institute to recognize buildings meeting the highest level of sustainability. In general, the Living Building Challenge requires buildings to avoid environmentally sensitive sites, use recycled materials, generate as much or more electricity than they use (through sustainable sources), capture as much rainwater as they use, treat wastewater on site, and meet a number of standards for other elements, such as quality of the indoor environment.

In order to meet the stringent performance standards of the Living Building Challenge, buildings generally rely upon innovative building design techniques and features including natural daylighting and ventilation, solar capture, rainwater capture and use, wastewater treatment and reuse, and ultra-efficient heating, ventilation and air conditioning systems. These systems can substantially increase design complexity and necessitate early integrated design processes to ensure that all systems are compatible, work in an efficient manner, and that each performance goal can be met. These innovative systems may also necessitate alternative building massing, non-traditional exterior and roof top features, or other elements that were not envisioned by existing codes, which were designed to provide minimum standards rather than the flexibility to consider radically different building strategies.

The proposal would use the existing design review process for board review of permit applications eligible to participate in the program. The program would end after applications for 12 projects are accepted by DPD or three years, whichever comes first. Design review for selected projects would be subject to existing permit review fees, which are anticipated to cover the cost of permit review activities.

X This legislation does not have any financial implications.





City of Seattle

Gregory J. Nickels, Mayor

Office of the Mayor

November 17, 2009

Honorable Richard Conlin
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Conlin:

I am pleased to transmit the attached proposed Council Bill that establishes a Living Building Pilot Program to facilitate the development of the next generation of green buildings as part of an international movement called the Living Building Challenge.

The Living Building Challenge was created by the International Living Building Institute to certify and recognize buildings meeting the highest level of sustainability. Living Buildings are required to be self-sufficient in terms of meeting their own energy and water needs, and must comply with advanced standards in areas such as sustainable material use and indoor environment quality. The development of Living Buildings requires alternative design approaches that may call for flexibility when applying the Land Use Code. The proposed pilot program authorized by this Bill would use the existing design review process and authorize certain alternatives and departures to permit buildings that meet Living Building Challenge goals and the City's design guidelines.

This proposal will help drive the development of innovative buildings that support City government's ongoing commitment to conserve energy and water, and reduce waste. Thank you for your consideration of this legislation. Should you have questions, please contact Brennon Staley at 684-4625.

Sincerely,

A handwritten signature in black ink, appearing to read "G. Nickels", written over a large, light-colored scribble or watermark.

GREG NICKELS
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

