

May 11, 2018

MEMORANDUM

To: Planning, Land Use and Zoning Committee
From: Aly Pennucci, Legislative Analyst
Subject: 2030 Challenge Pilot and Living Building Pilot

On May 16, 2018, the Planning, Land Use and Zoning Committee (PLUZ) will have an initial briefing and discuss the proposed amendments to the Land Use Code, 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. A public hearing and possible vote is scheduled for the June 6, 2018, PLUZ meeting. This memo:

- (1) Provides background information on the existing LB Pilot;
- (2) Describes the proposed 2030 Program and changes to the existing LB Pilot; and
- (3) Describes potential amendments for the Committee's consideration.

Background

The LB Pilot provides Land Use Code flexibility and incentives to facilitate the development of up to 20 buildings that would either achieve Living Building Challenge (LBC) full certification, or LBC Petal Certification and specific energy and water requirements. The LB Pilot was adopted through ordinances that amended the Land Use Code as follows:

2010: The original legislation implementing the Living Building Pilot program ([Ordinance \(ORD\) 123206](#)).

2012: Amendments to the LB Pilot to add in a "Seattle Deep Green" option. This required that projects meet 60 percent of the LBC requirements and specific energy use, water use, and storm water management requirements ([ORD 123942](#)).

2014: The program was amended in [ORD 124535](#) to:

- Eliminate the Seattle Deep Green option;
- Revise the minimum energy use requirements to align with the new Seattle Energy Code;
- Clarify that independent third-party report is required to verify compliance with LBC;
- Modify and/or remove available design review departures; and
- Increase the maximum penalty for projects failing to demonstrate full compliance.

2016: The LB Pilot was amended two times in 2016, ORD 125053 extended the program's expiration date to June 30, 2017 in order to prevent the program from lapsing prior to subsequent update enacted under [ORD 125163](#). ORD 125163 amended the LB Pilot to:

- Link the Program directly to the International Living Futures Institute's (ILFI) Living Building Challenge™ (LBC) Petal certification program;
- Allow Land Use Code incentives for additional height and floor area as-of-right;
- Modify the minimum program requirements;
- Reduce the maximum penalty from ten to five percent of a project's construction value; and
- Extend the enrollment period until 2025 (or when 20 projects have participated).

During the deliberations that led to the 2016 update to the LB Pilot, the Seattle 2030 District proposed that rather than achieving LBC Petal Certification, existing buildings should be able to obtain the same height and floor area incentives by meeting a different set of green building standards designed for existing buildings.¹ At that time, Council directed the Seattle Department of Construction and Inspections, in coordination with the Office of Sustainability and the Environment, to work with stakeholders, including the Seattle 2030 District and the International Living Future Institute, to develop recommendations for: (1) a green building pilot program for existing buildings; and (2) allowing a project located on an upland lot in the Urban Harborfront Shoreline Environment to participate in a green building pilot program for new or existing buildings. Since 2010, one project has been developed under the former Seattle Deep Green Pilot Program, one project under the LB Pilot, and four other projects considering participation are at varying stages of the permit review process.

The proposal included in this current piece of legislation is in response to direction described in item (1). SDCI will prepare recommendations for item (2) by the end of 2018.

Pilot Programs – Overview

The intent of both the 2030 Pilot and the LB Pilot is to encourage the development of very green, high performing buildings. The primary distinction between the two programs is that the 2030 Pilot is focused exclusively on existing buildings while the LB Pilot is available to new buildings as well as existing buildings.

The proposed 2030 Pilot would:

- Allow up to 20 projects that include renovation of an existing building meeting certain size thresholds to participate. Projects must be located within an urban center, excluding any lots located in the Shoreline District or within the International Special Review District.
- Require that projects meet specific standards for energy, water and transportation efficiency.
- Provide Land Use Code incentives described below.
- Require participation in the Design Review Program.
- Apply a maximum penalty of three percent of construction value for failure to meet the green building standards.

The proposed changes to the LB Pilot would:

- Add a provision prohibiting use of on-site combustion of fossil fuels for space heating and water heating.
- Increase the amount of height and floor area incentives available to participating projects, and expand the list of available departures, as described below.
- Reduce the maximum penalty for failure to meet the green building standards from five percent of construction value to three percent.

¹ The current LB Program does allow existing buildings to participate, if the project voluntary goes through design review. Achieving LBC certification, or LB Petal Certification, is difficult for any building and to a certain degree may be more difficult for existing building, but there are examples of existing buildings achieving certifications available under the LBC.

