

June 15, 2018

MEMORANDUM

To: Planning, Land Use and Zoning Committee
From: Aly Pennucci, Council Central Staff
Subject: CB 119252: 2030 Challenge Pilot and Living Building Pilot

On June 20, 2018, the Planning, Land Use and Zoning Committee (PLUZ) will consider potential amendments and likely vote on [Council Bill \(CB\) 119252](#), which would: (1) establish a 2030 Challenge High Performance Existing Building Pilot Program (2030 Pilot) and (2) update the existing Living Building Pilot Program (LB Pilot). Both programs encourage the development or rehabilitation of buildings that meet high green building standards and promote environmental quality. An initial briefing and discussion was held at the May 16 PLUZ Committee meeting, and a public hearing was held on June 6.

This memo describes potential amendments for discussion and possible vote on June 20.

Potential Amendments

There are four potential amendments described below for the Committee's consideration. Specific amendment language is provided in Attachments 1 through 4.

1. Clarify water requirements for the LB Pilot *Sponsor: CM Johnson*
This amendment would add specificity to the water requirements under the LB Pilot to provide clear direction to applicants. The Seattle Department of Construction and Inspections requested this clarification to assist in administration of the program.
2. Maintain maximum penalty of five percent of construction value *Sponsor: CM O'Brien*
Under the existing LB Pilot, projects are subject to a maximum penalty of five percent of the construction value for the development project. The proposal would reduce the maximum penalty to three percent of construction value and includes a weighted formula to calculate the percent of noncompliance for different program requirements. This general penalty structure would apply to both pilot programs. This amendment would maintain the maximum penalty of five percent and modify the formula used to determine the penalty applied to each program requirement to account for the five percent maximum.
3. Eliminate proposed expansion of available departures *Sponsor: CM O'Brien*
Land Use Code departures available through the Design Review Program offer project applicants flexibility in exchange for projects that better meet adopted design guidelines. In addition to the general design review departures that any project subject to design review can pursue, projects participating in either pilot program could request departures from other standards that are not otherwise available if they demonstrate that approval of a departure would better meet the goals of the pilot program or the

adopted design guidelines. The Executive's proposal would expand the list of departures available in certain Downtown zones that would be available to both programs.

During recent Council deliberations regarding changes to Downtown zones, concerns have been raised related to tower spacing and the bulk of new towers (i.e. tower floor area limits and tower width limits). This amendment would remove the additional departures included in the Executive's proposal related to tower space and the bulk of new towers.

4. Request for additional water conservation policy development. *Sponsor: CM Herbold*
Both the existing LB Pilot and the 2030 Pilot include standards that require applicants to include, or at least consider, incorporating water reuse strategies into their projects. This amendment adds a noncodified section to CB 119252 requesting that Seattle Public Utilities begin work that would inform a potential future program to encourage or require incorporating systems for water reuse in new developments.

Attachments:

1. Amendment 1: LB Pilot Water Requirements
2. Amendment 2: Pilot Program Penalties
3. Amendment 3: Proposed departures
4. Amendment 4: Water reuse policy development

cc: Kirstan Arestad, Central Staff Director
Ketil freeman, Supervising Analyst

Amendment 1: Living Building Pilot – Water Requirements
Councilmember Johnson

This amendment would add more specificity to the Living Building Pilot Program’s requirements for water management to provide clear direction to applicants

Note:

- Language proposed to be added by this amendment is shown with a double underline.
- Language proposed to be deleted by this amendment is shown with ~~double strikeout~~.

Section 1. Section 23.40.060 of the Seattle Municipal Code, last amended by Ordinance 125163, is amended as follows:

23.40.060 Living Building Pilot Program

* * *

B. Minimum standards. A project shall qualify for the Living Building Pilot Program if it is located outside of the shoreline jurisdiction, (~~has been~~) is reviewed in accordance with the full 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 SM 3.1 certification or all of the following:

* * *

~~(3)~~ 4. The project uses only nonpotable water to meet the demand for toilet and urinal flushing, irrigation, hose bib, cooling tower (make up water only), and water features, except to the extent other applicable local, state, or federal law requires the use of potable water.

**Amendment 2: Modify proposed penalties for the Living Building and 2030 Challenge Pilot Programs
Councilmember O'Brien**

This amendment would

1. Increase the proposed maximum penalty from 3% of construction value to 5% (for the LB Pilot this would be maintaining the existing maximum penalty); and
2. Modify the proposed formulas in the penalty calculations for consistency with a 5% maximum penalty

Note:

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- Language proposed to be deleted by this amendment is shown with ~~double strikeout~~.
- Language previously proposed to be removed from the Seattle Municipal Code that would instead be retained if this amendment is passed is shown with a dashed underline.