Both programs would include the following Land Use Code incentives for qualifying projects:

- 25 percent more floor area than the maximum allowed in the zone; or 30 percent more for projects that include renovation of an unreinforced masonry (URM) building.
- 12.5 feet more height for residential buildings and 15 feet more height for commercial buildings above the maximum allowed in the zone for zones with height limits 85 feet or less; 25 feet more height for residential buildings and 30 feet for more height for commercial buildings in zones with a height limit greater than 85 feet.
- Allow the Design Review Board to consider the following additional departures from development standards for:
 - Tower spacing requirements in Downtown Mixed Commercial zones;
 - Tower floor area limits and tower width limits for portions of structures in residential use in Downtown Mixed Commercial zones; and
 - Structure height limits in Downtown zones and Seattle Mixed-South Lake Union zones

The additional height and floor area would be additive to any additional floor area or height gained by other programs such as incentive zoning or through any rezones to implement the Mandatory Housing Affordability program (MHA). The additional height and/or floor area gained through either program would not be subject to incentive zoning or MHA requirements.

Discussion items / potential amendments for consideration:

1. Level of Incentives

The proposal significantly increases to the Land Use Code incentives available to participating projects. The proposed floor area incentive results in a 67 to 100 percent increase compared to what is currently available under the LB Pilot. The proposed height incentive results in a 25 to 50 percent increase compared to the existing program. The proposed increase in incentives is combined with a proposed decrease in the maximum penalty applied if a project does not fulfill program requirements (see discussion item 2 below). In addition, it is unclear if the green building standards proposed under the 2030 Program are equivalent to those required to achieve LBC Full or Petal certification. Councilmembers may want to consider modifications to the proposed incentives. Options available to the committee include:

- a. Reduce the size of the floor area and height incentives available to participating projects for either or both programs.
- b. Request that the Executive provide information demonstrating that the requirements proposed under both programs are equivalent, justifying the provision of the same level of incentives provided under both programs.
- c. Amend the proposal to offer tiered incentives for each program. This could include, for example, offering less height and floor area under each program, or requiring that all or some portion of the floor area gained is subject to incentive zoning and MHA requirements generally applicable in the zone.
- d. No change.

2. Penalties

Penalties associated with the program have fluctuated over time. The original program had a maximum penalty of five percent. In 2014, the maximum penalty was increased to 10 percent. The increase addressed a concern that the penalty was so low that it was a disincentive to comply with program requirements. In 2016, the maximum penalty was reduced back to five percent informed by recommendations from a technical advisory group assembled in 2014 to review the LB Pilot requirements and reinforced by public comment. Upon further review, it was determined that the penalty should be high enough to ensure that project applicants will strive to fully comply with program requirements, rather than paying the penalty in lieu of complying, while not setting it so high that it deters participation. The group recommended that ten percent was too high and would deter participation.

Under the LB Pilot today, projects are subject to a maximum penalty of five percent. 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.

As an example, under the existing LB Pilot, a project with a construction value of \$8,000,000 would have a maximum penalty of \$400,000. If the project falls short of meeting the energy requirement the SDCI Director has authority to apply a penalty based on the extent of noncompliance. The proposed changes would result in the following:

Maximum penalty (100% noncompliance):	\$240,000 penalty
Fails to meet the energy requirement entirely:	\$160,000 penalty
Falls just shy of meeting the energy requirement:	\$88,000 penalty

The reduction to the maximum penalty combined with the proposed formula to calculate penalties for each program component could result in projects benefiting from the incentives without complying with the program requirements. To some extent that scenario may be balanced by the permit review process that includes reviewing the systems that should be designed to fulfill program requirements. However, there could be a calculation made by a project team that weighs the risk of the potential penalty against the cost of fully implementing the more efficient systems. Councilmembers may want to consider modifying the proposed changes to the penalties. Options available to the committee include:

- a. Increase the maximum penalty proposed by the Executive.
- b. Modify the formula used to determine the penalty applied to each program requirement. This could be combined with maintaining the current maximum penalty of five percent or reducing the maximum penalty.
- c. No change.

3. *Departures*

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 proposal would expand the list of departures that would be available to both programs as described on page 3.

The stated reason for introducing the additional departures is to help program participants use the height and floor area incentives while meeting applicable design guidelines. 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). The Committee may want to consider removing or setting additional criteria for application of the proposed departures. Options include:

- a. Eliminate the additional departures included in the proposal;
- b. Add parameters limiting the extent of the departure that could be requested (i.e. allow a departure to reduce the required tower separation by 20 percent or less).
- c. No change.

Next Steps

Following the discussion on May 16, central staff will work with councilmembers to draft amendments based on direction from the Committee for discussion at the June 6 PLUZ meeting.

cc: Kirstan Arestad, Central Staff Director
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