Section 1. Section 23.40.060 of the Seattle Municipal Code, last amended by Ordinance 125163, is amended as follows:

23.40.060 Living Building Pilot Program

* * *

G. Penalties for the Living Building Pilot Program

* * *

2. Failure to demonstrate compliance with the provisions contained in subsection 23.40.060.B is subject to a maximum penalty of five ~~three~~ 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. A minimum penalty of one ~~and one-half~~ percent will be applied if any of the provisions contained in subsection 23.40.060.B are not achieved in their entirety. Additional penalties for minimum energy and water criteria, at one ~~and one-half~~ percent and one ~~half~~ percent respectively, will be based on the extent of noncompliance compared to the baselines provided in this Section 23.40.060 and calculated according to the methodology in subsections 23.40.060.G.2.a and 23.40.060.G.2.b for each component. An additional penalty of one ~~half~~ percent will be applied for not

achieving Petal Certification. Penalties shall be calculated according to Tables B and C for 23.40.060 and this subsection 23.40.060.G:

a. Energy: Percentage of noncompliance = $100 \times \frac{[(\text{Pilot Program Target}) - (\text{Metered Energy Use Intensity})]}{[(\text{SEC target}) - (\text{Pilot Program Target})]}$; where “SEC target” means Energy Use Intensity (EUI) targets in the Target Performance Path of Seattle Energy Code Section C401.3, and “Pilot Program target” means the SEC target x 0.75.

b. Water: Percentage of noncompliance = $100 \times [1 - \frac{(\text{total gallons/year of non-potable water used})}{(\text{total gallons/year of water needed for non-potable uses})}]$

Table B for 23.40.060	
Percentage of Noncompliance for Energy	Penalty (percentage of construction value)
Greater than zero up to 10	0.1 0.15
Greater than 10 up to 20	0.2 0.30
Greater than 20 up to 30	0.3 0.45
Greater than 30 up to 40	0.4 0.60
Greater than 40 up to 50	0.5 0.75
Greater than 50 up to 60	0.6 0.90
Greater than 60 up to 70	0.7 1.05
Greater than 70 up to 80	0.8 1.20
Greater than 80 up to 90	0.9 1.35
Greater than 90	1.0 1.50

Table C for 23.40.060	
Percentage of Noncompliance for Water	Penalty (percentage of construction value)
Greater than zero up to 10	0.05 0.1
Greater than 10 up to 20	0.10 0.2
Greater than 20 up to 30	0.15 0.3
Greater than 30 up to 40	0.20 0.4
Greater than 40 up to 50	0.25 0.5

Table C for 23.40.060	
Percentage of Noncompliance for Water	Penalty (percentage of construction value)
Greater than 50 up to 60	0.30 <u>0.6</u>
Greater than 60 up to 70	0.35 <u>0.7</u>
Greater than 70 up to 80	0.40 <u>0.8</u>
Greater than 80 up to 90	0.45 <u>0.9</u>
Greater than 90	0.50 <u>1.0</u>

* * *

Section 2. A new Section 23.40.070 is added to the Seattle Municipal Code as follows:

23.40.070 2030 Challenge High Performance Existing Building Pilot Program

* * *

F. Penalties for the 2030 Challenge High Performance Existing Building Pilot Program

* * *

2. Failure to demonstrate compliance with the provisions contained in subsection 23.40.070.B is subject to a minimum penalty of one and one-half percent up to a maximum penalty of ~~three~~ 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 23.40.070.B. A minimum penalty of one and one-half percent will be applied if any of the provisions contained in 23.40.070.B are not achieved in their entirety. Additional penalties will be based on the extent of noncompliance compared to the baselines provided in 23.40.070.B.6 and calculated according to the methodology below in subsections 23.40.070.F.2.a through 23.40.070.F.2.c for each component. Penalties shall be calculated according to Tables F through H for 23.40.070:

a. Energy: Percentage of noncompliance = 100 x [((Metered Energy Use Intensity) - (2030 Target)) / ((SEC target) - (2030 Pilot Target))];

b. Water: Percentage of noncompliance = 100 x [((2030 Pilot Target) - (water managed (%))) / (2030 Pilot Target)];

c. Transportation: Percentage of noncompliance = 100 x [(Mode share result) - (2030 Pilot Target)] / [(2014 baseline) - (2030 Pilot Target)];

where “2030 Pilot Target” means the 2030 Challenge High Performance Existing Building Pilot Program Target.

Table F for 23.40.070	
Percentage of Noncompliance for Energy	Penalty (percentage of construction value)
Greater than zero up to 10	0.1 <u>0.15</u>
Greater than 10 up to 20	0.2 <u>0.30</u>
Greater than 20 up to 30	0.3 <u>0.45</u>
Greater than 30 up to 40	0.4 <u>0.60</u>
Greater than 40 up to 50	0.5 <u>0.75</u>
Greater than 50 up to 60	0.6 <u>0.90</u>
Greater than 60 up to 70	0.7 <u>1.05</u>
Greater than 70 up to 80	0.8 <u>1.20</u>
Greater than 80 up to 90	0.9 <u>1.35</u>
Greater than 90	1.0 <u>1.50</u>

Table G for 23.40.070	
Percentage of Noncompliance for Water	Penalty (percentage of construction value)
Greater than zero up to 10	0.05 <u>0.1</u>
Greater than 10 up to 20	0.10 <u>0.2</u>
Greater than 20 up to 30	0.15 <u>0.3</u>
Greater than 30 up to 40	0.20 <u>0.4</u>
Greater than 40 up to 50	0.25 <u>0.5</u>
Greater than 50 up to 60	0.30 <u>0.6</u>
Greater than 60 up to 70	0.35 <u>0.7</u>
Greater than 70 up to 80	0.40 <u>0.8</u>
Greater than 80 up to 90	0.45 <u>0.9</u>
Greater than 90	0.50 <u>1.0</u>

Table H for 23.40.070	
Percentage of Noncompliance for Transportation	Penalty (percentage of construction value)
Greater than zero up to 10	0.05 <u>0.1</u>
Greater than 10 up to 20	0.10 <u>0.2</u>
Greater than 20 up to 30	0.15 <u>0.3</u>
Greater than 30 up to 40	0.20 <u>0.4</u>
Greater than 40 up to 50	0.25 <u>0.5</u>
Greater than 50 up to 60	0.30 <u>0.6</u>
Greater than 60 up to 70	0.35 <u>0.7</u>
Greater than 70 up to 80	0.40 <u>0.8</u>
Greater than 80 up to 90	0.45 <u>0.9</u>
Greater than 90	0.50 <u>1.0</u>

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**Amendment 3: Removed proposed departures
Councilmember O'Brien**

This amendment would eliminate the additional Land Use Code departures that would be available to projects participating in either pilot program.

Note:

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Section 4. Section 23.41.012 of the Seattle Municipal Code, last amended by Ordinance 125429, is amended as follows:

23.41.012 Development standard departures

* * *

D. Departures for the Living Building and 2030 Challenge High Performance Existing Building Pilot Programs

* * *

2. Scope of departures. In addition to the departures allowed under subsection 23.41.012.B, departures for projects qualifying for the Living Building and 2030 Challenge High Performance Existing Building Pilot Programs established under Sections 23.40.060 and 23.40.070 may also be granted for the following:

- a. Permitted, prohibited, or conditional use provisions, but only for accessory uses that would directly address the standards contained in subsection 23.40.060.B and subsection 23.40.070.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. Maximum size of use;

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

e. Standards for storage of solid-waste containers;

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

g. Standards for the location of access to parking in Downtown zones;

~~and~~

h. Standards for structural building overhangs and minor architectural encroachments in Section 23.53.035. ~~§~~

~~i. The following departures may be allowed to the extent necessary to accommodate development that includes the additional floor area gained pursuant to subsections 23.40.060.C and 23.40.070.C:~~

~~1) Tower spacing requirements as provided in subsection 23.49.058.D in Downtown Mixed Commercial zones;~~

~~2) Average floor area limit for stories in residential use in Downtown zones in Table B for 23.49.058;~~

~~3) Floor area limits for all uses in SM-SLU zones provided in subsections 23.48.245.A, 23.48.245.B.1, 23.48.245.B.2, and 23.48.245.B.3;~~

~~4) Structure height limits in Downtown and Seattle Mixed-South Lake Union zones;~~

**Amendment 4: Onsite water systems for non-potable applications.
Councilmember Herbold**

This amendment would add a new section to the ordinance requesting that the Executive uses information from the pilot programs to inform possible next steps to implement a program that requires or incentivizes water reuse in new developments. This amendment also renumbers Section 7 to Section 8.

Note:

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Section 7: The Council requests that Seattle Public Utilities (SPU), in consultation with Public Health—Seattle & King County Environmental Health Services, Office of Sustainability and Environment, and the Seattle Department of Construction and Inspections, collect and analyze information from the Living Building Pilot Program and the 2030 Challenge High Performance Existing Building Pilot Program, to inform possible recommendations to develop a program that requires or incentivizes innovative strategies to reuse water to reduce demand for potable water in new development. Potential aspects of such a program could include, but are not limited to, use of graywater for nonpotable uses like landscape irrigation or toilet flushing, or the addition of onsite water systems for water recycling and non-potable applications in new development. SPU should include a review of programs launched in other cities, including the City of San Francisco’s recycled water and non-potable water ordinances, in addition to reviewing any applicable local, state, or federal regulations. SPU shall report to the Civil Rights, Utilities, Economic Development, and Arts Committee by December 2018.

Section ~~7~~ 8. 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.

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